

FORCED MIGRATION

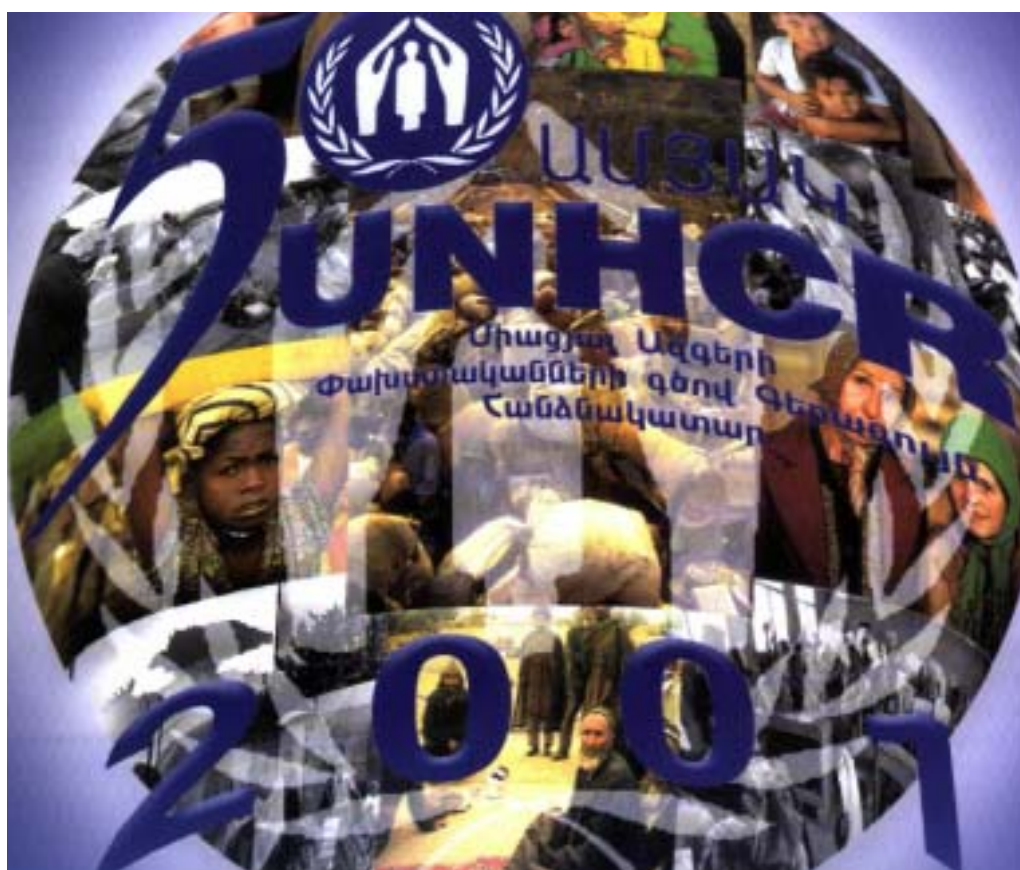
10
April 2001

review

published by

the Refugee Studies Centre in association with the Norwegian Refugee Council/Global IDP Project

UNHCR and the Convention at 50



fighting fit ~
or in need of a by-pass?

Forced Migration Review

provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published three times a year in English, Spanish and Arabic by the Refugee Studies Centre/University of Oxford in association with the Global IDP Project/Norwegian Refugee Council. The Spanish translation, *Revista de Migraciones Forzadas*, is produced by HEGOA in Bilbao, Spain.

Editors

Marion Couldrey & Dr Tim Morris
Subscriptions Assistant
Sharon Ellis

Forced Migration Review

Refugee Studies Centre,
Queen Elizabeth House,
21 St Giles, Oxford, OX1 3LA, UK
Email: fmr@qeh.ox.ac.uk
Tel: +44 (0)1865 280700
Fax: +44 (0)1865 270721

Global IDP Project

Chemin Moise-Duboule 59
CH-1209 Geneva, Switzerland
Email: idpsurvey@nrc.ch
Tel: +41 22 788 8085
Fax: +41 22 788 8086

Subscription rates

Individuals £15/US\$26 per annum
Institutions £25/US\$43 per annum
FREE for: residents of developing countries,
students/unwaged and refugees/IDPs
See page 57.

Copyright and disclaimer

Material from *Forced Migration Review* may be freely reproduced but please acknowledge the source. Photographs should only be reproduced in the context of the articles in which they appear (and credited). Material and information contained in *Forced Migration Review* are the opinions of the authors and do not necessarily reflect the views of the Editors, the Refugee Studies Centre or the Norwegian Refugee Council.

Forthcoming features

August 2001: Return to Peace
December 2001: Development -Induced Displacement

Website

www.fmreview.org

printed by LDI Ltd on environmentally friendly paper

ISSN 1460-9819



from the editors

We are delighted that the announcement of the feature themes of 'UNHCR and the 50th Anniversary of the Convention' and the forthcoming August issue on 'Return to Peace' prompted unprecedented numbers of offers of articles. Thanks to additional funding by UNHCR's Department of International Protection, we have been able to increase the number of pages in this issue to accommodate more articles than usual. We are also grateful for the contributions made to this issue by UNHCR staff and the assistance of UNHCR and the UNHCR-50 Foundation in providing photos and artwork.



Corinne Owen

We are indebted to Professor B S Chimni for his guidance and input as Guest Editor on this issue. If you would like to respond to any of the points made, or to raise new ones, please contact us by the end of June for inclusion in the *Debate* section of the August issue. Don't worry if English is not your first language – we are more than happy to edit contributions. Email us (fmr@qeh.ox.ac.uk) or write to us at the address opposite with your debate responses or proposals for future articles.

In each issue of *Forced Migration Review*, we announce the themes of the following two issues, to give readers enough time to submit articles and reports. The August issue on 'Return to Peace' will look at a range of issues around post-conflict reconciliation with a particular emphasis on community-level initiatives. The December issue is to be on development-induced displacement. If you have suggestions for other themes, we would like to hear from you.

Could you, your colleagues or your partners in the field write for *Forced Migration Review*? We would welcome more practice-oriented articles that do one or more of the following:

- debate the different approaches to working with refugees/IDPs
- review the experience of one particular project or programme
- convey the results of recent practice-oriented research

Articles should not be purely descriptive but should try to draw out lessons learned with wider regional or global implications.

We welcome three new members of our *Editorial Advisory Board*: Stephen Castles, Director of the Refugee Studies Centre (replacing David Turton); Nicola Jenns of the UK Department for International Development; and Marit Sorheim of the Norwegian Refugee Council (replacing Eigil Olsen). We would like to express our thanks both to Eigil Olsen and to Lyndall Sachs (who is leaving UNHCR) for their invaluable support and input over the past three years.

We are always keen to reduce costs. If you are receiving a free subscription but no longer wish to receive *FMR*, we would be grateful if you could let us know.

With our best wishes for your work.

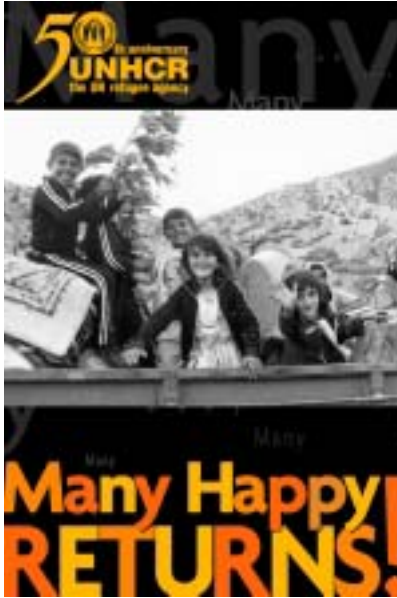
Marion Couldrey and Tim Morris
Editors

Writing for FMR? Here are our submission deadlines:

Issue	Articles by	Information items by
11 : Return to Peace	1 June 2001	1 July 2001
12 : Development-Induced Displacement	1 October 2001	1 November 2001

Front cover: Cover of 50th Anniversary calendar, UNHCR Armenia.

contents



Introduction by B S Chimni	4
The Convention at 50: the way ahead for refugee protection by Erika Feller	6
Global migration and asylum by Gerry Van Kessel	10
After the Cold War: asylum and the refugee concept move on by Guy S Goodwin-Gill	14
Ireland: from Emerald Isle to island mentality by Maura Leen	17
Integration or alienation? by Tarig Misbah Yousif	19
Legal protection of refugees in South Asia by Chowdhury R Abrar	21
International and national responses to the plight of IDPs by Francis Deng and Dennis McNamara	24
UNHCR and the erosion of refugee protection by Gil Loescher	28
UNHCR and the ethics of repatriation by Michael Barnett	31
Return to Prijedor: politics and UNHCR by Ayaki Ito	35
Rights and accountability by Leanne MacMillan and Lars Olsson	38
UNHCR and emergencies: a new role or back to basics? by John Telford	42
UNHCR and forgotten emergencies: can funds be found? by Amelia Bookstein	46
UNHCR in Guinea by Father John Agberagba	49
<hr/>	
Regular features	
Global IDP Project	50
Update	52
Refugee Studies Centre	54
Conferences	56
Publications	58

Introduction

by B S Chimni

The 50th anniversary of the 1951 Convention on the Status of Refugees falls this year, offering the occasion to reflect on the Convention's continuing relevance.

How well has the 1951 Convention served the cause of protection of refugees? Is it out of sync with the times? In what ways can the international refugee regime be strengthened to meet contemporary concerns relating to the globalisation of migration? The opening set of articles responds to these and other questions. It is fair to state that they reflect an overwhelming consensus that whatever new approaches are proposed to actualise the goal of refugee protection and the management of migration, these must accept the centrality of the 1951 Convention. As Ruud Lubbers, the new High Commissioner for Refugees, recently stressed:

The Convention has proven its resilience by providing protection from persecution and violence to millions of refugees over five decades. It is the hub upon which the international protection regime turns, and we would tamper with it at our peril.¹

In the opening article, **Erika Feller** avers that the strength of the 1951 Convention is derived from the fact that it codifies the core principles of refugee protection. Unfortunately, as she notes, the Convention is today being undermined in the North by a range of restrictive measures and by a proliferation of alternative protection regimes. She readily admits that the Convention is not, and was never meant to be, a panacea for all problems of displacement. In this regard, the launch by UNHCR of Global Consultations with governments, NGOs and refugee experts offers the opportunity to find imaginative solutions to the problems confronting states without in any way sacrificing the interests of asylum seekers and refugees. From the point of view of the South, it is important that the North does not hijack the Global Consultations.

Gerry Van Kessel articulates the general approach of states of the North to the contemporary global refugee issue. Van Kessel highlights, among other things, the phenomenon of 'mixed flows' of asylum seekers and economic migrants. He mentions the problems of fraudulent claims, the smuggling and trafficking of migrants, the inability of states to return failed asylum seekers and the expensive nature of asylum systems. But unhappily, according to Van Kessel, much of the current debate ignores the connections between migration and asylum. The concerns that Van Kessel expresses deserve to be seriously debated. To some these concerns may appear one-sided and will no doubt provoke a response in the Debate section of the next issue of *Forced Migration Review*.

Is the North willing to listen and be persuaded by good arguments? As **Guy S Goodwin-Gill** notes in his article, the 'individual rights' model has today been replaced by the 'security' model; the language of security is increasingly being deployed to justify the dilution of the language of protection. In this regard, **Maura Leen**, like Goodwin-Gill, calls for a more responsible and human rights-infused response to the plight of asylum seekers and refugees informed by each country's generous traditions. For this to happen there is an urgent need to change political attitudes. **Tarig Yousif** notes how the scaremongering depiction of refugees as scroungers makes it harder for them to gain employment and integrate into Irish society. He pleads for Convention refugees to be granted full citizenship.

While countries in the North are now using unconventional terminology to describe 'refugee' status, there are regions in the South which are marked by the absence of any formal legal regime dealing with the protection of



asylum seekers and refugees. What are the different alternatives available to such states in terms of adopting a law on the subject? **Chowdhury R Abrar** identifies the different possibilities before South Asian states for developing a formal legal regime: to accede to the 1951 Convention or the 1967 protocol, to adopt a regional convention or to frame national legislation. Abrar considers some of the reasons why states in the region of South Asia are hesitant to become party to the 1951 Convention. Most of the reasons offered by states appear to be unpersuasive; however, there is little incentive for South Asian governments to ratify the Convention at a time when it is being dismantled by the very states which drafted and adopted it. Without doubt, nevertheless, in South Asia as elsewhere national laws need to be put in place in order to protect the rights of asylum seekers and refugees.

While there is an international regime for those who cross borders to seek asylum there is still no unified binding protection regime for those who are displaced inside their own countries. **Francis Deng** and **Dennis McNamara** trace the progress that has been made at the international level, including the adoption of the non-binding Guiding Principles on Internal Displacement (1998), to redress the problems concerning the protection of IDPs. In their view, the "overall response remains woefully inadequate". They argue that sovereignty constitutes a serious constraint in shaping an international response,

“a barricade against international scrutiny and humanitarian action”. An alternative view might argue that the principle of sovereignty is a valuable one for the weak in an international system when powerful states ignore it to further their own interests.

Several articles discuss UNHCR and whether it is fulfilling its mandated responsibilities to provide protection, seek permanent solutions for the problem of refugees and supervise the application of the 1951 Convention. Critics have contended that UNHCR has moved away from its fundamental core objective of protection to stressing relief and assistance, that its extensive involvement with IDPs is incompatible with its mandate to protect refugees and that under pressure from states it has diluted the principle of voluntary repatriation. **Gil Loescher** points out how UNHCR’s management culture accords declining importance to the culture of protection. Protection needs to be restored as UNHCR’s central concern.

It is generally believed that UNHCR has deviated from its path under the influence of donor pressure alone. **Michael Barnett** contests this view and argues that UNHCR has a degree of autonomy *vis-à-vis* donor states. He also analyses the ‘repatriation culture’ which has come to pervade UNHCR but makes the important observation that both sides of the principled versus pragmatist debate on

repatriation occupy an ethical position. His article highlights, once again, the need for refugees themselves to be involved in decisions that affect their lives.

The pragmatic turn in UNHCR’s repatriation policy is worrisome. **Ayaki Ito** presents a telling case study demonstrating that when UNHCR talks about return in less than ideal conditions it is often a euphemism for involuntary return. Such a stance, instead of promoting stability, can actually accentuate instability. Yet, one wonders whether the solution is for UNHCR to abandon its non-political mandate to lobby and persuade states to address the fundamental causes of displacement. Could this process damage the credibility of the organisation?

One of the problems in the effective defence of refugee rights is that UNHCR is not in a position to effectively supervise the conduct of states. Article 35 of the 1951 Convention does not go far enough to secure state compliance. UNHCR’s views on the interpretation of the Convention are sidelined by states and are often openly resisted. UNHCR’s dependence on donor countries does not make it a suitable organisation for exercising the supervisory role. **Leanne Macmillan** and **Lars Olsson** argue the case for setting up an independent and impartial body to oblige states to report on monitoring and implementation of the 1951 UN Refugee Convention, to

advise on questions of interpretation of the Convention and to receive individual complaints from refugees whose rights are being violated.

John Telford draws attention to the current financial crisis that afflicts UNHCR and the perils of bilateralisation. Financial crises, as he notes, are cyclical in UNHCR. He points out that the decision of major donor countries to deny it funds is inherently political. The politics of humanitarianism, as **Amelia Bookstein** points out, also explain the fact that there is little commitment to the principle of universal entitlement to humanitarian assistance. Per capita assistance offered in Former Yugoslavia far exceeds that in Sierra Leone, the Democratic Republic of Congo or Guinea, whose plight is presented by **John Agberagba**. All this points to the dismal conclusion that states in the international system tend to privilege narrow national interests over the rights of asylum seekers and refugees.

*B S Chimni is Professor of International Studies, Department of International Law, Jawaharlal Nehru University, Delhi.
Email: bschimni@hotmail.com*

¹ Presentation by Ruud Lubbers, UN High Commissioner for Refugees, at the Informal Meeting of the European Union Ministers for Justice and Ministers for Home Affairs Stockholm, 8 February 2001, available at www.unhcr.ch/refworld



The Convention at 50: the way ahead for refugee protection

by Erika Feller

In order to explore the way ahead for refugee protection it is important to situate the Convention and the refugee protection regime in its present context. What is the Convention and what is it not, as an instrument of refugee protection today?

It is often said, with justice, that the 1951 Convention is the foundation of refugee protection, the one truly universal instrument setting out the baseline principles on which the international protection of refugees has to be built. These include:

- Refugees should not be returned to face persecution or the threat of persecution (the principle of *non-refoulement*).
- Protection must be extended to all refugees without discrimination.
- As the issue of refugees is social and humanitarian in nature, it should not become a cause of tension between states.
- Since the granting of asylum may place unduly heavy burdens on certain countries, a satisfactory solution can only be achieved through international cooperation.
- As persons escaping persecution cannot be expected to leave their country and enter another country in a regular manner, they should not be penalised for having entered into or for being illegally in the country where they seek asylum.
- Given the serious consequences of expulsion of refugees, such measures should only be adopted in exceptional circumstances directly impacting on national security or public order.
- Cooperation of states with the High Commissioner for Refugees is essential if the effective coordination of measures taken to deal with the issue of refugees is to be ensured.

The Convention has a legal, political and ethical significance that goes well beyond its specific terms: legal in that it provides the basic standards on which principled action can be founded; political in that it provides a truly universal framework within which states can cooperate and share the burden resulting from forced displacement; and ethical in that it is a unique declaration by the 140 States Parties of their commitment to uphold and protect the rights of some of the world's most vulnerable and disadvantaged.

Assertions that the Convention is no longer relevant are belied by encouraging recent developments. At the Inter-Parliamentary Union meeting in Amman in May 2000, 648 parliamentarians from 124 countries around the world reaffirmed the centrality of the Convention to asylum systems today; EU leaders meeting in Tampere, Finland, followed suit as have the 56 government members of the UNHCR's Executive Committee. States continue to accede to the Convention and State Parties continue to promote accession.

The Convention is no panacea for all the problems of displacement. Root causes are outside its scope. If the notion of burden sharing is inherent in its terms, there is no practical underpinning of it through specific provisions. Absent, too, are provisions on family reunification, access to procedures or the grant of asylum. There are no measures tailored to the specific needs of women and children, just as there is only very lit-

tle development of the solutions aspect of refugee protection. While the Convention could be applicable to large-scale influxes, just as to individual arrivals of refugees, in practice states have found it too difficult or onerous to adhere to its provisions when faced with sudden mass arrivals.

Clearly the Convention regime has gaps. We have to be able to admit this without blaming the Convention for problems to which it was never designed to respond. Recently critics have alleged that the Convention is outdated, unworkable, irrelevant and inflexible, a complicating factor in today's migration environment. Several states have deemed it an instrument unresponsive both to the interests of states and to the real needs on the ground.

In its defence, we must adamantly state that the Convention was never conceived only as an instrument for permanent settlement, much less for migration control. The Convention, together with its 1967 Protocol, was drafted to become the global, multilateral, standard-setting agreement on how to protect individuals in need of protection. It is true that it impacts on the sovereign right to regulate entry across borders but it does so in order to introduce a needed exception for a specified category of persons. UNHCR can sympathise with the concerns of states that asylum should not be frivolously resorted to and should not be abused. The Convention itself has safeguards against these risks and states have other means to limit this possibility. There is no need to condemn and modify the only global refugee protection framework that exists. The inability of states to control their borders or to deport aliens with no valid claim to continued residence on their territories should not be blamed on the Convention.

Migration and the Convention

Migration trends are central to the environment in which refugee protection has

to be realised. As far as protection is concerned, changes in migration patterns represent a serious complicating factor. Refugee problems are not only closely tied to the spread of inter-ethnic conflicts and the capacity of states to respond to and resolve them but also to globalisation. There is no doubt that states have a serious apprehension about 'uncontrolled' migration in this era of globalisation – globalisation in communications, in economies and indeed in migration. To governments aiming at minimising the effects of globalisation of migration, asylum is an exemption that allows too many people through the door.

One problem is that many refugees, of necessity, come 'uninvited' and more and more via smugglers. Trafficking and human smuggling are a compounding feature of the migration landscape. There are many evils associated with trafficking and smuggling which are criminal activities involving abuses of many individuals. It is also true, though, that being smuggled to sanctuary has become an increasingly important option for asylum seekers, even while it carries a price tag going beyond its financial cost. An asylum seeker who resorts to a human smuggler seriously compromises his or her claim in the eyes of many states. As has already been observed, this leads to an imputation of double criminality; not only do refugees flout national boundaries but they also consort with criminal trafficking gangs to do so. Therefore, it is claimed, their claims must be bogus and measures to restrict elementary privileges are justified.

If migration is a singular feature of the changed environment for refugee protection, another is the increasingly unfavourable cost/benefit equation of asylum as seen from the perspective of states. There was a time when the benefits of offering asylum to refugees, arguably at least for many states, outweighed their costs. Where refugees were culturally similar, easily assimilable, plugged labour shortages, arrived in manageable numbers and, even better, reinforced ideological or strategic objectives, the policy was one of

generous admission. Today, in the reckoning of states, the costs are to the fore. States seeking to restrict asylum options frequently claim that these options have to be limited because of the economic burden of offering asylum, set against competing national priorities for limited resources. Security concerns, inter-state tensions, backdoor migration, social and political unrest and environmental damage are all cited as 'negative' costs in the asylum ledger. In parallel with more and more asylum arrivals is a growing incidence of racism, xenophobia and intolerance directed against refugees, asylum seekers and foreigners in general. There is also a cost to this at the political level and it is certainly, as a result, a disincentive to enlightened arrival policies.

Changes in states' asylum policies

This combination of factors (the evolving refugee situation, the threat of uncontrolled migration and the costs – real or imagined – of asylum) has led to a reshaping of the asylum policies and practices of many states. Broadly speaking, two parallel trends have emerged, both of which have impacted negatively on the accessibility of asylum and the quality of treatment received by refugees and asylum seekers. The first has been the growth in an overly restrictive application of the 1951 Refugee Convention and its 1967 Protocol, coupled with a formidable range of obstacles erected by states to prevent legal and physical access to their territory. The second is the bewildering proliferation of alternative protection regimes of more limited duration and guaranteeing lesser rights than those contained in the 1951 Convention. There has even been, in some states, a gradual movement away from a rights-based approach to refugee protection altogether, with a growing

preference by their governments for discretionary forms of protection that provide lesser safeguards and fewer rights to people of refugee concern.

There has been the growth of 'notions' or 'approaches' which have substituted, in effect, for the application of the Convention by giving it a rather subsidiary place in a state's response repertoire. The notion of the 'safe country' notion or the concept of the 'internal flight alternative', rather than serving an evidentiary function within a full refugee status determination process, are coming to constitute the rationale for non-resort to the Convention procedures in the first place. From the perspective of UNHCR, refugee protection can only be seriously jeopardised as a result.

Notions such as 'effective protection elsewhere' are increasingly entering asylum systems, in effect substituting for the internationally agreed refugee definition. Whether or not an individual has found, or even could have found, protection in countries through which that person passed is rarely easily or reliably assessed. In any case, the indicators of 'protection' are too imprecise. If the notion is to have any currency, its applicability should be determined on an individual basis, not on a country basis, and certainly not in the case of persons who have passed through countries of 'mere transit'. Any decision to return an asylum seeker to a 'safe third country' should be accompanied by assurances that the person will be readmitted to that country, will enjoy there effective protection against refoulement, will have the possibility to seek and enjoy asylum and will be treated in accordance with accepted international standards.

Similar concerns exist with the notion of 'safe country of origin', which is also coming to serve as an automatic bar to access to asylum procedures. It is impossible to exclude, as a matter of law, the possibility that an individual could have a well-founded fear of persecution in any particular country, however great its attachment to human rights and the rule of law. While a

A REFUGEE IS A PERSON
WITH A WELL FOUNDED FEAR OF
BEING PERSECUTED FOR REASONS OF
RACE, RELIGION, NATIONALITY,
MEMBERSHIP OF A PARTICULAR
SOCIAL GROUP OR POLITICAL OPINION...

UNHCR/S. Fuzeau

sophisticated democratic order and an elaborate system of legal safeguards and remedies would allow for a general presumption of safety, history is replete with examples to prove that no system is either infallible or immutable. Where the notion of safe country of origin is used as a procedural tool to assign certain applications to accelerated procedures, or where its use has an evidentiary function (for example giving rise to a presumption of non-validity of claim), UNHCR has far less concern, provided that the presumption of safety is rebuttable in a fair procedure.

In parallel, much ingenuity has been shown in developing new forms of protection. Temporary protection, 'B' status, humanitarian status, exceptional leave to remain, stay of deportation and toleration permits are but a few. The present situation is marked by lack of harmonisation of asylum policies even within regions, with marked differences among countries and within countries as to who gets protection, what kind of support is accessible, and what are the legal and social consequences of different kinds of status.

In response to these various approaches by states there has been even more resort (by failed asylum seekers, lawyers seeking protection solutions and judges considering protection needs) to human rights instruments as, in effect, an alternative source of protection. With all the advantages of this possibility being available, there is also the problem (at least at the present time) that *non-refoulement* under human rights instruments is not yet accompanied, for the beneficiaries, by clearly articulated standards for treatment and stay.

Discussion so far has focused on the developed world, countries where refugee protection traditionally has a strong legislative base. In those countries where protection is not legislated for, accession to the Convention seems an increasingly remote possibility. Tellingly, Southern governments frequently observe at UNHCR's Executive Committee meetings that the Convention seems to be less and less relevant for its main traditional supporters and that therefore any incentive for them to consider accession is fast receding. Restrictive approaches of Northern

governments export well. They are already being replicated in regions where laws and structures are only now being put into place. Consequences are particularly apparent where they are being replicated in regions where their effect is not cushioned or mitigated in any way by a culture, much less a regime, of human rights protection.

There are clear advantages to all concerned (refugees, host states and the international community in general) in having a globally recognised and consistently applied regime of refugee responsibilities. Burden sharing would be enhanced, 'asylum shopping' would be diminished and better predictability of responses would improve asylum management.

The way ahead

The plethora of different forms of protection, coupled with the ever more ingenious systems of people trafficking, is causing increasing frustration. Countries are coming to appreciate the need to rationalise and harmonise approaches, both regionally and, increasingly, inter-regionally. Harmonisation may well run in tandem with a growing acceptance by states that it is no longer feasible, much less demographically sound, to coexist without a considered migration policy. Most population projections for the developed world forecast a greater and greater imbalance between young and old. A truly comprehensive and integrated approach must include a normative framework for managing migratory movements.

In UNHCR's view, constructive and visionary immigration policies could result in an easing, or at least a balancing, of the pressure on asylum systems. There would be a positive switch in approach to managing migration through migration tools and managing the asylum system through asylum tools. Where there are linkages, and trafficking and human smuggling is a case in point, special additional approaches are called for.

What we should be working towards is in fact a revitalisation of the Convention regime, which would preserve its centrality but would buttress it with more enlightened migration policies and

harmonised additional protections. This scenario is built around the recognition that the 1951 Convention is far from obsolete, even if in some respects it is incomplete. Might we envisage somewhere down the line protocols on mass influx and temporary protection? Interstate cooperation, or burden sharing, is another area where the Convention's preambular references could well benefit from being given specific context. Special protection measures for women and children, procedural requirements for refugee status determination, family reunification and voluntary repatriation are other areas where a progressive development of international refugee law would be useful. In the process of revitalising the protection regime, UNHCR also sees a need to foster greater consistency and complementarity between human rights instruments, such as the European Convention on Human Rights or the CAT Convention and the 1951 Convention.

Refugee law is not a static but a dynamic body of principles. As with all branches of law, it has, and must retain, an inherent capacity for adjustment and development in the face of changed international scenarios. UNHCR's approach to promoting this development rests on the understanding that refugee protection is first and foremost about meeting the needs of vulnerable and threatened individuals. These needs of course have to be accommodated and addressed within a framework of sometimes competing interests of other parties directly affected by a refugee-producing situation, which include states, host communities and the international community generally. The refugee protection regime has to balance appropriately all these rights, interests and expectations.

UNHCR regards it as its moral, legal and mandate responsibility to foster this process of developing new approaches, not to lower the international protection paradigm but to strengthen the available protection modalities. For this reason UNHCR has used the build-up to the 50th anniversary to engage in consultations [see end for details] with senior government representatives and experts in the refugee protection area in order to clarify the content and scope of protection, within the framework of comprehensive approaches, necessitated by different refugee-producing situations not fully covered by the 1951

*the 1951 Convention
is far from obsolete*



Convention. The purpose of these Global Consultations is, on the one hand, to re-affirm the fundamental role of the Convention and, on the other, to acknowledge and answer the gaps and failures of the current system from the perspective both of persons seeking and needing protection and of governments confronted by serious dilemmas in this regard.

The initiative has been strongly supported by governments and expectations are high. The Secretary General has given his endorsement, as has UNHCR's Executive Committee and the UN General Assembly. The Consultations have been designed along three parallel tracks to which issues broadly divided along political, legal and practical lines were consigned. The 'First Track', or political track, centres squarely on the 1951 Convention and support at the highest political levels for it so as to preserve its integrity, relevance and place in the overall protection framework. The 'Second Track', the legal track, focuses on selected interpretative questions regarding the Convention. The 'Third Track', the practical track, is being conducted within the framework of the Executive Committee.

Problems for discussion in the Third Track have been grouped under three

themes: protection of refugees in mass influx situations; protection of refugees in the context of individual asylum systems (including burden sharing); and the search for protection-based solutions. It is hoped that this process will firstly foster a common understanding of the protection challenges and better cooperation to address them. Secondly, it will permit the identification and promotion of practical responses to protection problems. Thirdly, it should lead to new approaches, tools and standards to strengthen protection and buttress the Convention.

Erika Feller is the Director, Department of International Protection, UNHCR.
Email: FELLER@unhcr.ch

This article has been developed from a speech at a conference in Lisbon in June 2000.

Global Consultations on International Protection

Several articles in this issue have referred to the Global Consultation process initiated by UNHCR to promote more effective implementation of the Refugee Convention in its 50th year. The First Track involves inter-governmental action to reaffirm states' commitment to the Convention and to promote further accessions. The Second Track, looking in detail at refugee law, is to hold a series of expert roundtables in Washington, Cambridge, San Remo and Geneva. The Third Track, linked to the ExCom process, is discussing issues not fully covered by the Convention. To ensure that the Consultations have a global reach and involve governments, legal experts, NGOs and refugees themselves, the Third Track is organising a series of regional meetings.

There are a large number of discussion papers on all three tracks at: www.unhcr.ch/issues/asylum/globalconsult/main.htm

For further information, and to comment or contribute to discussions, contact:

1st Track:	2nd Track:	3rd Track	Regional Meetings
Philippe Leclerc	Kate Jastram	Walpurga Englbrecht	Stephane Jaquemmet
Leclerc@unhcr.ch	Jastram@unhcr.ch	Englbrew@unhcr.ch	Jaquemmet@unhcr.ch

Global migration and asylum

by Gerry Van Kessel

One area of debate and conflict between states with 'mature' individually-based refugee determination systems and many NGOs and academics concerns access by asylum seekers and the way they are treated once they gain access.

Controls on access and differential treatment for some asylum seekers imply, say many critics, that states are attacking refugees and their rights. For many of these critics, the measures adopted by states in the last decade signal a possible end to the international refugee protection system. States, for their part, see such measures as a necessary response to the phenomenon of 'mixed flows' - the inclusion among those seeking asylum of significant numbers of persons seeking economic betterment rather than protection. Such measures, states argue, are required to ensure the continued

protection of refugees in accordance with their obligation as signatories of the Geneva Convention. The focus of this paper is the context which have led states to act in this way.

Current migratory flows

Almost all parts of the world are witnessing major migratory movements. While in 1965 65 million people were living long term outside their countries of normal residence, by 1990 there were 130 million and in 2000 an estimated 150 million. Some are persons with legal status in their adopted countries. Most

are in an irregular situation and try by various means to regularise their status. A relatively small proportion are refugees. There are about 21 million persons of concern to UNHCR, half of whom are IDPs and refugees. These figures strongly imply that economic migrants place greater pressure on states than do refugees.

The majority of persons in these migratory flows, including refugees, remain in the geographic region of their birth. Increasingly, however, there are options, both legal and illegal, to move outside their regions. The problem for these people is that the rich industrialised countries do not accommodate the demand through legal migration. Demand far exceeds supply, with only between 2.5 and 3 million places available annually for immigrants.

There are two other options for would-be migrants. The illegal route has a long history. Immigrant-receiving countries know well the efforts of migrants to

Kosovo evacuation programme, Canadian Forces Base, Trenton, Ontario, May 1999.



resort to fraudulent documentation or to bypass immigration controls altogether in their efforts to achieve a better life. In industrialised countries, there is also the option of an asylum claim. In the 1990s, about 5 million asylum claims were submitted and about 1 million were successful, half as Geneva Convention refugees and the rest under other forms of protection and humanitarian relief. The ratio of economic migrants and refugees in mixed flows helps explain the rate of refusal of asylum seekers by the refugee determination system of states.

The attractions of the asylum system

What is it about asylum determination systems which makes them a choice for such migrants?

One reason is, perversely, the potential to exploit the high standards which states have established to

ensure that the determination system is fair. These standards are essential because the issue is so vital – to *refoule* or not to *refoule*? Asylum decision making is especially difficult. The facts are uncertain and often not easily verifiable. The procedures need to take into account the fear, confusion and ignorance of claimants about the process and how it functions. Because the outcome of a successful claim is the right to remain permanently, it is highly prized, including by those not in need of protection. These are among the reasons why the system attracts fraudulent claims and, increasingly, the attention of smugglers and traffickers.

Another feature of the asylum system is the length of the process. To ensure that the determination system is fair, states have introduced processes which take into account the challenges of presenting the facts and of making decisions on the basis of uncertain information. Appeals are an essential part of this process and fair results cannot be realised quickly. An unintended consequence is that even those interested only in using the system to ensure access to the country are assured of long periods in the country. It is assumed, not incorrectly, that the longer the stay the greater the chances of developing grounds for remaining permanently.

Complexity of asylum administration

Administering determination systems is very complex. Effective and efficient systems require processes which are simple yet fair, have sufficient decision makers with the staff and tools to support them and have stable volumes of asylum applications. These elements are closely interrelated and changes in any of them quickly affect processing times. The volume of asylum applications is the least controllable variable. It is very challenging for states to add skilled and trained resources quickly enough to maintain stability in processing times if volumes increase rapidly. Longer processing times mean uncertainty for genuine claimants and opportunities for non-genuine claimants. Processing times may

become so lengthy and the volumes so high that growing backlogs cannot be sustained. In some cases, there are

amnesties or other forms of regularisation of migration status so that a new determination process can start with a clean slate. The winners, of course, are those who do not need protection. While those needing protection receive it, the delays they have faced add to their uncertainty and delay the rebuilding of their lives in their new countries.

Perhaps the most attractive factor for claimants who do not need protection is that the odds of not being returned to their country of nationality, even if their claim is rejected, are very high. Of the 4 million whose claims were rejected, only small numbers were formally returned. Most national systems are ill-equipped to enforce negative decisions. It is difficult and resource intensive to locate persons who have gone underground. Once they are located, a further problem arises if they lack travel documents needed for return to their country of origin. Many countries are unwilling to accept the return of their nationals and do not readily issue the required travel documents. These favourable odds are well known and encourage asylum applications from those not needing refugee protection.

Failure to remove undermines public confidence in the system. The UK Home Secretary, Jack Straw, has observed that

“non return fundamentally undermines the essence of the institution of asylum by calling into question the assessment process and undermining public support for the institution and those accepted as refugees”. Removal cases are rendered even more difficult by the public attention which they often attract. While the public favours removals conceptually, it is often ambivalent in individual cases where the only issue is the violation of immigration laws rather than reasons of public safety. Removals are an issue where the legitimacy of public policy and its application in individual cases often appear at odds.

How can states respond to the attractions of asylum?

States have acted to try to resolve the dilemma of maintaining their international obligation to provide protection to those who need it and their national obligation to manage migration. In addition to streamlining processes and adding resources, governments have sought to limit access to the country and to develop special procedures for those who have gained access to the country and who have the weakest claims to refugee protection. They involve visas, interceptions, carrier sanctions, pre-embarkation controls and specialist liaison officers abroad. These measures seek to ensure that persons who arrive in their countries have documents demonstrating that they meet admission requirements. For asylum claimants who have arrived, a series of measures have been introduced to deal with claimants who appear to be non-genuine. They include accelerated manifestly unfounded processes, the Dublin Convention for most European countries, safe third country, safe country of origin, readmission agreements, detention and limits on employment and social services.

States have adopted these measures in varying degrees but demand remains as strong as ever. Greater controls have resulted in the emergence of persons, often criminally organised, who have the knowledge, the ability and the resources to find ways around access controls. Many of the people who are using smugglers are in countries of first asylum where they have protection but no durable solution. Much has been written recently about human smuggling and trafficking and the immense profits to be made. Several recent tragedies indicate

the extent to which smugglers and traffickers will go and the dangers to which some of those being smuggled and trafficked appear willing to submit themselves. A UN Convention on Transnational Organised Crime with protocols on migrant smuggling and on trafficking of persons, especially women and children, was signed in December 2000. This Convention and its Protocols are important international instruments for combating organised crime and the trafficking of people.

Expense of asylum systems

The contrast between the amount states spend on asylum seekers and what they spend on supporting UNHCR is striking. In 1995 UNHCR estimated that the annual amount spent by states on asylum seekers was \$7bn. A more recent estimate is \$10bn. UNHCR's budget is now less than \$1bn annually. There are about half a million asylum seekers in Western countries while persons of concern to UNHCR total 21 million. On a per capita basis, \$20,000 is spent per claimant while UNHCR spends \$50 per refugee/IDP under its care. The amount spent by some countries equals or exceeds the entire annual budget of UNHCR. Justifying this huge level of expenditure can be a political challenge.

States are determined there will be no return to the freer access of the 1980s. The reality of the mixed flows which have emerged since that time has led to the responses described above. States have not found solutions which distinguish between those needing protection and those seeking economic betterment and which have the support of both the public and the refugee advocacy community. Migration is extraordinarily difficult to manage within the context of a process designed for protection. It is inevitable that the challenge is met by attempting to separate the protection and migration issues, realising that there is no clear distinction.

Canada's response to inadmissible applicants

A lesson which states have learned is that it is more effective and efficient to refuse persons who are inadmissible before, rather than after, their arrival. Stopping them before they arrive is sound migration management. In response to the rise in irregular migration and in the number of asylum

seekers, Canada has undertaken initiatives which include visa requirements, dedicated officers stationed abroad to halt the influx of irregular migrants and increased fines on carriers who transport improperly documented travellers. Documents have been made more fraud-resistant and laws amended to penalise those using improper documents and not establishing their identities. The introduction of a new and better funded refugee determination system in 1990 coincided with an administrative review allowing almost all of the 100,000 applicants in the backlogged pipeline to remain permanently. Visas have been imposed on many countries (such as Trinidad and Tobago and Portugal) after large numbers of their nationals claimed refugee status but did not need protection. In 1995 Canada removed the requirement for a visitor visa on Chile but reimposed it a year later after 4,200 Chilean economic migrants travelled visa free to Canada and claimed refugee status.

In 1999 Canada issued 665,000 visitor visas while refusing them to over 100,000 persons judged to be inadmissible, non bona fide visitors who would not leave voluntarily at the end of their visits. Included in this number were 581 persons suspected of being war criminals. In the period 1996-1998 Canada stopped 600 persons from entering Canada who were known or believed to have links with organised crime. This was achieved because of the visitor visa requirement and the policy of intercepting persons with improper documents.

If Canada were to eliminate its access controls, the persons now refused and those deterred by access controls from going to Canada would have to be dealt with at the border or inland. It would mean rejecting the experience that demonstrates how difficult and costly it is to remove large numbers of inadmissible persons, including those who are a risk to Canada. It would put at risk public support because of the focus it would place on the challenges rather than the benefits of migration.

States are very aware of the importance of maintaining public support for the asylum process. Support for asylum is most at risk when there are large num-

bers of what are believed to be non-genuine claimants. The objective of states has been to adopt measures which address, to the extent possible, migration rather than asylum.

The nexus between asylum and migration

The need for a debate among all concerned about refugees seems evident. The competition between more controls and increasingly sophisticated efforts to evade the controls can too readily leave out the protection needs of refugees.

The Global Consultation process which UNHCR has initiated [see page 9] is an opportunity to debate these issues from the perspective of refugees. At the same time there is a need to examine global migration not as an element of the asylum debate

the current debate fails to acknowledge the nexus between migration

but as a distinct topic requiring the attention of states. The increase in the number of fora where migration is debated suggests that there is a heightened awareness of the need for state responses to the issues inherent in global migration flows. States need the contributions of academics, NGOs and all involved in the refugee field, particularly on the practical choices states face, choices which are not mutually exclusive and which accommodate both protection for refugees and state concerns about migration management. In this way, the public support critical to refugee policy can be secured. When the issues are clear cut, as in the case of Kosovar refugees, public support is readily forthcoming. Debate needs to move beyond reiteration of established positions to focus on how to safeguard protection for refugees within the larger context of migration management. Much of the current debate fails to acknowledge the nexus between migration and asylum.

For starters, we have to review what is currently happening. For persons seeking protection, the first question is how to ensure greater equity in receiving protection regardless of where the claim to protection is made. There is the question about how many have come from countries of first asylum where they have protection but no durable solution. Should there be greater focus on durable solutions, whether in the country of first

asylum or through resettlement in third countries? Would more money from the West to countries of first asylum add to the level of protection in those countries and reduce pressures on asylum systems?

There are also questions about the manner in which asylum seekers get to Western countries. Given the phenomenon of undocumented, improperly documented and uncooperative asylum seekers, how many resort to this because

that is what they have to do to flee persecution and because they are fearful of authority and how many do so because it complicates the task of decision makers? How many asylum seekers with false documents come from countries that refuse to issue travel documents to their nationals? As long as states continue to have access controls, how can those who need protection be dealt with? Is it possible to build on the code of conduct which the International Air Transport Association has for airport

liaison officers which requires them to refer requests received for asylum UNHCR or to a diplomatic mission?

In the context of the UN Convention on Transnational Organised Crime, there is the issue of how to stop traffickers and yet protect refugees. For persons seeking economic betterment, there are

States have learned that they cannot leave their back door unattended

questions about whether economic immigration and more generous family reunification would reduce the number of asylum seekers. (The Canadian experience of a high annual immigration intake - more than 220,000 in the year 2000 - and a high asylum seeker intake - 36,000 in the year 2000 - suggests caution in concluding this is the case.) Will it be possible for countries of origin, countries of transit and countries of final destination to come together to examine the issues of refugees and migration and come up with solutions? These are important questions, the answers to which will assist in the

complex matter of deciding how states should manage protection and migration.

In introducing Canada's new Immigration and Refugee Protection Bill on 1 May 2000, Elinor Caplan, the Minister for Citizenship and Immigration, said that "closing the back door to those who would abuse the system will allow us to open the front door wider - both to genuine refugees, and to the immigrants Canada will need to grow and prosper in the future". States have learned that they cannot leave their back door unattended. The debate needs to be about the protection of refugees and the relationship between the back and the front doors.

Gerry Van Kessel is the Director General, Refugees Branch, Department of Citizenship and Immigration Canada.
Email: VanKessel@8501SRD.CINA.cic.x400.gc.ca

The comments and views in this article are the author's and not necessarily those of the Department of Citizenship and Immigration.

Federal Border Patrol, German/Polish border



UNHCR/A Hollmann

After the Cold War: asylum and the refugee concept move on

by Guy S Goodwin-Gill

The international protection of refugees, considered the responsibility of the international community, has a long and distinguished history dating back to the first efforts of the League of Nations.

The 1951 Convention relating to the Status of Refugees, updated by the 1967 Protocol, was a step in the evolution of refugee protection. By comparison with earlier instruments, it provided for a broader, if still restricted, refugee definition and for a comprehensive standard of treatment, particularly for the settled or lawfully staying refugee. But, as its title implies, it was not and is not a comprehensive document. It did not deal with, and was not intended specifically to deal with, large-scale refugee movements, the question of asylum or admission to asylum, the details of international cooperation or the promotion of solutions other than those related to the status of the individual as a refugee.

By the early 1980s, although there were still grey areas, it had been established that:

- The refugee in international law included both the individual having a well-founded fear of persecution and a range of others having valid reasons for not being required to return to their country of origin.
- *Non-refoulement* encompassed both non-expulsion to persecution of those already within state territory as well as non-rejection at the frontier.
- International solidarity and cooperation were key fixtures in a regime directed towards protection and solutions.
- Procedures for the determination of refugee status were crucial.
- Refugee pending solution should be granted.

- Refugees had human rights.
- The protection of refugees was a universal principle.

In short, the international community had developed a regime with a strong legal content, premised upon a particularly strong conception of human worth and upon the individual's entitlement to respect for his or her dignity and integrity as a human being. In general, up until the mid 1980s the system worked reasonably well.

The ending of East-West tension has brought with it a move to re-examine obligations and institutional roles and possibilities. Where they were once content to react on the basis of obligation and expectation, states now commonly extend their reach, acting extra-territorially to prevent obligations ever being triggered. Duties, once freely assumed, are taken less seriously. The human rights dimensions to the movements of people are increasingly downplayed, while governments and international organisations have failed effectively to manage and control themselves, to respond coherently to large movements or to deal with the changing character of causes, to take decisions, to set strategic goals or to determine tactical means.

The nature of some of the present predicaments can be illustrated by two competing models.

i) The security model

Premised upon ancient notions of sovereign rights, the security model sees, and reacts to, the phenomenon of refugee (and migratory) movements essentially with a view to control. Refugees, asylum seekers and migrants are perceived or represented as threats to national, regional and even international security. This characterisation is not neutral, is not or not inherently benign; rather it opens the door to ways of dealing with people in disregard of their dignity and worth as individuals.

Two related and often combined aspects to the statist/security model are apparent: i) internal/sovereigntist and ii) external/protectionist.

The internal aspect is illustrated, first, by control mechanisms directed at people moving or seeking to move – visas, carrier sanctions, restrictive immigration and refugee protection laws and policies, deterrence measures, such as detention, and greater or lesser denials of rights. It is generally accompanied by a certain rhetoric in public discourse, which serves to heighten a sense of national alarm, or claims to protect new and established communities, or raises the spectre of social tensions.

The external aspect to the security model looks outward; it is evident in foreign policies, in the conclusion of 'readmission agreements', in support for solutions by resolution in the Security Council, in support of interventions and in the more or less effective 'steering' of international, particularly UN, agencies ('preventive protection', regional protection and so forth).

In resolutions adopted under Chapter VII, the UN Security Council has linked

States no longer seem so willing to work towards standards for the common good.



Mexico/US border

situations of internal disorder and resulting population displacement to threats to international peace and security.¹ And certainly it makes good sense to recognise, finally, that causes must be addressed politically and that this may indeed mean by way of enforcement action under Chapter VII. But it is only a small step to seeing refugees themselves as the threat and to putting their lives and well-being and security as individuals at serious risk. Not surprisingly, the individual rights model is widely seen as an essential counterweight.

ii) The individual rights model

In opposition to the security model stands the individual rights model. Drawing on a certain stream of state practice, a particularist reading of the 1951 Convention and, especially, human rights doctrine, it opposes the claims of the state premised on generalised and suspect powers. Instead, it demands that refugees, asylum seekers and migrants be considered as individuals, each potentially with a justifiable claim to protection, whether from persecution or in respect of other relevant human

rights; and that each individual claim should be determined on its merits. The bases for this model are readily found. Even within the limited regional context governed by the European Convention on Human Rights, a considerable body of jurisprudence has already developed under articles 3, 8 and 14, clarifying the limits on the competence of the state to refuse admission, expel or remove an individual, where such action violates his or her human rights. Protection against and remedies for arbitrary and unlawful administrative action are woven into the tapestry of the rule of law. At the universal level, the 1966 International Covenant on Civil and Political Rights, the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 3 in particular) and the 1989 Convention on the Rights of the Child all extend the protection regime for individuals.

The refugee and asylum today

With this 'clash of cultures' in mind, and when thinking about where the refugee

and asylum seeker stand today, it helps to recall what was not achieved, both before the end of the Cold War and since. The list of goals still to be attained is a forbidding one:

- fair, efficient and expeditious procedures for the determination of refugee status/entitlement to protection, including in situations involving large numbers
- regional and international capacity to prepare for sudden movements, to mediate and to intervene
- regional (and international) capacity to share responsibility in protection and solutions
- flexible policies and programmes, capable of moving between immediate protection, longer-term asylum and third country resettlement
- national and international institutional mechanisms competent to deal with and promote migration and migration management, from both ends
- integration of human rights doctrine into legislation, administration and policy making

Instead of looking to the future and strengthening capacity, more often than not the national and regional responses to refugee and other migratory movements have been reactive, narrowly focused on control, inhibition and deterrence, and grounded in insular sovereignties rather than international solidarity.

States no longer seem so willing to work towards standards for the common good. This is the present political reality. The challenge for law is to identify and comprehend the relevant areas of state concern, to come to terms with the problematic – whether it be Turkey's closing of the border in 1991, or UNHCR's own *refoulement* agreement with Tanzania, or 'perverse' interpretations of refugee criteria or the rules of state responsibility – and to work through the practice to develop rules more clearly compatible with the integrity and human worth of every refugee.

Despite decades of experience, few states have yet managed to marry compliance with international obligations to national procedures for protection. The determination of refugee status continues to play its part in the management of claims, and the following **general principles** will each require elaboration and translation into national systems, if the rule of law is to prevail:

- compliance with the 1951 Convention/1967 Protocol, including the refugee definition, *non-refoulement* and cooperation with UNHCR
- procedures to be regulated by law
- every application to be considered individually, objectively and impartially, by qualified and informed personnel
- refugee status determination to involve a 'shared responsibility' between decision maker and applicant (who should have an adequate opportunity to present his/her case)
- due process, including the opportunity to apply for refugee status/asylum at the border and the right to an interpreter, legal advice, access to UNHCR and a personal interview
- written, reasoned decisions
- appeal or independent review of negative decisions
- entitlement to remain pending decision
- recognition of status where the criteria are satisfied and of recognised refugees' presumptive entitlement to residence

If the rule of law is to prevail, the solutions proposed must be realistically attainable. For example, in situations of mass influx, other priorities may prevail and different considerations enter the picture; the emphasis on individual procedural rights may be replaced by a group or categories approach, provided however that the fundamental principles of protection, such as *non-refoulement*, are maintained. A groups or categories approach may also introduce other rights-based concerns, such as the standard of treatment to be accorded to the group, within a social and political context in which fundamental human rights continue to be protected. A considerable body of experience and research exists on temporary protection but still needs to be consolidated into an authoritative statement of international practice.

The role of the UN

The exponential growth in organisations dealing with refugees, both in overall numbers and unit size, has brought severe challenges of strategic management. Clarity of mandate and purpose has frequently yielded to the demands of emergency relief. In order to be effective, international organisations need both a clear understanding of mandate objectives and division of responsibilities for achieving particular goals. The current debate on responsibility for the protection of and assistance to the internally displaced is but one example of a range of complex and inter-connected issues.

For an organisation such as UNHCR, whose principal mandate is clear enough, the ineluctable consequence should be an internal ordering of functions such that the principles of international protection are integrated into policy and operations planning, both

from the ground up and at the point of decision.

Unfortunately, this has not

been the case for some time. The consequences have often been disastrous.

The challenges of organisation are not only internal, however. Within the UN system, the mutual recognition of others' generally complementary mandates is also required, as is acceptance of the responsibilities of cooperation. The 'lead agency' role may need to be rejected, precisely because the politics of resolution sully organisational first principles and compromise autonomy. Conflicts of interest will also need to be resisted, for example by reliance on third party input to country of origin assessments, both in refugee determination and the promotion of repatriation.

Structures alone are not enough to ensure either that goals will be achieved or that policies will be premised on primary directives. A culture of protection is required and, given the level of institutional changes over the past years, more than structural alteration may be called for.

There is a further, relatively unexplored dimension here that requires attention - accountability. Accountability is the duty to give an account of conduct in office,

for actions taken or declined within the area of mandate responsibility. In the early decades of the UN, international agency accountability may have been satisfied by annual reporting to the General Assembly but the evolution of the international system in the last ten years has created other expectations. Accountability still translates somewhat imperfectly into the UN but successive evaluations - the Great Lakes, Rwanda, Kosovo - confirm that the activities of international organisations, even those specifically mandated to particular goals, can no longer be assumed to conform to organisational principle. The means to ensure that they do so must therefore be found.

Conclusions

The future of the refugee concept and the institution of asylum will depend not only on the will to protect and to abide by international legal obligations but also on the will to deal cooperatively with migration, involving issues still considered sovereign. A new framework for the better management of migration must be premised on the foundations of international human rights law, the essentials of which are obligations *erga omnes* (that is, international obligations owed to the international community as a whole), and much of which draws its authority from peremptory rules of international law. But it must also promote effective cooperation to these ends by institutionalising mechanisms whereby states are able to fulfil the obligations which, as states of origin, they owe towards their citizens. This is a matter both of individual rights and of responsibility in and towards the international community. While some attention has been given to the right of the refugee to return and to the obligation of the state to re-admit, far too little has been paid to those responsibilities in the everyday, unexceptional context of migration.

Guy Goodwin-Gill is Professor of International Refugee Law, University of Oxford, and Editor-in-Chief of the International Journal of Refugee Law. Email: guy.goodwin-gill@law.ox.ac.uk

¹ Iraq: SC res. 688/1991; Somalia: SC res. 733/1992; SC res. 794/1992; Haiti: SC res. 841/1993; Rwanda: SC res. 929/1994; Kosovo: SC res. 1199/1998.

Ireland: from Emerald Isle to island mentality

by Maura Leen

The 1951 Geneva Convention, an instrument to protect the rights of those displaced outside their countries of origin, has turned 50. Instead of being universally celebrated as a cornerstone of international human rights policy, it has come under attack.

It is ironic that much of the sniping has come from those same countries which were present and active at its birth, such as the United Kingdom. The close connections between Ireland and Britain in terms of population movements and the designation of a common travel area give rise to fears that the Convention may be undermined in the Republic of Ireland. If this happened it would be unfortunate at a time when both parts of the island are striving to build peace and a culture of human rights.

Asylum and human rights

Ireland's deserved reputation for support for peace building and conflict resolution has been recognised by a seat on the UN Security Council. Ireland's credibility has been further boosted by the recent pledge to reach, by 2007, the UN target of providing 0.7% of GNP as aid. At the same time in Ireland the debate on asylum issues has gathered momentum over the past few years as the numbers of asylum seekers, still very small in absolute terms, have grown. Ireland's treatment of asylum seekers is a key litmus test of its commitment to human rights. Sadly, to date its asylum policies have failed to meet the high standards on human rights it expects from others.

In 2000 applications for asylum totalled 10,920, a figure well below the government's projected figure of 12,000-15,000. Only about 3% of the

cases processed were granted refugee status at first instance; on appeal the numbers granted status almost trebled. At the end of 2000 nearly 13,000 asylum seekers were awaiting a decision on their applications. Many have been in Ireland for two or more years, far in excess of the government's own six-month target. Given the human distress such long waiting periods entail, the Conference of Catholic Bishops is among those calling for the regularisation of those asylum seekers already in the country. Opposition groups have supported the move but the government has refused to change its policy. Having to wait so long often leads to boredom, insecurity, fear and isolation. Self-respect is further undermined by enforced idleness; only those who applied for asylum by July 1999 and had been in Ireland for a year following their application are entitled to work.

The government's policy of dispersal of asylum seekers throughout the country has met with protests since its introduction in January 2000. Asylum seekers' accommodation, food, medical care and basic needs are covered and a small cash allowance provided. However, host communities have frequently not been properly informed in advance of their arrival and planning to meet their needs has often been inadequate.

Even more alarming is the plight of those seeking to enter the country. The Minister for Justice is currently preparing legislation to make carriers liable to substantial fines for carrying people without adequate documentation. Since the amended 1996 Refugee Act came into force in November 2000, evidence has emerged that asylum seekers have been refused permission to land at the port of Rosslare. Others are being refused permission to embark in France to travel to Ireland: a direct contravention of their right to seek asylum. As France does not recognise persecution by armed militia as a valid basis to seek asylum, it is clear that certain groups of asylum seekers are thus being denied the right to make an application. Church leaders and refugee groups are urgently seeking an end to this ban.

Church groups, the Irish Refugee Council and the Irish Congress of Trade Unions are among those arguing that Ireland's refugee and asylum policy should be based on human rights standards and ethical principles, and not be driven by the numbers arriving at our borders.

We need to embrace the opportunity provided by the anniversary of the 1951 Convention to reflect critically on our national performance. Although in some cases a climate of fear and xenophobia has led to attacks on this already vulnerable group, it is heartening that there are also many signs of hope, particularly at community level.

*Understand that it is not simple, nor easy
Avoiding past memory.
I can't remove from my mind
My traditional culture
My sentimental torture
The folktales of my childhood
Never old, never dead
Stamped in my mind
I have normal feelings
I suffer for dignity
Please do not kill my broken heart.*

Yilma Tafere, Ethiopia
Taken from *Refugees and Forcibly Displaced People* by
Amaya Valcárcel and Mark Raper, Jesuit Refugee Service

Welcome to the stranger

A recent publication of the Jesuit Refugee Council, *Refugees and Forcibly Displaced People*, provides an ethical base from which to assess Ireland's performance. The authors trace the biblical/Christian traditions of 'welcome to the stranger', so strong in Ireland's history, and compare and contrast these to current international refugee policies. They place the Irish experience within a global context and provide personal accounts of life in exile, a situation in which so many Irish people have found themselves across the centuries.

A core message of this book is that, without concerted action to tackle poverty and inequality, conflicts will continue and forcible displacement will remain the harsh reality for many. This echoes the views expressed by Trócaire partners from Asia, Africa and Latin America who came together three years ago at Trócaire's 25th anniversary conference. These partners drew up a ten-point declaration, the first point of which was that poverty is an endemic abuse of human rights and a form of violence against the poor. Many of the authors of this declaration had been victims of human rights abuses; several had themselves been forced into exile. Most of those able to return home are working to build a culture of peace and human rights and to end the culture of impunity which forced them to flee. These are signs of hope for a better world in which determined refugees can go home to rebuild peaceful and secure societies.

Perhaps the greatest contribution of *Refugees and Forcibly Displaced People* lies in its account of what a truly human response to those who are displaced would look like. It begins by noting that as Christians and as human beings we are one global family travelling together and sharing a common duty to welcome and accompany each other. Experience in Ireland and elsewhere shows us that good refugee/asylum policy is more than a matter of legislation (important through a sound legal framework is). Change must take place at both personal and political levels. The field experience of the Jesuit Refugee Service captured in this new book provides ample evidence of such a process. It highlights the need to listen to the stories of refugees and

asylum seekers, to create space for them rather than to exclude them, to welcome them into our churches, our communities and our workplaces, and to celebrate rather than fear the cultural diversity which their arrival brings.

The role of education

In the prosperous Ireland of the Celtic Tiger, formerly known as the 'Ireland of the thousand welcomes', the challenge ahead of us is to stop the building of a fortress Ireland within a fortress Europe. If we are to do so, human rights education is vitally important. Mary Robinson, UN High Commissioner for Human Rights, reminded the Irish some years ago that "prosperity brings its obligations". She identified human rights education as the fourth 'R' - the awareness which, with reading, writing and arithmetic, will help us to understand our obligations. The government's record exchequer surplus provides ample scope for investment in a better asylum system. Ireland's rapidly expanding overseas development assistance programme provides a further opportunity to put additional resources into development education. In this way people can be better informed of the rights of asylum seekers and our responsibilities, both domestic and international, towards them.

A world suffused by respect for human rights and convinced of the inherent dignity of each and every person would be one where no one would be forced to flee his or her home. In the meantime, while actively pursuing this ideal (an ideal which was in the hearts and minds of those drafting the 1951 Convention), countries must, at a minimum, ensure that those forced to flee are provided with a place of sanctuary, where they can feel safe and rebuild their lives in a spirit of hope. If we achieve this, Valcárcel and Raper point out, we will not only have a better world for the refugee - we will also have a better world for ourselves.

International Day against Racism took place on 21 March, four days after Ireland's national holiday in honour of her patron saint and most famous immigrant, Patrick. Patrick's vision of tolerance and solidarity should inform modern Ireland's response to asylum seekers and migrants. If Ireland cannot

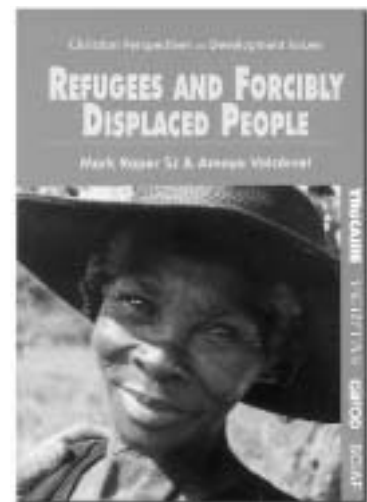
cope with the diversity which a small minority seeking asylum brings to its shores, how can it ever hope to truly celebrate its own diversity, for so long a source of conflict and division?

Maura Leen is Policy Analyst with Trócaire, the Overseas Development Agency of the Catholic Bishops Conference of Ireland.

Email: maura@trocaire.ie

Refugees and Forcibly Displaced People

by Mark Raper SJ & Amaya Valcárcel.
Christian Perspectives on Development Issues. Trócaire/Veritas/CAFOD/SCIAF.
October 2000. 100pp. ISBN 1 85390 537 2. £3.99.



This book offers a prophetic vision of refugee issues at the start of a new millennium. Drawing on the practical experience of the Jesuit Refugee Service and others, the authors urge policy makers and individuals to build a culture of "welcome to the stranger" rather than allowing "a culture of disbelief or suspicion" to become the hallmark of our response. They also point out the benefits of recognising and utilising the rich contribution which refugees and asylum seekers can make to our societies and communities.

Contact: Trócaire, Catholic Agency for World Development, 169 Booterstown Avenue, Blackrock, Co Dublin, Ireland.
Tel: +353 1 2885385.
Fax: +353 1 288 3577.
Email: info@trocaire.ie
Website: www.trocaire.org
Also available from CAFOD;
email: hqcafod@cafod.org.uk

Integration or alienation?

by Tarig Misbah Yousif

Integration of refugees into a host society has long been seen by UNHCR as a permanent solution to the refugee issue.

Refugee integration means building a new life with dignity, becoming an independent and productive member of society, being able to fend for oneself. It is a process by which refugees increasingly participate in all levels of society and become full citizens. However, Convention refugees¹ in Ireland face a score of problems which prevent them from releasing their energies and realising their potential. Two major obstacles relate to language learning skills and employment.

English language skills and employment are inseparable: a good command of English is essential for entering the Irish

job market. Although Fas (a government-funded training scheme) is of paramount importance, its language training component is far from adequate, sorely needing more innovative methods of teaching. Furthermore, even if a refugee is fluent in English, his/her accent remains an identifying characteristic which may trigger discrimination.

Having agonisingly awaited a decision on their application for asylum, for large numbers of refugees refugee status has made no difference in their lives in terms of enabling them to lead an independent dignified life. For some, job-seeking proves harder than asylum-

seeking; for those who do not succeed in securing employment, joblessness means increased alienation.

Much has been written about negative media portrayal since the number of asylum seekers shot up in 1996. Unsurprisingly, government scaremongering tactics in depicting refugees as scroungers have impacted negatively on refugees' job-hunting. The label 'refugee' arouses anti-refugee sentiments among potential employers and many Convention refugees have been condemned to dependency; other qualified refugees have been compelled to take up low-paid and sometimes backbreaking jobs. Medical doctors are an exception as Irish hospitals are in desperate need for their services; even so, qualification recognition and other procedural problems have prevented many from practising their profession in Irish hospitals.

Vietnam refugee, who settled in Northern Ireland and set up his own take-away business, shows the papers he used to escape from Vietnam.



Panos Pictures/Howard J Davies

The role of the voluntary sector

The overseas-oriented mandate of most Irish NGOs appears to restrict them from being actively involved in programmes designed for refugees in Ireland. All the organisations working for refugees in Ireland include refugee participation as an integral part of their programmes but this is mostly empty rhetoric. There is no clarity about how they envisage refugees taking part in programmes designed to help them integrate into Irish society. Does refugee participation mean offering them the opportunity to work with these agencies as volunteers? Or is it about refugees telling their stories to schoolchildren? All too often these organisations, which have been formed expressly to support and empower refugees, have less enthusiasm for actually employing refugees. The situation needs urgent rectification if empowerment is to be given any real meaning.

Recommendations

- More funds need to be pumped into language learning projects.
- Convention refugees should be granted full citizenship rights based on principles of recognition and the cele-

bration of difference. Refugees could then participate in economic and social life on an equal footing as Irish citizens; this can be crucial to successful resettlement.

- NGOs and other groups working for refugees need to take the issue of empowerment more seriously by involving refugees in all issues concerning their integration. There is an apparent lack of willingness on the part of such groups to support bodies created by refugees (the issue of capacity building is getting little attention). Moreover very few organisations have taken the difficult decision to recruit refugees.
- Integration of refugees into Irish society should be grounded in a positive self-definition of group difference rather than an assimilationist ideal; in the latter, the privileged groups implicitly define the standards according to which all will be measured.
- More vigorous action needs to be taken to combat racism. The Irish government needs to put in place effective anti-discrimination legislation if the fight against racism is to have any real effect. Most importantly,

state funding should be available for civil society institutions to help combat racism via development education and awareness-raising programmes.

Tarig Misbah Yousif worked for the Sudanese Commissioner's Office for Refugees (see his article in FMR issue 2 entitled 'Encampment at Abu Rakham in Sudan: a personal account': www.fmreview.org/fmr024.htm). He now lives in Dublin, Ireland, and is the founder of African Development Workers in Ireland, a recently formed body aiming to bring an African perspective to the discussion in Ireland of issues such as debt cancellation, capacity building and a human rights-based approach to development. Email: tarigyousif@eircom.net A longer version of this article appears in Africans Magazine, an online magazine and information service for Africans in Ireland (www.africansmagazine.com).

See also 'Human rights have no borders' by Maura Leen in FMR issue 1, p17 www.fmreview.org/fmr016.htm

1 Those recognised as refugees under the terms of the 1951 Refugee Convention, as opposed to 'programme refugees' (invited by a government under UNHCR's supervision - eg Vietnamese, Bosnians, Kosovans), who enjoy a well-established structure of welcome and support.

Guide to Irish refugee organisations

Further information on refugee issues in Ireland can be obtained from:

Amnesty International Irish Section
48 Fleet Street, Dublin 2, Ireland.
www.amnesty.ie

Anti Racism Campaign
c/o 10 Upper Camden Street,
Dublin 2, Ireland.
<http://get.to/arc.dublin>
Email: sandeep@gofree.indigo.ie

Association for Refugees and Asylum Seekers in Ireland (ARASI)
213 North Circular Rd,
Dublin 7, Ireland.
<http://indigo.ie/~arasi/>
Email: arasi@indigo.ie

Immigrant Solidarity
PO Box 178, Cork, Co Cork, Ireland.
<http://flag.blackened.net/revolt/is.html>
Email: immigrantsolidarity@hotmail.com

Irish Centre for Migration Studies
University College, Cork, Ireland.
Tel: 00 353 21 902889
<http://migration.ucc.ie/immigration>
Email: migration@ucc.ie

Irish Council for Civil Liberties
Dominick Court, 40-41 Lower Dominick St,
Dublin 1, Ireland.
www.iccl.ie
Email: iccl@iol.ie

Irish Refugee Council
40 Lower Dominick St,
Dublin 1, Ireland.
www.irishrefugeecouncil.ie
Email: refugee@iol.ie

National Consultative Committee on Racism and Interculturalism
26 Harcourt Street, Dublin 2, Ireland.
<http://homepage.eircom.net/~racism-ctee/refugees.html>
Email: nccli@eircom.net

Refugee Project of the Irish Bishops' Conference

169 Booterstown Avenue, Blackrock,
County Dublin, Ireland.
Tel: 00 353 1 288 4713.
Fax: 00 353 1 283 4161.
Email: refproject@eircom.net

Refugee Protection Policy Group
<http://members.tripod.co.uk/rppg/>
Email: rppg@irishrefugeepolicy.org

Residents Against Racism
http://sites.netscape.net/rarireland/racist_diary.html
Email: residents_against_racism@ireland.com

SPIRASI
Spiritual Asylum Services Ireland
213 North Circular Road, Dublin 7,
Ireland.
Tel: 00 353 1 8683504
Email: spiro@indigo.ie

UNHCR Liaison Office
27 Upper Fitzwilliam Street, Dublin 2
Email: iredu@unhcr.ch

Legal protection of refugees in South Asia

by Chowdhury R Abrar

Since 1947, 30-40 million people have crossed the borders of South Asian states in search of refuge and almost every country has produced and/or received refugees.

The region continues to be an area of major refugee flows and, against a backdrop of burgeoning social, economic and ethnic tensions, the issues relating to these population movements are likely to become more complex.

The increase in refugee flows has been accompanied by a growing reticence of states to provide asylum. Apart from the political and security considerations, receiving states have become increasingly weary of the adverse economic, social and environmental consequences that accompany refugee flows. In addition, the ever more restrictive asylum policies of a growing number of Western countries have dampened the interest of at least some countries in the developing world in upholding the ideals of international refugee protection and acceding to international refugee instruments.

Although the refugee problem is grave in South Asia the countries concerned have not developed any formal structure to deal with the issue. Nor is there a regional initiative. Refugees are subjected to the same laws as illegal aliens. As there is no refugee-specific law, asylum seekers and refugees are dealt with under *ad hoc* administrative arrangements which by their very nature can be arbitrary and discriminatory, according few rights to refugees. The most important hindrance towards developing a formal refugee regime in South Asia has been the adherence to the policy of working out political solutions through bilateral negotiation between the host country and the country of origin, with the emphasis on sovereign jurisdiction.¹ It is in this context that this paper stresses the urgent need for developing a legal regime for refugees in South Asia.

Structures of refugee protection

The framing of law on refugee protection can be done in three ways: by acceding to international refugee instruments, by developing a regional instrument for South Asia and/or by framing national legislation.

i. Accession to international instruments

The basic instruments of international refugee protection are the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The regional conventions and declarations that have since been adopted draw heavily on the Convention. So far no South Asian state has expressed interest in acceding to the Convention. Many reasons have been put forward to explain this:²

- the perception that the 1951 Convention is a Cold War instrument, tilted in favour of 'political refugees' and therefore inappropriate for the South Asian situation where the mass exodus of refugees is caused mainly by generalised conflict



USCR/Hiram A. Ruiz

- bureaucratic wariness of the perceived ‘interventionist’ activities of UN and other international agencies
- the apprehension of policy makers that the consequences of signing the Convention might entail obligations that they may not be able or prepared to meet in terms of resource mobilisation
- the perception that the Convention is being abused by refugee groups in the developed countries who are collecting funds for terrorist activities in their countries of origin³
- the belief that, as a region, South Asia has been generous to refugees and that accession to the Convention would not necessarily improve the condition of refugees
- the derogation by developed countries of international refugee protection principles
- the possibility of economic migrants benefiting from the Convention principles

BS Chimni has argued that South Asian states should refrain from acceding to the Convention as the instrument is being dismantled by the very states which framed the Convention, and that any talk of accession should also be linked to the withdrawal of measures that constitute the *non-entrée*⁴ and temporary protection regimes.

Chimni’s formulation merits serious consideration given the fact that asylum as an institution has come under severe threat from the Western countries. It is time for a serious moral challenge to be posed by the developing world and South Asia could very well take the lead in this regard. One may fully share Chimni’s concerns about the policies of the Western countries; however, linking the accession issue to making demands for changes in the Convention may lead to the further erosion of already weakened international refugee principles. Accession to the Convention can provide civil society institutions with a basis from which to campaign against any violations of the conventions (nationally, regionally and internationally)⁵ and provide South Asian states with a legitimate base from which to exert pressure on Western countries to dismantle the *non-entrée* regime.

ii. Framing of a regional instrument

Regional instruments constitute another important structure of refugee protection. The OAU Convention of 1969 reflected the frame of minds of political leadership of a continent engaged in anti-colonial movements. It broadened the scope of the definition of refugees to include those fleeing apartheid, colonial oppression and generalised violence and emphasised voluntary repatriation as a solution to refugee problems in Africa.

In Europe, the Schengen (1985) and Dublin (1990) agreements were directed to develop a common strategy to deal with asylum seekers within the continent.

To address their own regional needs, Latin American states opted for a non-binding

It is time for a serious moral challenge to be posed by the developing world

Cartagena Declaration (1984). The Declaration was formalised by the non-governmental sector only, yet the governments of the region tend to follow it as a matter of policy. The Cartagena Declaration further broadened the scope of the refugee definition to include foreign aggression, internal conflicts and those fleeing massive violation of human rights.

An analysis of various regional approaches⁶ suggests that the coordination and cooperation of the concerned states are essential for the success of such an initiative, and that the consistent application of standards can indeed promote the protection of refugees and encourage voluntary repatriation.

Those who argue for a regional instrument point out that, in spite of accession to quite a few international human rights instruments and constitution guarantees and in spite of generous asylum practices and lenient judiciaries in many countries of South Asia, there have been occasions when protection for refugees has been jeopardised by the absence of legal principles. It is further suggested that foreign policy and domestic political considerations have often prevailed over general protection principles, putting refugees in vulnerable situations.⁷ The proponents of the regional approach argue that:

- The complexity and size of population movements in South Asia defy *ad hoc* responses.
- There is sufficient commonality of problems, policies and practice among the South Asian states to develop a regional approach.
- A regional approach would allow South Asia to address its specific concerns on refugee issues, help improve cooperation and solidarity among countries, improve prospects for solution and help define a clear and useful role for UNHCR.

However, there are those who argue in favour of a national legislation, as opposed to a regional declaration or convention. Firstly, they argue, a premature attempt at a regional solution could mean the “scuttling of national legislation as the process of negotiation will raise politically sensitive issues which may be used by ruling elites to turn the ordinary citizen hostile to even a national regime for refugees”⁸. Secondly, a non-binding regional instrument may have little impact but may provide enough justification of thwarting any national legislation. Thirdly, the scope of a regional instrument will be confined to general issues affecting the region while a national legislation can go into much more detail and therefore be more comprehensive. Fourthly, any attempt at arriving at a regional agreement is likely to result in a minimalist regime. And, finally, issues surrounding IDPs which, for obvious reasons, have no place in a regional instrument can be effectively addressed in national legislation. Chimni states further that the “passage of national legislations would allow states in the region to identify and debate their individual concerns, both at the level of security and resources, and thereby bring to the fore the divergent perceptions to the refugee problem. They would also accumulate critical experience in their implementation.”⁹

The South Asian countries have yet to de-link refugee issues from their national security concerns and do not share the broad worldview of perceiving them as humanitarian and human rights concerns. In this context it is most unlikely that a regional instrument, either in the form of a declaration or a convention, is likely to emerge. Even if it does, in the absence of national regimes such an instrument is likely to be constrained by a number of factors and the rights of

refugees are likely to be compromised. This leaves us with the option of national legislation.

iii. National legislation

Given the realities of South Asia, efforts should be geared towards developing comprehensive national laws which uphold the universal principles of international refugee protection while taking into account the distinctive traits of the region.

Initially, the second half of the 1990s saw some initiatives at an unofficial level towards developing a regional refugee protection regime in South Asia. The constitution of the Eminent Persons Group (EPG) for South Asia by UNHCR in November 1994 was an important step in this direction. At its first meeting, the Group agreed to hold annual regional Consultations to promote public awareness and identify mechanisms and strategies for moving towards accession or, alternatively, formulating a regional instrument adapting the Convention to the needs of the South Asian region. The Colombo Consultation of 1995 underscored the need for a South Asian regional legal regime for refugees and a common Declaration reconfirming the validity and relevance of the definitions contained in the international refugee law instruments as well as the 1969 OAU Convention and the 1984 Cartagena Declaration. The principal focus therefore was on the development of a regional normative framework that would address the needs of refugees, stateless persons and IDPs.

It was at the New Delhi Consultation of 1996 that there was a strategic shift in favour of a model law for refugees that would be applicable at the national level. The Consultation also emphasised the need for better public awareness-building about refugees and IDPs and concluded that national legislations would permit a better understanding of commonalities in principles, policies and practices, and would eventually enable a regional legal framework to be drawn up.¹⁰

It was at the Dhaka Consultation of EPG in November 1997 that a model national law was approved. This model law is the first step in the process of building a regional consensus on preventing, managing and solving the problems accompanying refugee flows in a comprehensive and humane manner.

The purpose of the law is to establish a procedure for granting refugee status to asylum seekers, to guarantee them fair treatment and to establish the requisite machinery for its implementation.

The model law incorporates 'ethnic identity' in its categorisation of people who would qualify to gain refugee status and in a note establishes that membership of a particular social group will also include gender-based persecution. In that respect, the model law provides a comprehensive definition suiting the needs of the region.¹¹

The model law reaffirms the principle of *non-refoulement* and lays down rules for application of refugee status; it provides for setting up an implementing agency (the 'Refugee Commissioner') and an appellate body (the 'Refugee Committee') and rules for determination of refugee status; and it explicitly sets out the rights and duties of refugees and provides for appropriate procedures in case of mass influx. An important safeguard for those who enter illegally has been provided and, in order to ensure the voluntary nature of repatriation, the model law makes it necessary that refugees express their wishes in writing or through other appropriate means. The model law provides a basic framework by embodying procedures for the determination of refugee status including legal assistance and interpreters' services.

Accession to other international instruments

There are several other international instruments¹² that have major relevance for the protection of refugees and IDPs. Civil society institutions may urge states which are not signatories to these conventions/covenants to accede to these instruments and also press those states that have acceded but have not made enabling national legislations to do so. All countries of South Asia have acceded to the Convention for the Elimination of Discrimination against Women, the Child Rights Convention and the International Convention for Elimination of all forms of Racial Discrimination. Accession to these conventions obliges states to uphold and protect the rights of women, children and racial and ethnic minorities in refugee situations. South Asian states should also consider signing the Convention Relating to Status of Stateless Persons.

Conclusion

In assessing various aspects of international refugee protection, including the implications of ratifying international refugee instruments, developing a regional instrument and framing national legislations for the South Asian countries, this article concludes that the adoption of national legislations would be an effective first step. It calls for state accession to those other international instruments with implications for refugee protection in the region and urges South Asian countries to engage with Western states in dismantling the *non-entrée* regime which is undermining the basic principles of international refugee protection.

C R Abrar is Professor in International Relations University of Dhaka, and Coordinator of the Refugee and Migratory Movements Research Unit (RMMRU).

Email: cabrar@citechco.net

1 The Basic Principle of the SAARC (South Asian Association for Regional Cooperation) charter enshrines that 'contentious' bilateral issues would not be brought in for discussion. See 'The Contemporary Refugee Problem and the Concept of Asylum in South Asia' by Rose Varghese in *Proceedings of the Second Regional Consultation on Refugee and Migratory Movements*, Colombo, 25-27 September 1995. See also *Managing Refugees in South Asia* by Mahendra Lama, Occasional Paper 4, RMMRU, Dhaka, 2000.

2 Bradman Weerakoon 'Regional Initiatives to Promote Awareness of and Accession to the 1951 Refugee Convention and other Relevant Human Rights Instruments' in *Proceedings for the Fourth Informal Consultation on Refugee and Migratory Movements in South Asia*, Dhaka, 10-11 Nov 1997. See also 'The Need for Refugee Laws in South Asia' in (C R Abrar and Shahdeen Malik ed) *Towards National Refugee Laws in South Asia*, RMMRU, Dhaka, 2000.

3 Article 44, 9th SAARC Summit, Male (May 1997).

4 Various legal and administrative measures drawn up by the US and European countries to restrict the entry of asylum seekers from other regions.

5 Tapan Bose *Protection of Refugees in South Asia Need for Framework*, SAFHR Paper Series 5, South Asia Forum for Human Rights, Kathmandu.

6 See V Vijaykumar 'Developing a Regional Approach to Refugee Problems in South Asia', presented to the Fourth Regional Consultation on Refugee and Migratory Movements, cited earlier.

7 *Ibid.*

8 B S Chimni *The Law and Politics of Regional Solution of the Refugee Problem: The Case of South Asia*, RCSS Policy Studies 4, Regional Centre for Strategic Studies, Colombo, 1998, p12.

9 *Ibid.*

10 SAARCLaw has also contributed substantially to developing model national legislation for refugees. SAARCLaw is a regional body recognised by SAARC which brings together national associations of judges, legal administrators, academics and lawyers from the five SAARC countries. Its Delhi Seminar of May 1996 favoured framing national legislations before formulating a regional instrument.

11 For a comparative review, see S S Wijeratne and Wei Meng Lim Kabaa in *Towards National Refugee Laws in South Asia*, RMMRU, Dhaka, 2000.

12 International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention Against Torture.

International and national responses to the plight of IDPs

by Francis Deng and Dennis McNamara

In over 40 countries, in literally all regions of the world, 20-25m people are displaced as a result of conflict and human rights violations. Millions more have been uprooted due to natural or man-made disasters.

In Afghanistan nearly one million people are internally displaced. In recent months alone, hundreds of thousands of Afghans have fled fighting, drought and famine. Africa is the most affected continent, hosting approximately half of the world's internally displaced population. Over 3.8m Angolans, a quarter of the population, have been internally displaced by decades of armed conflict. In January alone a further 19,000 Angolan civilians were driven from their homes by conflict. Angola ranks second only to Sudan, where over 4m people are estimated to be displaced. Innumerable other examples illustrate the magnitude of the ongoing crises that have rendered scores of millions destitute, homeless and vulnerable to human rights abuse.

Responsibility for Internally Displaced Persons (IDPs) falls first and foremost on national governments and local authorities. Disturbingly, however, in many countries IDPs find themselves in a vacuum of responsibility within the state. Under such circumstances, their only alternative source of protection may be the international community.

When and where possible, it is vital that the international community complements the efforts of national governments and provides protection and assistance for IDPs in cooperation with the governments concerned. International protection and assistance, however, become especially needed where governments lack the will or the capacity to provide for their own displaced populations. Tragically, this is often the case.

The magnitude of the problem challenges national and international capacities, especially when the displacement is protracted and the conflict unresolved. In such cases, the challenge can become one of moving from relief to development in a humane manner so that the displaced may resume their lives in dignity and regain self-sufficiency in accordance with human rights standards to which they, like all other citizens in their country, are entitled.

Addressing the crisis

In recent years there has been growing awareness within the international community of the enormity of the crisis of internal displacement and the need to take adequate steps to address it. In 1992 the mandate of the Representative of the Secretary-General on Internally Displaced Persons was established in order to recommend an effective system of protection and assistance for IDPs. The Representative has focused on four areas: developing an appropriate normative framework for responding to the protection and assistance needs of IDPs; fostering effective institutional arrangements at the international and regional levels; focusing attention on specific sit-

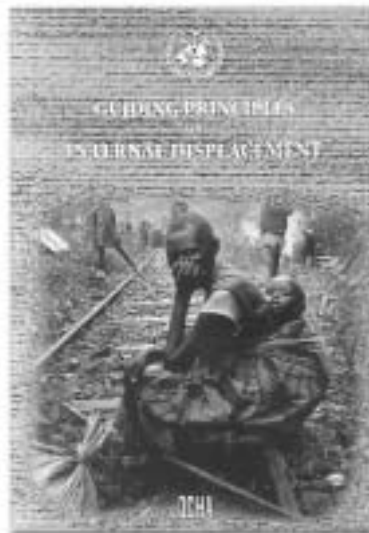
uations through country missions; and undertaking research to broaden understanding of the various dimensions of the problem.

Together with a team of international legal experts, and at the request of the Commission on Human Rights and the General Assembly, the Representative prepared a compilation and analysis of the legal norms pertaining to internal displacement. This provided the basis

for the development of international standards for the internally displaced, culminating in the Guiding Principles on Internal Displacement, which the Representative submitted to the Commission in 1998. Based upon existing international humanitarian law, human rights law and refugee law by analogy, these Principles provide the international standards that should guide the work of the

Representative of the Secretary-General, states, all other authorities, groups and persons and inter-governmental and non-governmental organisations when addressing internal displacement. The Principles identify rights and guarantees relevant to all phases of displacement: providing protection against arbitrary displacement, offering a basis for protection and assistance during displacement, and setting forth guarantees for safe return, resettlement and reintegration. While the Principles do not constitute a legally binding instrument, they reflect and are consistent with international law.

Since the establishment of his mandate, the Representative has attempted to address the need for an institutional



framework for the international response to the crisis of internal displacement. Among the options which have been considered are the creation of a new UNHCR-style agency for IDPs, designation of an existing agency to assume responsibility for IDPs and a collaborative approach to mobilise the capacities of existing agencies. This last option is the one preferred and now followed, through the Inter-Agency Standing Committee comprised of the main UN humanitarian, human rights and development agencies as well as international NGOs.

Country missions have provided the Representative with an important means to assess the extent to which the protection, assistance and development needs of IDPs are being met in specific situations and to engage in solution-oriented dialogue with concerned governments, international agencies and NGOs. The Representative has undertaken 19 country missions in different regions of the world. The findings of these missions and the recommendations for addressing the plight of IDPs more effectively are set out in reports of the Representative to the Commission on Human Rights.

The UN has also taken other steps towards enhancing the effective and timely response of the international community to the needs of IDPs. Many organisations, including the International Committee of the Red Cross, the World Food Programme, UNHCR, UNICEF and numerous NGOs have long been involved in protecting and assisting displaced populations. In 1997, the UN Secretary-General charged the Emergency Relief Coordinator (ERC) of the Office for the Coordination of Humanitarian Affairs (OCHA) with responsibility to be the focal point within the UN system for any IDP-related

issues. Within a given country the resident and humanitarian coordinators are responsible for coordinating the UN's response to both the protection and assistance needs of IDPs and for ensuring that gaps in the response are systematically addressed.

It is almost universally agreed that more needs to be done to help the displaced.

The overall response to a problem of enormous magnitude is woefully inadequate. Serious gaps in the UN and agency operational response to the needs of IDPs - including their protection - and continuing funding difficulties have plagued the international response.



IDPs being moved from Jegga Camp (where they have lived for two years) to Shelab Camp, Eitrea.

Senior Inter-Agency Network established

In recognition of the need for increased efforts, international agencies agreed in September 2000 to establish the Senior Inter-Agency Network on Internal Displacement. Headed by a Special Coordinator, and including senior representatives of concerned organisations, the Network is to carry out reviews of selected countries with IDP populations and propose an improved international response to meeting their basic needs. Working with UN country teams, the Network has set out to assess current efforts to provide protection and assistance to IDPs, to identify areas where the national and international response may be inadequate and to see what might be done to address such gaps. The Network's terms of reference also include making longer-term recommendations for follow-up and inter-agency approaches to strengthen the international response.

The Network's objective is to increase efforts by all concerned agencies and governments to bring about concrete improvements in the delivery of assistance and protection to IDPs worldwide. The Network emphasises the need to examine the efficiency of the international response and its coordination.

The Network's missions provide a necessary impetus for response and action by agencies, as well as the host authorities and donor governments. Countries which the Network has reviewed include Ethiopia, Eritrea, Burundi and Angola. Among some of the pressing protection and assistance needs that have emerged are those relating to HIV/AIDS, human rights abuses, lack of basic nutrition, health and sanitation, inadequate shelter and landmines. The Network has focused its advocacy efforts on host governments as well as on donor countries towards promoting an improved response to the needs of the displaced. The Network, through its review missions, enables the UN and partner agencies to exert their collective weight and influence to expeditiously address gaps in provision in countries where IDPs are desperately in need of immediate protection and assistance.

The Representative and the Network collaborate closely in seeking to better address the needs of IDPs and also to optimise the complementarity of efforts and avoid duplication. The Representative, while reporting directly to the Secretary-General, is largely independent of the UN and has a degree of flexibility in his analyses that facilitates his role as an advocate and as an ombudsman. The Special Coordinator of the Network is very much a part of the UN system and consequently is well placed to effect appropriate changes in response by agencies to better meeting the needs of the dispossessed.

The Representative, in his role as global advocate, has been able to raise aware-

ness of problems faced by the displaced at a national and regional level through constructive dialogue with governments and

through seminars and work with regional organisations. Though his country missions he has sought to examine and address problems of displacement through dialogue with governments and all other actors. These have included post-emergency situations that have ceased to draw international attention. The Representative has also engaged in longer-term efforts to build capacity within the infrastructure of a country and to promote and disseminate the Principles. Additionally, he attempts to be a 'research arm' for the more operational actors that work for the internally displaced. Such operational agencies, particularly those within the Network, are compelled to act quickly in responding to the needs on the ground and benefit from in-depth analyses undertaken by the Representative.

Constraints and concerns

Serious constraints continue to hinder development of an improved response to the needs of IDPs. The international community can attempt to ameliorate their plight but cannot be a substitute for the primary role of governments and local authorities. It is the duty and responsibility of such actors to alleviate the plight of persons uprooted from their homes from within the boundaries of a government's jurisdiction.

Sovereignty must be given a positive interpretation as a normative concept of state responsibility to ensure the safety and general welfare of its citizens. In order to enjoy legitimate sovereignty states must show, by provision of protection and assistance to all those under its jurisdiction, that it is meeting minimum international human rights and humanitarian standards. Many host countries are themselves implicated in the violence which has caused displacement. Efforts to increase international involvement are easily labelled as external interference, particularly if they touch the highly sensitive issue of protection of the basic rights of displaced citizens. Thus the involvement of the international community is impeded, if not obstructed, by negative perceptions of national sovereignty as a barricade against international scrutiny and humanitarian action.

Additionally, gaining access to displaced populations in a country where an internal conflict rages is also fraught with danger. Each side fears that humanitarian assistance will strengthen the other and may therefore seek to obstruct provision of assistance. Access is further complicated by the fact that the displaced are often scattered, sometimes for their own safety, and not always reachable in camps or settlements.

A further problem of significant concern is the lack of willingness on the part of donor governments to provide funds in situations where concrete solutions seem elusive and assistance programmes appear futile. It is difficult to raise funds for international assistance when governments that are supposedly responsible for persons within its boundaries show no desire to end a conflict.

Conclusion

Despite widespread agreement that more needs to be done to help displaced populations, the response remains inadequate. Millions of people continue to suffer. Quite apart from its tragic humanitarian consequences, displacement has important implications for both human security and the security of states. Socio-economic systems and community structures can break down and impede reconstruction and development for decades. The conscientious responsibility of a state towards its people, however, and the ability of people to

realise the rights associated with nationality, provide an indispensable element of stability to life, whether at the personal, societal or international level.

Since the gravity of the issue became recognised in the early 1990s, the major UN agencies, the Red Cross Movement and international NGOs have made appreciable progress in responding to the global crisis of internal displacement. All indications are that displacement crises will continue to increase as fundamental challenges of nation building confront many countries in the post-Cold War era.

The role of the Representative as advocate and ombudsman will continue to be relevant in raising the profile of the humanitarian tragedy of internally displaced persons. The Senior Inter-Agency Network will, in the course of the next months, through its country reviews, compile a report to the Secretary-General

and the ERC with recommendations on possible follow-up arrangements and inter-agency approaches to strengthen future responses to internal displacement.

Much still needs to be done to ensure that the Guiding Principles are translated into a more effective system of protection and assistance for the millions of IDPs around the world. International efforts to address these issues are only part of the solution. It is only when the obligations of the Principles permeate all levels of government and civil society and the international community gives priority to their observance that the plight of IDPs will markedly improve. Nothing, however, can act as a worthy and sustainable substitute for state responsibility.

Francis M Deng has been Representative of the Secretary-General on Internally Displaced Persons since 1992. Dr Deng is also

Distinguished Professor at the Graduate Centre of the City University of New York (CUNY) Prior to his tenure at CUNY, Dr Deng served as a senior fellow at the Brookings Institution for 12 years. Before leaving the Sudanese diplomatic service in 1983, he served as Ambassador to Canada, the Scandinavian countries and the United States, and as Minister of State for Foreign Affairs.

Dennis McNamara was appointed as Special Coordinator heading the UN Senior Inter-Agency Network on IDPs in September last year. He was previously Head of the Humanitarian Pillar of the United Nations Mission in Kosovo (UNMIK). His 25 years with the UNHCR include heading the Department of International Protection and a posting as Head of Human Rights in Cambodia.

IDPs and returnees in Kabul, Afghanistan.



UNHCR/R. Le Moayne

UNHCR and the erosion of refugee protection

by Gil Loescher

For the past half century UNHCR has been at the heart of international debates about human rights and international responsibility.

In no other UN agency are values and principled ideas so central to the institutional mandate and *raison d'être* or committed staff members so willing to place their lives in danger to defend the proposition that persecuted individuals need protection. As UNHCR points out, if the agency did not exist hundreds of thousands, if not millions, of refugees would be left unassisted and unprotected.

However essential the agency is, it is important not to take the rhetoric and self-presentation of UNHCR at face value. While UNHCR has had many successes over the past 50 years, it has also had many failures. Slow and inadequate responses to refugee emergencies and protection crises have sometimes risked the lives of countless numbers of refugees. A number of internal and external constraints inhibit the organisation from achieving its full impact.

Endemic political and financial problems

The absence of an autonomous resource base for UNHCR and the limited mandates and competencies of the organisation continue to limit its response to future refugee crises just as they have done for the past 50 years. Many of the political problems facing UNHCR are those that existed during the Cold War. UNHCR's actions are limited by the practices of states concerning sovereignty, particularly those norms which preclude intervention in the domestic affairs of these states. The attachment to the principle of state sovereignty remains strong among several powerful Western states, Russia, China, India, Iran and many developing and non-aligned states. The major powers, including the United States, have been highly selective about whether and to

what extent to get involved in political crises and humanitarian emergencies. By statute, the High Commissioner is not allowed to address the factors likely to generate refugee flight. UNHCR is not mandated to intervene politically against governments or opposition groups, even where there is clear evidence of human rights violations that result in forcible displacement. In civil war situations, UNHCR staff are often unfamiliar with human rights and humanitarian law and are uncertain of how governments and opposition groups will react to their interventions using these protection norms. Increasingly, the organisation finds itself out of its depth and faced with security and political issues that it has neither the mandate nor the resources to deal with.

Although it characterises itself as non-political, UNHCR is a highly political actor and is clearly shaped by the interests of major governments. In mounting massive relief operations, UNHCR is often at the mercy of its donors and host governments. The agency can only

carry out its enormous emergency and maintenance programmes if it receives funding from the industrialised states. It can only operate in the countries into which refugees move if host governments give it permission to be there. Thus UNHCR is in a weak position to challenge the policies of its funders and hosts even when those policies fail to respond adequately to refugee problems.

Financial vulnerability and reliance on powerful donor governments as well as host states also impedes UNHCR in carrying out its principal function of providing protection to refugees. Response to refugee emergencies and

repatriations are absorbing most of the limited funds available for international assistance. In recent years, in order to demonstrate its 'relevance' to states, UNHCR has regularly cooperated in the containment of the internally displaced within countries of origin and in the enforcement of repatriation programmes that are often less than voluntary. Such instances of 'humanitarian pragmatism', together with the rapid expansion of UNHCR's mandate, have caused widespread concern. Many observers fear that in becoming a general humanitarian agency and a more overt instrument of state policy, UNHCR has diluted its primary function of protecting refugees.

From legal protection to humanitarian action: UNHCR's new culture

Perhaps the most important constraint facing UNHCR results from the shift in focus from legal protection to emergency assistance that has occurred within the agency in recent years. In its first decades the protection of refugees reflected the core values and practices which gave UNHCR its special meaning, identity and coherence. Since the mid 1980s, as operational activities

have gained precedence over protection, UNHCR's culture of protection has declined.

Organisational changes have sidelined the Division of International Protection (DIP) in favour of the more pragmatic and operational regional bureaux. This shift in identity has accelerated as humanitarian emergencies have come to be perceived chiefly in terms of logistics and as UNHCR has become identified with providing massive relief to refugees. The major humanitarian emergencies of the 1990s have spawned a new cadre of logistics personnel and managers whose priorities are effectiveness of aid delivery rather than protection. The infusion of pragmatic managers, coupled with the departure of mid-career and senior staff from the

UNHCR is often at the mercy of its donors

agency, has deeply affected the organisational culture, recruitment policies, socialisation of staff and policy guidelines of UNHCR.

The new culture of the organisation is rapidly becoming entrenched. Recent personnel have little or no knowledge or memory of institutional history and lack appropriate experience or awareness of how UNHCR used to operate before the 1990s. This is unfortunate because UNHCR staff face difficult political and moral dilemmas, often without the benefit of knowledge about either the underlying nature of refugee disasters or about the success or failure of past UNHCR interventions. For UNHCR staff, the general tendency is to perceive emergencies in terms of logistics and not as failures of politics, the development process or ethnic relations. UNHCR's objectives are increasingly pragmatic - to do the best in difficult circumstances and to implement the least bad options - and not chiefly to uphold universal principles.

In recent years UNHCR has not been primarily concerned with the preservation of asylum or protection of refugees. Rather, its chief focus has been humanitarian action. UNHCR is primarily about assistance - the delivery of food, shelter and medicine - to refugees and war-affected populations. Successes and failures of humanitarian action are judged primarily in terms of technical standards of aid delivery and in fulfilling the material needs of refugees and threatened populations. In UNHCR, as in so many large organisations today, success is measured quantitatively - how much relief can be delivered and how quickly. The central importance of human rights protection of displaced and threatened populations is frequently neglected.

This qualitative aspect of the agency's work is less easily measured and less easily sold to donor nations as worthy of funding. While UNHCR and other humanitarian organisations are able to deliver large quantities of humanitarian supplies under extremely difficult conditions, they are much less successful in protecting civilians from human rights abuses, expulsions and ethnic cleansing.

Raising UNHCR's protection profile

Ruud Lubbers, the new High Commissioner, should seize the opportunity to make much-needed changes. A key issue

for UNHCR is to raise the protection profile of the agency. It is true that relief operations provide for the physical security of refugees and give UNHCR staff a presence with which to monitor protection developments in the field. However, material assistance operations must not dominate the agency's policies to such an extent that traditional protection of refugees and asylum seekers is undermined. While the new High Commissioner has signalled that he would like to make the protection of refugees his "core concern", protection issues do not figure consistently as a real priority in UNHCR's management culture.

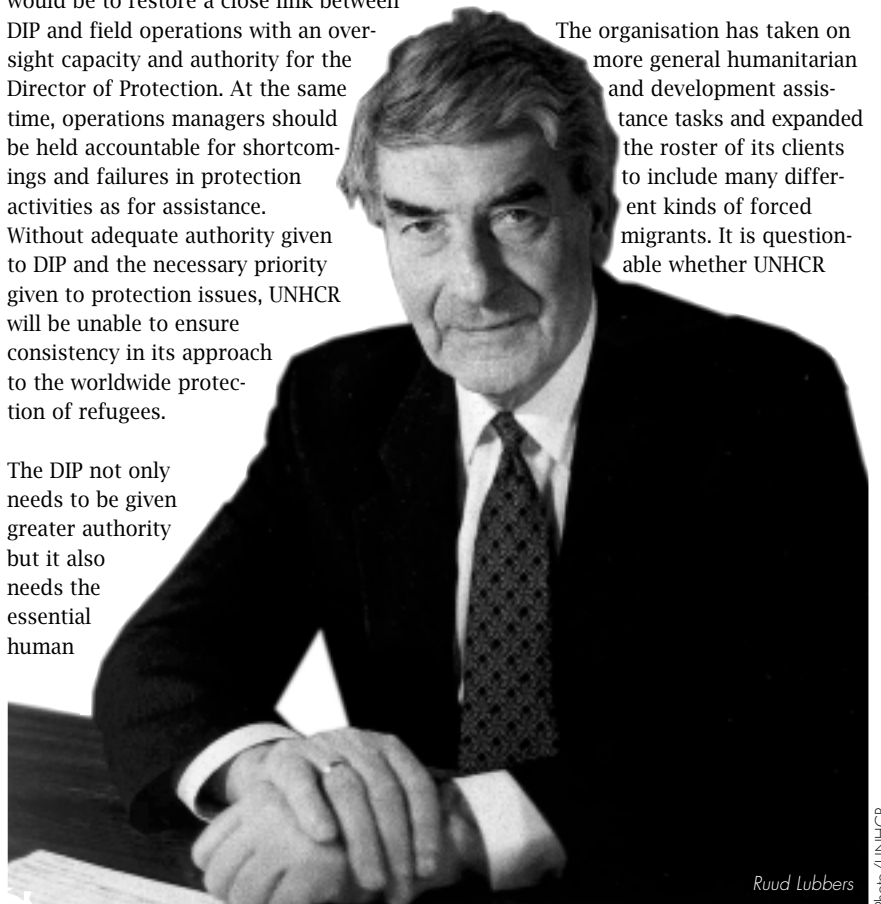
Currently the role of the DIP on operational issues is marginal and the Director of Protection has no independent authority to act, even on the most pressing protection crises. UNHCR staff now see job experience in operations, not in protection, as the way to advance their careers and ensure regular promotions. The sidelining of protection over the past 15 years has not only damaged the traditional protection ethos of the organisation but also severely limits the staff expertise needed to pursue a vigorous protection policy. The most significant step that the High Commissioner could take to redress this imbalance between protection and operations would be to restore a close link between DIP and field operations with an oversight capacity and authority for the Director of Protection. At the same time, operations managers should be held accountable for shortcomings and failures in protection activities as for assistance. Without adequate authority given to DIP and the necessary priority given to protection issues, UNHCR will be unable to ensure consistency in its approach to the worldwide protection of refugees.

The DIP not only needs to be given greater authority but it also needs the essential human

resources to upgrade the role of protection. Adequate resources are required for the comprehensive protection training of UNHCR staff at all levels, particularly at management level. Although progress has been achieved in recent years to improve professional development, UNHCR needs to ensure that all staff receive regular training of all kinds. Recent humanitarian emergencies in Kosovo and elsewhere have revealed a serious shortage of senior staff capable of assuming leadership roles on short notice. A future priority should be for heads of missions to be trained on how to handle emergencies and how to ensure protection for refugees.

UNHCR often seems confused about its identity and role in the international system. At times, UNHCR acts as if it were independent - almost like the International Committee of the Red Cross - with little connection to other parts of the UN system. At other times, it works alongside UN peacekeeping and peace enforcement troops and other UN agencies as part of a broad UN-led effort. UNHCR's overall mission combines international protection and the search for durable solutions with an expanded mandate centred on 'persons of concern'. However, the limits to UNHCR's practical work are not clear.

The organisation has taken on more general humanitarian and development assistance tasks and expanded the roster of its clients to include many different kinds of forced migrants. It is questionable whether UNHCR



Ruud Lubbers

Photo/UNHCR

has the necessary resources or expertise to take on such a broad range of activities. The ambitious, but ambiguous nature, of its expanded mandate and programmes lead to confusion and loss of autonomy, particularly when there have been so few clear policy statements about its overall responsibilities

A key to making its institutional structure stronger and more unified is to identify a particular niche for UNHCR in humanitarian affairs. One of the agency's strengths is its clear original mandate. Only UNHCR has the legitimacy from its Charter to protect refugees and to promote solutions to refugee problems. It is an indispensable organisation which deserves the fullest support of governments. But UNHCR loses authority and autonomy when it steps outside of its mandate to take on tasks that other agencies or governments do better. The advantage of reaffirming and clarifying its original protection mission would be to convey to personnel what is important and to provide them with a sense of overall purpose. A distinctive niche would also provide the external public with a strong message about UNHCR commitment and focus and would build up trust and confidence in the authority of the organisation.

Need to reverse the erosion of refugee protection

UNHCR also has an important role to play in convincing states that it is in their own national interests to find satisfactory solutions to refugee problems. The task ahead is formidable, particularly at a time when political leaders are reluctant to take positions that they feel might expose them to electoral risks. Being the international 'watch dog' on asylum and balancing the protection needs of refugees with the legitimate concerns of states requires courage and a willingness to confront governments when necessary. As the guardian of international refugee norms, UNHCR has a role to play in reminding liberal democracies of their own identity as promoters of international human rights.

Refugee and human rights norms enjoy a special status among Western states because they help define the identities of liberal states. They are also important to non-Western states because adherence to these norms constitute a crucial

sign to others of their membership in the international community of law-abiding states. Most states are not proud of practices and policies that contradict international refugee norms. The most powerful liberal democratic states are particularly sensitive to the criticism they have received for not providing a humanitarian leadership role. Political leaders are floundering in their search for effective responses to refugee movements and are looking for intellectual and political leadership and guidance on this policy issue. UNHCR and other refugee rights advocates have a unique opportunity to insert human rights ideas into the contemporary policy debate about refugees. UNHCR needs to help states transform their perceptions of their national interests and alter their calculations of the costs and benefits of their refugee and asylum policies. While individual governments may feel uncomfortable being criticised, UNHCR will gain greater respect in the long term for speaking up for refugee protection principles than for remaining silent.

UNHCR needs to develop a well-considered and consistent policy on refugee advocacy. Presently, the extent to which agency officials engage in attempts to criticise and pressure governments depends more on personalities and

individual initiatives than on agency-wide policies. The role and example of the High Commissioner is key. If the High Commissioner chooses to utilise the moral authority and prestige of UNHCR, he will set a positive tone and example for the entire agency. While public statements and pressures may prove ineffective in the short term in bringing about improvements for refugees, persistent and well-founded advocacy may well achieve desired change in the long term. A proactive protection policy has the added benefit of contributing to UNHCR's reputation for integrity which is vital to its long-term influence.

UNHCR is not a static organisation but has constantly changed and evolved over the past 50 years. Dramatic and bold steps should now be taken to revitalise UNHCR's primary role as the protector of refugees and the guardian of asylum worldwide.

Gil Loescher is Research Associate at the Centre of International Studies, University of Oxford and the author of UNHCR and World Politics: A Perilous Path, Oxford University Press. [See Publications on page 58 for full details.] Email: gil@loescher.freeserve.co.uk

The United Nations
wants to "as
the widest po
FUNDAMENTAL R

UNHCR/S Fuzeou

UNHCR and the ethics of repatriation

by Michael Barnett

“We would never push refugees across a border at gunpoint,” replied the UNHCR official.

I was in Geneva interviewing officials regarding what they saw as the environmental demands and organisational reasons that accounted for the evolution of the agency’s repatriation policy. This particular official was slightly more vitriolic than most when it came to defending a policy that had been accused of playing fast and loose with traditional refugee rights. He readily agreed that UNHCR no longer clung to the original principles guiding voluntary repatriation and insisted that such departures were warranted because, firstly, states were demanding that refugees return as quickly as possible and, secondly, there was no objectively ‘safe’ benchmark in many ‘post-conflict’ settings. I conceded the broad point that if UNHCR had to wait for the ideal conditions before sponsoring a repatriation exercise then it might have to wait

forever, yet wondered aloud about the opposing danger of sacrificing principles on the altar of pragmatism. “How does the agency know when it is about to go too far? How far would the agency go? At what point are principles stretched beyond recognition?” It was then that he revealed the ethical bottom line: the agency would never physically coerce a return. Certainly many UNHCR staff would repudiate this position and would draw the line closer to original rights and principles but his candour and position within the agency suggested that his views were hardly unfashionable.

UNHCR’s new thinking on repatriation

UNHCR’s repatriation policy has shifted dramatically over the years. The crux of voluntary repatriation is that refugees cannot be returned against their will to a home country that in their subjective assessment has not appreciably changed for the better and, therefore, still resembles the situation that triggered their flight. Beginning in the 1980s, however, UNHCR began to weaken this categorical imperative as it developed new concepts like ‘safe return’ and ‘voluntariness’ that made repatriation possible and desirable under less than ideal conditions.

There is considerable debate regarding what provoked this change. One explanation is that states made UNHCR do it. By the late 1970s, it is argued, Western and Third World states were demanding relief from the heavy burdens placed on them by the refugee regime. Western states were growing agitated by the increasing number of asylum requests from the Third World; viewing many of these requests as bogus, Western states began denying asylum in greater numbers and demanding a change in refugee law. Third World states were also increasingly intolerant of refugee flows that were imposing heavy financial, environmental and political costs. The result was that Western and Third World states demanded that UNHCR become involved in what the High Commissioner referred to as a policy of ‘deterrence’.¹

The agency acquiesced because it had little alternative: patrons held the purse strings and were going to send refugees back whether UNHCR liked it or not. UNHCR could sit on the sidelines with its principles but would be of no help to refugees in danger. UNHCR had no real choice but to play ball and more fully reconsider its repatriation policy. Only a thick-skinned or self-destructive organisation would have been oblivious to the preferences of its patrons on whom its freedom to act depended.

It is worth pausing to consider the historical convergence between this state-induced pragmatism and the agency’s 1990s presentation of itself as a humanitarian international organisation at the same time as it developed relief activities that were directed at, and situated in, refugee-producing states. Sweeping global changes prepared the groundwork for this humanitarianism. Most significant was a change in the sovereignty regime. In recent history states have leaned on the norm of sovereignty and its principle of non-interference to shield themselves against

ations
sure refugees
sible exercise of...
IGHTS AND FREEDOMS.”



unwanted intrusions on their domestic affairs. Increasingly evident during the Cold War, and then bursting onto the scene after its end, was a growing acceptance that state sovereignty was conditioned by popular sovereignty.

A key aspect of popular sovereignty was said to be the expectation that states should have a degree of domestic legitimacy and respect basic human rights. The implication was that governments could no longer behave monstrously toward their populations without fear of sanction by the international community. This was not only a normative issue but was also related to international peace and security. If illegitimate states were more likely to generate domestic conflicts that had regional and international implications, then domestic governance was related to international governance.

For reasons related to these developments, UNHCR became more deeply involved in the domestic affairs of states. The emerging belief that state sovereignty was conditioned by popular sovereignty permitted UNHCR to enter into once sacred domestic territory. UNHCR increasingly admonished those governments that were causing refugee flight and began to propose concepts such as 'state responsibility'. There were

also security imperatives. Internal conflicts led to refugee flows which, in turn, triggered regional instability and challenged 'human security'.²

UNHCR's humanitarian discourse

UNHCR's growing interest in refugee-producing countries was accompanied and legitimated by a humanitarian discourse – warranted because of a principled concern for the fate of displaced peoples and the desire to relieve their suffering. The agency became increasingly involved in in-country protection, bringing relief to people (rather than waiting for people to reach relief). It widened the definition of refugee to include IDPs and supported development projects to provide refugees with a means of livelihood to ease reintegration back into their country of origin.

If the 1990s can be described as the dawning of the age of humanitarianism its theme song was sung with a statist inflection. UNHCR's expanded humanitarian space was legitimated with reference to a moral discourse around the assuagement of suffering and fostering of 'responsible' states. However, states were willing to license these activities not because of an outpouring of generosity but because of its very

deficit. States were retreating from their obligations to refugees at the same time that the end of the Cold War swelled refugee case-loads. Because they were less willing to house the growing number of refugees and more interested in seeing them speedily return home (and stay at home), states became receptive to the idea that UNHCR should become more involved in the affairs of refugee-producing countries. UNHCR was permitted to expand the humanitarian space in one area because it was being shrunk in another.

Humanitarianism and the risk to refugee rights

The distressing implication was that refugee rights were possibly at risk because of this actual, living humanitarianism.³ In-country relief might be permitted because states were now backtracking on their obligations under asylum and refugee law. The desire to get refugees back 'home', in itself unobjectionable, can lead to *refoulement* and involuntary repatriation. The desire to help all those displaced, regardless of which side of an international border they find themselves on, could mean that states are willing to help IDPs because they do not give individuals the opportunity to flee across a border

IDPs prepare to board UNHCR-organised charter flight to Dili, East Timor. Kupang airport, West Timor.



and seek asylum. Though the desire to eliminate the root causes of refugee flows is undoubtedly noble, it could lead to individuals being discouraged from fleeing a country deemed to be 'improving' or 'safe.'

Simply put, this expanding humanitarian agenda has potential to erode the traditional protection guarantees and rights given to refugees. Humanitarianism risks becoming implicated in a system of deterrence and containment which usurps refugee rights. The broad global context - including both state pressures and humanitarian imperatives - has shaped UNHCR's repatriation policy and explains how and why its humanitarian operations might represent a potential threat to refugees.⁴

The fundamentalist-pragmatist debate

The focus on global forces can obscure the fact that UNHCR is a relatively autonomous organisation. Although states place all kinds of shackles on international organisations such as UNHCR, the agency, nevertheless, retains some autonomy and operational discretion. Moreover, UNHCR is able to use its role as protector of refugee law to place some distance between itself and member states. UNHCR derives autonomy from its standing as a bureaucratic organisation that is increasingly viewed as the authority and the lead agency in refugee affairs. Even the most constrained international organisation has some autonomy and capacity for independent thinking and action.^{5 & 6}

UNHCR may have its own reasons for adopting humanitarianism and pushing repatriation, reasons not simply determined by pragmatic compromise but based on moral considerations.

UNHCR staff have thrown light on why the agency has revised its 'exilic' bias and promoted repatriation. In its infancy UNHCR favoured repatriation but was precluded from doing so because of the Cold War context and the circumstances of many refugees. Once the environment and circumstances became more favourable to repatriation UNHCR was ready, willing and able. Moreover, UNHCR was influenced by new developments in refugee law, refugee activities and ethical understandings that revolved around the discourse of 'home' and the 'right of return'. Also, refugees were 'spontaneously repatriating' and UNHCR

began to initiate activities to hasten and ease their reintegration. UNHCR was not a reluctant advocate of repatriation.

A concern, however, was that this enthusiasm for repatriation might undermine the principles of voluntary repatriation and *non-refoulement*. Accordingly, it began to wrestle with how to reconcile its newfound preference for repatriation with its longstanding protection and assistance mission. Opinion within the agency was polarised. Fundamentalists maintained a more 'legalistic' approach that suggested a human rights orientation toward refugee rights. They decried moves toward repatriation lest this new emphasis jeopardize UNHCR's unique role as the agent of refugees and compromise its independence *vis-à-vis* governments.

Pragmatists argued for allying with governments. They held to a more expedient, political and pragmatic view of refugee law because they feared that ignoring systemic trends and pressures might compromise UNHCR's overall effectiveness. They believed that the organisational and doctrinal shift in favour of repatriation righted a defect in a system that had tended to privilege legally-oriented protection officers over those who had specific area expertise.

The ground shifted toward a pragmatic view. UNHCR became much more favourably disposed toward repatriation, convinced that return will inevitably happen under less than ideal circumstances, and that the agency must and should actively promote repatriation as soon as possible.

These changes showed up in various areas. UNHCR's organisational chart was restructured so that regional offices holding more more pragmatic views no longer had to report directly to a Protection Division that saw itself as the 'priest of principles'. The agency developed flexible new norms and rules on repatriation and introduced new terminology and categories of 'safe' return that clearly differentiated repatriation under 'ideal' conditions from repatriation under 'less than ideal' conditions. 'Protection' was increasingly married to repatriation. The 'voluntary' in voluntary repatriation was also transmuted. Whereas once 'voluntary' had implied that the refugee should consent to

return to a country that in his/her view no longer represented a threat to personal safety, concepts like 'voluntariness' meant that refugee consent was no longer necessary. All that was now required was that the situation in the country of origin had appreciably improved or held out the promise of improving. An immediate consequence of these changes was that the principle of voluntary repatriation was stretched to its finite limits.

UNHCR developed a 'repatriation culture' characterised by an organisational discourse, bureaucratic structure and

The ground shifted toward a pragmatic view

formal and informal rules that make repatriation more desirable, proper and legitimate under more permissive conditions.⁷ The effect of this culture was to

increase the danger that UNHCR would sponsor a repatriation exercise with potential to slide uneasily into involuntary repatriation and *refoulement*. This culture has its origins in a complex mixture of state pressures, pragmatic considerations and organisational learning. The existence of state pressures and the need to choose between the 'least bad' of alternatives certainly forced UNHCR into areas that were not necessarily to its liking. But these pressures and momentary compromises also were institutionalised and legitimated with reference to new understandings. Policies in the 1960s that might have been viewed as a gross departure from acceptable practices increasingly not only became the norm (in its prescriptive meaning) but were also legitimated by a moral discourse.

Repatriation's ethical basis

We need to recognise that those in both the 'principled' and 'pragmatic' camps within UNHCR use ethical claims to support their positions. Pragmatists refer to a set of ethical principles to legitimate their position, principles largely founded on the desire to give refugees the ultimate form of protection - repatriation. Geneva, therefore, might reasonably decide to promote repatriation if, in its assessment, refugees were more likely to be safer at home than in the host country. In this view, the 'principles' of the principled camp might expose refugees to greater harm in the long run. As one pragmatist said, "The priests care

more about refugee law than they do about the refugees themselves.”

Losing the refugee voice?

Yet the ethics of repatriation under less than ideal conditions is also accompanied by a discursive shift that makes it less likely that refugees themselves will have a voice in determining their future. Voluntary repatriation originally required that refugees give consent to their return. By many accounts this is less likely to be the case. As UNHCR officials concede, the decision to promote repatriation is based not only on the refugees’ preference but more fundamentally on UNHCR’s objective assessment of whether life is better at home relative to life in the camps (a calculation that can take into account the immediate situation and future circumstances). Where ‘protection’ is increasingly tantamount to repatriation, UNHCR officials are disposed to the view that getting refugees home, even to highly unstable situations, is preferred and legitimate.

UNHCR might well be correct that refugees should repatriate under less than ideal conditions because their circumstances will become even less ideal if they remain in exile. But the

UNHCR officials occasionally run roughshod over refugee rights

issue at hand is whose voice counts and what calculations are used to determine the efficacy of repatriation. The shift away from absolute standards regarding the desire by refugees to repatriate given their assessment of the situation in the home country toward a comparative evaluation by agency officials regarding whether refugees would be more secure at home or in the camps has the direct implication of privileging the agency’s knowledge claims over those offered by refugees. The ethics of repatriation under less than ideal conditions can be accompanied by a diminution of power accorded to refugees.

The impact of bureaucratic culture

UNHCR officials occasionally run roughshod over refugee rights – a callousness that some analysts see as a likely consequence of prolonged employment with the agency.⁸ They imply that UNHCR staff appear, once socialised into

the organisation, to embrace a different set of moral principles with which to guide and judge their actions.

Such observations relate to a broader literature on how bureaucratic culture is an incubator of indifference toward the targets of their policies.

A host of explanations can be offered. There is the possibility that because one’s contribution is relatively small it cannot be related to the outcome. The sheer physical, psychological and social distance between the office holder and the subject can make it more difficult to fully comprehend or realise the effects of one’s actions until after the event, if at all. If dissident voices are absent within the bureaucracy and complacency has become the norm, then those tempted to protest or dissent have a well-founded fear of ostracism and ridicule. There is evidence that the bureaucratic appeal to broad rules to generalise and find guidance reduces the concern for the particular and makes it more difficult to see and to act in extreme and extenuating circumstances. Not to be forgotten is blind ambition: the belief that one’s career prospects are best served by pay-

ing no heed to ethical dilemmas.⁹ Also of importance is the influence

of precedents that already departed from previous moral guidelines.

An ethnography of institutional ethics is required to understand the ethical reasons individuals use to guide and legitimate their actions; only after we try to recreate the moral universe as constructed by the participants themselves will we better understand the many ways that bureaucratic culture reorients practical and ethical reason.

Conclusion

There is a generalised concern that new humanitarians can be disturbingly disconnected from those in whose name they act. Whereas once we likened humanitarian agencies to white knights on muscled steeds charging to rescue the powerless and weak, we are now more likely to recognise that these knights are also interested in the mundane: career advancement, protecting

the agency’s reputation and cultivating the largesse of patrons. They are likely to use political and pragmatic considerations to navigate the moral dilemmas that populate complex emergencies and to develop ethical claims verging on indifference and callousness. None of this means that we need to be saved from our saviours. But it does mean that any discussion of humanitarianism requires a more thorough consideration of the multi-sided and polymorphous ethical field that underlies humanitarian action.

Michael Barnett is Professor of Political Science, University of Wisconsin, Madison. He is the author of The Right Thing to Do: The United Nations and the Genocide in Rwanda (Cornell University Press, forthcoming), and is writing a book with Martha Finnemore, tentatively titled The Power, Politics, and Pathologies of International Organisations. Email: mbarnett@polisci.wisc.edu

1 Executive Committee of the High Commissioner’s Programme, ‘Note on International Protection.’ 31 August 1983, p3.
2 Sadako Ogata ‘Half a Century on the Humanitarian Frontlines’, lecture delivered at Graduate Institute for International Studies, Geneva, 25 November 1999.
3 The term is Alex de Waal’s.
4 For a related critique, see B S Chimni ‘Globalization, Humanitarianism, and the Erosion of Refugee Protection,’ *Journal of Refugee Studies*, 13 (3), 1999, pp243-263.
5 B S Chimni ‘The Geopolitics of Refugee Studies: A View from the South,’ *Journal of Refugee Studies*, 11 (4, 1998), pp350-74; Michael Barnett & Martha Finnemore ‘The Politics, Power, and Pathologies of International Organisations’, *International Organisation*, 53 (Fall 1999), pp699-732.
6 Marjorie Zieck *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, Martinus Nijhoff Publishers, The Hague, 1997, pp438-39.
7 Michael Barnett ‘UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture, and the Rohingya Refugees,’ presented at the 2000 International Studies Association meetings, Los Angeles, California.
8 See, for instance, Barbara Harrell-Bond ‘Repatriation: Under What Conditions is it the Most Desirable Solution for Refugees?’, *African Studies Review*, 32 (1), 1989, pp41-69; Mark Walkup ‘Policy Dysfunction in Humanitarian Organisations: The Role of Coping Strategies, Institutions, and Organisational Culture’, *Journal of Refugee Studies*, 10 (1), 1997, pp37-60; Liisa Malkki ‘Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization’, *Cultural Anthropology*, 11 (1996), pp377-404; and Fiona Terry *Condemned to Repeat?: The Paradoxes of Humanitarian Intervention*, PhD thesis submitted to Department of International Relations, Australian National University, February 2000.
9 Mark Bovens *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations*, Cambridge University Press, 1998.

Return to Prijedor: politics and UNHCR

by Ayaki Ito

As Yugoslavia disintegrated, the town of Prijedor in northwest Bosnia and Herzegovina witnessed one of the worst examples of ethnic cleansing during the 1992-1995 war.

Tens of thousands of Bosniaks (Bosnian Muslims) and Croats in the area were expelled from their homes by Serb military, paramilitary forces, police and, often, neighbours. Some were killed while others were sent to camps in the area, where many were tortured or even killed. The survivors of this pogrom became refugees overseas or IDPs in various parts of the country.

The signing of the Dayton Agreement in December 1995 put an end to the bloody conflict. Annex 7 of the agreement enshrines the right of refugees and IDPs to 'freely return to their homes of origin'.¹ It also clearly stipulates the obligations by the 'Parties' to the agreement, that is, Bosnian Serbs represented by the Federal Republic of Yugoslavia, Bosnian Croats by Croatia and Bosniaks by the Sarajevo government. Article 1 paragraph 2 of the Annex calls for refugees and displaced persons to be 'permitted return in safety, without risk of harassment, intimidation, persecution or discrimination'. Article 1 paragraph 3 requires the Parties to 'take all necessary steps to prevent activities within their territories which could hinder or impede the safe and voluntary return of refugees and displaced persons'.

By signing the Dayton Agreement, the warring factions and their leaders committed themselves to removing obstacles for voluntary, safe and dignified return of those displaced. The international community expected the Dayton Agreement to bring a quick end to the conflict and reversal of ethnic cleansing. Most importantly, refugees and IDPs themselves had a heightened hope to exercise their right to return. Both the displaced people and the international community were too optimistic. Parties to the agreement have blatantly ignored their pledges.

In the spring of 1996 UNHCR began to negotiate with the Serb authorities of Prijedor to allow 50 displaced Bosniaks to visit their homes for the first time since their flight. UNHCR's interlocutor on the Bosniak side was a survivor of an internment camp and a card-carrying member of the Party for Democratic Action (SDA), the Bosniak nationalist party led at the time by Alija Izetbegovic. He stood accused by Serbs of launching attacks against Prijedor's Serb population at the beginning of the war. He enjoyed full political and financial backing from the SDA and was determined that the visit should go ahead.

On the Serb side, UNHCR's main contact was the mayor, a medical doctor by profession and a staunch supporter of Radovan Karadzic's Serb Democratic Party (SDS). Though always cordial, he constantly avoided giving a straight answer to our request. UNHCR staff kept emphasising the principles of freedom of movement and right to return as enshrined in the Dayton Agreement. UNHCR also pressed for sufficient security coverage from the local police. Both the mayor and the chief of police were key members of the 'Crisis Committee' of Prijedor created in 1992 ostensibly to deal with the volatile situation in the municipality at the time of disintegration of the former Yugoslavia. In reality, however, the committee existed to coordinate deportation of non-Serbs from Prijedor.² UNHCR thus found itself negotiating with the very individuals previously in charge of ethnic cleansing to arrange the return of the same people they had expelled four years earlier.

After months of negotiations, the mayor allowed a short visit by 50 Bosniak IDPs to an outlying village in Prijedor. Apart from a group of stone throwing Serbs,

the two-hour visit on a cold December day in 1996 went relatively well, guarded heavily by the NATO-led Implementation Forces (IFOR) and followed by a procession of white vehicles carrying numerous foreign observers. That evening over 90 destroyed Bosniak houses were further dynamited to make them even more uninhabitable. The huge amount of TNT used indicated the level of hatred. Only a scattered collection of bricks remained. Given the organisation required for such systematic destruction, it was inconceivable that the Prijedor authorities had not been involved or known in advance. News of the destruction dashed any glimmer of hope for early return of non-Serb residents during the early days of the post-Dayton period.

Repatriation in politicised settings

The Prijedor experience confirms the global trend in the 1990s. UNHCR is increasingly involved in implementation of repatriation in highly politicised settings where the fundamental causes of displacement remain unaddressed. In post-Dayton Bosnia and Herzegovina, many of the leaders and politicians who fought for ethnic separation during the war are still in power. All parties (Bosniaks, Serbs and Croats) continue to try to maintain their ethnically-based political control over their territories by using their own displaced populations. The displaced people themselves in turn support their own nationalist leaders, fearful of potential dominance by the other ethnic groups and fuelled by propaganda.

In the case of Prijedor, Bosniak IDPs, led by a nationalist politician, pressed ahead with the agenda of return without consideration of the safety of potential returnees. In the early post-Dayton period it was unclear how many Bosniak IDPs had been objectively informed on the implications of visit or return to such a hostile environment. For their part, the Serb leaders, having expelled non-Serbs from their area, had no intention whatsoever of allowing ethnic cleansing to be reversed. Displaced Serbs occupying property belonging to



expelled non-Serb residents were often told that they would be killed by ‘muja-hedin’ should they return to the Bosniak-administered area. Similarly, displaced Serbs were frequently intimidated by their own leaders into not pushing to return to their communities, for if they did so it would imperil the nationalists’ goal of maintaining ethnic purity in the Serb-controlled area of the country. In this highly charged political environment, the basic principles of refugee return – voluntariness, safety and dignity – were relegated to a secondary concern at best.

The international community in Bosnia and Herzegovina was not immune to the general trend of politicisation of return. ‘Minority return’ has become a catchphrase for an elusive political goal as major powers have grown frustrated with the slow pace of Dayton implementation. A May 1997 communiqué from the Steering Board of the Peace Implementation Council (a political body overseeing the implementation of the Dayton Agreement) announced that:

“refugees and displaced persons have the right to return to their homes in a peaceful, orderly and phased manner. Unless and until

there is a process under way to enable them to do so, there will be continued instability in Bosnia.”³ These words encapsulate the politicisation of the approach taken towards return of refugees and displaced persons in Bosnia and Herzegovina during the first years of the post-conflict period. One

would logically suppose that stability in the country would entice refugees and IDPs to return. Returning refugees and IDPs to a volatile situation would not create stability. Is this not a complete reversal of the cause and effect relationship?

One of the consequences of the politicisation of minority return is that the success and failure of ‘minority return’ was measured in terms of the number of returnees without clearly defining who the returnee is. Playing a numbers game, the international community asked ‘how many have returned’ rather than ‘how have they returned’ (voluntarily, in safety and in dignity).

A linkage was created between the numbers of minority returns and funds provided to areas where minority returns took place. Levels of reconstruction assistance have been tied to acceptance of ‘minority return’, a formula often described as ‘conditionality’. Based on the belief in ‘conditionality’, prompted by the political exigency to

increase the number of minority returns, UNHCR began its Open City initiatives in 1997. While UNHCR set up an elaborate mechanism to mea-

sure compliance, major donors joined the numbers game and urged UNHCR to increase the number of minority returns. The Open City was a useful fundraising mechanism for UNHCR and brought benefits to financially deprived local authorities. However, while paying lip service to the principle of minority

return, authorities in many of the recognised Open Cities made only cosmetic changes, did not remove fundamental causes of displacement and did not genuinely invite former residents to return.⁴ The initiative gave us an invaluable lesson: money alone cannot remove fundamental causes of displacement.

UNHCR’s three options

Bosnia and Herzegovina is just one example of numerous repatriation operations where political pressure undermines the principles of voluntariness, safety and dignity. UNHCR also faces similar dilemmas in many other operations, such as the repatriation of Rwandan Hutu refugees from the Democratic Republic of Congo, Afghan refugees from Iran, Burmese Rohingya refugees from Bangladesh and return of ethnic Serbs to Kosovo, to name but a few. How can UNHCR be effective in a highly political environment? How can a non-political organisation be engaged in repatriation operations which require political solutions? How can a non-political organisation remove political causes of displacement in order to ensure voluntary repatriation in safety and dignity? The seeming dilemma between UNHCR’s non-political mandate and the politicised impetus for repatriation constitutes one of the major challenges that UNHCR faces today.

Presented with these realities, UNHCR has three options:

First, UNHCR could yield to externally determined, prevailing political imperatives. This approach would certainly frustrate UNHCR’s efforts to uphold the basic repatriation principles of voluntariness, safety and dignity, where effective intervention is often left to the ingenuity of the field staff. In the end, however, unable to remove fundamental political obstacles, UNHCR often finds itself in an intractably compromised position, running the risk of being seen to condone the violations of principles. Returning refugees and IDPs would suffer while UNHCR staff struggled with their own moral dilemma.

Second, UNHCR could refuse to be engaged when principles are seriously violated. However, what would be the effect of total disengagement on those refugees and IDPs involved? In order for UNHCR to choose to pull out, there has

*money alone cannot
remove fundamental
causes of displacement*

to be a rigorous balancing test between the magnitude of violations of the repatriation principles and UNHCR's ability to remedy the situation. UNHCR aptly expresses its own dilemma in the *State of the World's Refugees*:

'Humanitarian assistance can inadvertently prolong conflict, sustain the perpetrators of human rights violations, and undermine local institutions of self-reliance. And yet the price of suspending assistance to avoid these unintended consequences may be paid in the suffering and death of innocent people. UNHCR is increasingly called upon to make fine judgments about when it is appropriate to continue operating in less than ideal circumstances, and when persevering in the attempt to do so may actually contribute to the suffering of the intended beneficiaries in the long run. These are inherently political decisions.'⁵

A **third** option is for UNHCR to be bolder in recognising the increasingly politicised nature of humanitarian activities and in improving its capacity for political lobbying. UNHCR should be able to engage more actively in galvanising political support for non-political purposes. We can learn lessons from experience in Prijedor in the early post-conflict days. Because of the political pressure to bring about rapid minority returns, UNHCR was driven into the situation of having to negotiate with expellers to bring home the expelled. A logical step would have been to first remove these political figures. Ideally UNHCR should have been able to convince influential governments to take a more proactive role in removing indicted war criminals and war-time leaders from the political scene, thus neutralising their political influence and helping to foster democratically accountable institutions.⁶

This kind of political support from governments is as vital as their financial contribution to UNHCR. In the face of humanitarian crises, governments provide generous contributions to UNHCR and other humanitarian actors with the expectation of a quick end to refugee crises. However, money is only a small

part of the overall solution. Political will is the key to the solution to any humanitarian crisis. UNHCR could better position itself to entice more effective political support from governments to remove fundamental causes of displacement.

UNHCR: catalyst for political action

Consider the following, not uncommon, scenario for humanitarian workers on the ground. You are asked to accelerate the pace of refugee/IDP return because of political imperatives. You are well aware that the reasons behind displacement are still there - including the leaders who participated in expulsion of the population. Since those responsible for expulsion are still in power, you often find yourself negotiating with them in order to make repatriation happen. It is hardly a surprise when you run up against political obstacles. Up against the wall, you have neither a ladder to go over it nor a hammer to chip away at it. You may see returnees violently attacked or incarcerated by a hostile ethnic group while local authorities cheer or turn a blind eye. Despite all that is going on before your eyes, the prevailing political imperatives still tell you to increase the number of returnees.

UNHCR staff face this situation on a daily basis. To translate the principles of voluntariness, safety and dignity into practice, it is necessary to remove the fundamental causes of displacement. These causes are of a political nature. For any repatriation programme to succeed UNHCR has to urge governments not just to provide financial contributions but to mobilise actors. This proposition, that removal of the fundamental causes of displacement must precede rapid repatriation, is strikingly obvious; unfortunately, experience in the past decade suggests sheer lack of common sense. As humanitarian action - ie repatriation - has taken precedence over political action, basic principles have been sidelined.

In the increasingly politicised climate of many repatriation operations, UNHCR can play a catalytic role in galvanising political support for the ultimate non-political goal, safe and dignified voluntary repatriation. UNHCR staff on the ground witness the plight of

individuals and the erosion of principles. Their dilemmas and frustrations should be harnessed to a movement for positive and fundamental change. UNHCR should take a bolder approach by calling on political actors to commit themselves to the removal of political obstacles. UNHCR has been active in mobilising financial human and material resources; it should mobilise the same effort to maximising political resources. Generous financial contribution from governments will not let them off the hook. Money has to be matched by political commitment. Without 'matching political commitment', political obstacles for repatriation will remain.

Bolder lobbying for political action in order to fulfil its humanitarian mandate would not constitute derogation of UNHCR's non-political mandate. UNHCR should not hide within the cocoon of its mandate. The challenge before UNHCR is to creatively re-interpret its non-political mandate in today's rapidly politicising humanitarian milieu.

Ayaki Ito is a Protection Officer at UNHCR Geneva and previously served in Banja Luka, Bosnia and Herzegovina as a Protection Officer in 1996-1999. Email: ITO@unhcr.ch

The views expressed herein are those of the author and do not necessarily reflect the views of UNHCR or the UN.

- 1 Article 1-1, Annex 7, the Dayton Agreement
- 2 For detailed background of the process of expulsion of non-Serbs and the work of the Crisis Committee in Prijedor, see Human Rights Watch, 'The Unindicted: Reaping the Rewards of "Ethnic Cleansing"', Vol 9, No 1 (D), 1 January 1997. (www.hrw.org/hrw/summaries/s.bosnia971.html)
- 3 Para 45, *Political Declaration from Ministerial Meeting of the Steering Board of the Peace Implementation Council*, 30 May 1997.
- 4 For example, see *The Konjic Conundrum: Why Minorities Have Failed to Return to Model Open City*, International Crisis Group, 19 June 1998, (www.crisisweb.org/projects/balkans/bosnia/reports/A400163_19061998.pdf)
- 5 *The State of the World's Refugees*, Oxford University Press, 2000, p283. (available online at: www.unhcr.ch/sowr2000/toc2.htm)
- 6 Today, Prijedor is considered one of the major 'minority return' areas in Bosnia and Herzegovina if numbers are used as a means of measurement. SFOR's strong stance against suspected war criminals contributed greatly to this gradual opening of the municipality, coupled with major political changes within the leadership of the Serb Entity, Republika Srpska, in 1997. The process has been slow and painful, however. More robust political actions at the onset of the return efforts would have eased the process. In addition, success of 'minority return' should not be measured only in a quantitative sense. The quality of return has to be equally measured with the same rigour. For such an effort, see *Returnee Monitoring Study Monitoring Returnees to the Republika Srpska - Bosnia and Herzegovina*, UNHCR Sarajevo, June 2000. (available online at: www.unhcr.ch/world/euro/seo/protect/retmon0006.pdf)

Rights and accountability

by Leanne MacMillan and Lars Olsson

Refugees languish in 'no-mans land' while countries close their borders, fearing de-stabilisation if too many are let in; men, women and children seeking asylum are detained, sometimes for months on end; refugees are caught in camps placed dangerously near the border of the very country they fled, subject to attack and infiltration of their camps by armed groups; refugee protection and assistance workers are killed working in dangerous settings despite the UN calling on governments to ensure their protection; refugees have been evacuated with an uncertain legal status under humanitarian rather than resettlement programmes; would-be refugees have been protected in 'safe' havens only to find them anything but safe; refugees are forcibly mass repatriated by countries no longer willing to provide protection; refugees face a whole host of obstacles on the path to finding safety including visa requirements, carrier sanctions, rejection at frontiers and interception by boats trawling the seas.

These distressingly common examples of the plight of refugees and those who seek to assist them represent the challenges faced by UNHCR and NGOs and also point to the failures of the international community as it grapples with the current challenges

of refugee protection and assistance. There is an urgent need to create a system of

accountability to expose the failure of states in their responsibilities to provide refugees with the protection they are due under agreed international standards. This article makes the case for the creation of an independent, impartial and effective body to secure reports from states to monitor their implementation of the 1951 UN Refugee Convention, to advise on questions of interpretation of the Convention and to receive individual complaints from refugees whose rights are being violated. The need for closer scrutiny of how states act needs the support of all those in the NGO sector whose work to protect

and assist refugees will be greatly enhanced through a more transparent system of accountability.

50 years of the UN Refugee Convention

This year, many are assessing how the Convention bears up in a world where the rights of refugees are much in dispute and where those forcibly displaced are the subject of popular debate. UNHCR has initiated a round of Global Consultations [see page 9] seeking to reach international consensus on the continued relevance of the UN Refugee Convention and on a number of contested issues relating to refugee protection. At this time when states are also being asked to re-affirm their commitment to the Convention, there are two key needs: first, to monitor how current standards are interpreted and implemented and to hold those who breach current provisions accountable for any violations; and, second, to find ways in which to develop standards to address new refugee protection concerns given the changing nature of forced displacement. This article will mainly focus on the first of these needs.

Most would not dispute that the Convention is an important and vital tool, along with other international human rights instruments, in establishing the minimum standards

of rights of refugees. However, the increasing tendency of many critics is to dispute the relevancy of the Convention in a world which, they argue, has changed dramatically in terms of the nature and character of the forced mass displacement of millions. Only the reasons why people continue to flee and need protection remain similar to those the Convention originally sought to address: genocide, conflict, oppression and a host of other human rights violations.

Clearly, the pressing challenge today is to stem the tide in the demise of refugee rights as states seek to change their

responsibilities to even the most basic of rights, such as the right to seek and enjoy asylum and the requirements of the fundamental principle of *non-refoulement*. Any casual reading of the press will show that refugees are more often seen as a threat to host societies and as having too many rights. Governments have engaged in making these arguments themselves while at the same time, and quite remarkably so, maintaining that they are committed to their Convention and other human rights responsibilities to refugees. In the meantime, those working with refugees in dozens of countries around the world provide protection and assistance in an environment where rights are balanced with political considerations which the NGO and IGO sector have little, if any, ability to influence. Reference need only be made to the crises of the past few years in Afghanistan, Guinea, Chechnya, East Timor, Kosovo, the former Yugoslavia and the Great Lakes region to see how refugees' rights reel in the face of geopolitical factors and varying commitment to those forcibly displaced.

The failure of protection

When speaking of failure, the tendency is to look for a 'guilty party'. In the realm of refugee protection, it is not possible simply to find one actor responsible for the flaws in the system; all those with roles and responsibilities for protecting refugees have failed. What is vital now is to learn from the sharp lessons of the past decade which have made it clear that new approaches are needed in the progressive interpretation of the Convention and the solutions which flow from it.

Ever since its inception, UNHCR, under its protection mandate, has sought to monitor the implementation of the Convention and to hold governments accountable. It has provided advice on interpretation of the Convention and has, when possible, publicly exposed and admonished governments violating the rights of refugees. It has also intervened on behalf of individual refugees in order to ensure that their claim to

refugees are more often seen as a threat

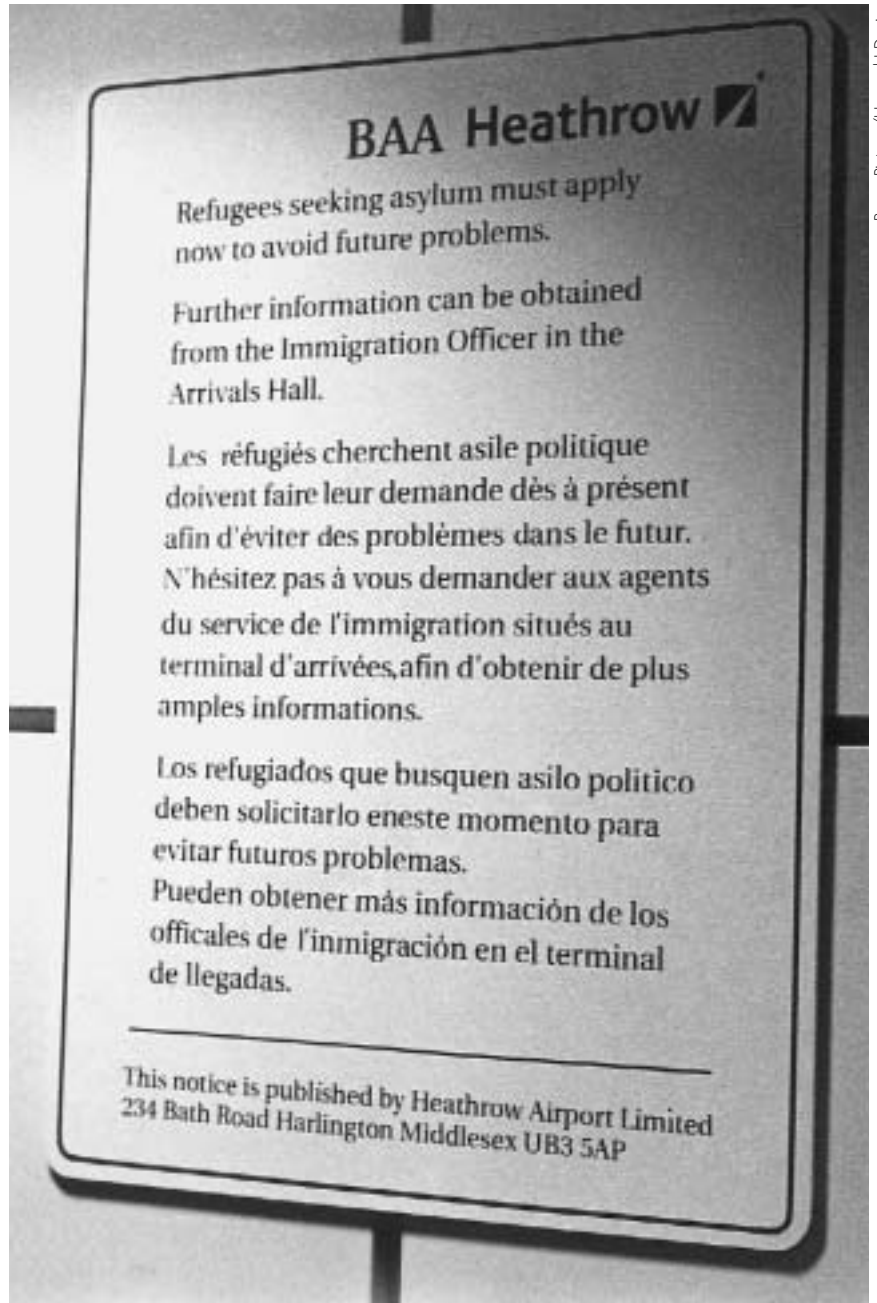
asylum was properly determined and in some instances has been the sole authority responsible for asylum adjudication in countries where there has been no other authority. It is not any failing of UNHCR which is at issue at present; it is rather the failing of the international community to abide by the very standards they agreed to uphold and the limited ability of UNHCR to ensure that governments heed their advice.

Recommendations

Some refugee experts have concluded that the absence of a treaty body with competence for examining the legality of state conduct and to bring states to account for the implementation of their Convention obligations has contributed to the inadequate protection of the rights of refugees.¹ When considering the most appropriate manner in which to ensure compliance with the Convention and the development of standards in the realm of refugee rights, it is frequently argued that the nature of refugee protection and assistance is unique in the area of international human rights standard setting, monitoring and enforcement. It is argued that refugee protection and assistance necessarily involve the close cooperation of host governments, governments in countries of origin, donor governments, intergovernmental organisations and, in particular, a host of international, regional and national NGOs. The nature of refugee protection and assistance is of course characterised by phases ranging from immediate emergency phases to longer-term post-return assistance. However, at each stage there are rights and standards to guide all actors in their protection and assistance work, which have been variously adhered to for a number of reasons. The need is to recognise that improvements can be made, however modest, through enhancing cooperation by all parties at each stage, including cooperation in monitoring the implementation of international standards.

1. Monitoring through periodic reporting

There are important, indeed necessary, criteria for effective monitoring of states' obligations under international instruments. The monitoring body must be independent and impartial (free to operate without political pressure from governments); it must be efficient (able to act in a timely manner and not be



administratively cumbersome, given that people's rights are at stake); and it must be open to public scrutiny, with a meaningful opportunity for NGOs and IGOs to provide input as this is the very essence of what motivates many governments to adhere to standards. Governments do not want to risk opprobrium and embarrassment.

It has been widely acknowledged that UNHCR operates in an increasingly politicised environment, subject to the political will of those very states responsible for its funding and the political considerations of those states in which it operates. The Office of the High Commissioner for Refugees is generally

responsible, according to both its Statute and the Refugee Convention, for ensuring compliance with international conventions for the protection of refugees.² Other international treaties include a reporting requirement whereby states issue reports on a periodic basis and are subject to scrutiny on the basis of these reports. Under the UN Refugee Convention, states have never consistently and publicly reported on their implementation of the Convention (as required under Article 35 of the Convention). UNHCR, through its protection work, variously monitors the compliance of states but these protection reports are not made public, for reasons including beliefs about the

primary role of diplomacy, preference for more private forms of influencing states, and concerns about the potential jeopardising of access by UNHCR and NGOs to the country in question if violations of Convention obligations were made public. However, in the majority of cases, other international human rights monitoring bodies' work and influence have not been lessened through the issuing of public reports. Indeed, rights have been reaffirmed and strengthened and further violations stopped. It may be concluded that the failure of UNHCR, NGOs and the international community as a whole to establish public reporting is ultimately a failure towards refugees.³

Many major human rights treaties establish an independent body to monitor application through a system of periodic

public reporting and, in some cases, through state and individual complaints mechanisms. This provides an opportunity for states to submit reports on implementation to the monitoring body which in turn reviews the reports, often in light of information supplied by NGOs. These monitoring functions, which play a key role in the protection of human rights, are performed in public, with states called to account in an open process.

Remarkably, these tools available under the international human rights framework are increasingly being used in an effort to improve or, some would argue, prevent a further deterioration in the quality of protection afforded to refugees, to assert the rights of refugees and to hold states accountable for

violations of human rights treaties as well as refugee protection standards. The integrity of the refugee protection framework is now more forcefully upheld in other human rights fora.

For some years now Amnesty International has promoted the use of other international and regional fora where refugees' rights can be asserted. In addition to the Executive Committee of the High Commissioner for Refugees (EXCOM), international human rights mechanisms have evolved to play an important role in the monitoring of states' refugee policies. For example, the UN Human Rights Committee, in its examination of country reports, has expressed concern regarding restrictive interpretations of the definition of persecution for refugees where account was not taken of persecution by non-state actors. The Committee also has found that an asylum seeker was arbitrarily detained in contravention of the International Covenant on Civil and Political Rights as there was no "real and not merely formal" review of the detention. The UN Committee against Torture has also reviewed an increasing number of individual communications brought forward by asylum seekers and refugees fearing return to countries where they would be at risk of torture. Most recently, the Committee on the Elimination of Racial Discrimination has also called on states to adhere to its commitments under the UN Refugee Convention.

2. Interpretation of the UN Refugee Convention

Governments interpret the UN Refugee Convention variously. There are a number of ways to ensure consistent interpretation but these are cumbersome, time-consuming, uncertain and, most importantly, cause undue grief for refugees who fall victim to the interpretative lapses of decision makers. It will always be the case that there are principled and legitimate differences of interpretation and these differences can only be corrected through larger processes of revision of the treaty from which the confusion flows. However, it simply cannot be the case that governments continue to willfully ignore the interpretative guidance offered by EXCOM and UNHCR and to be gained from leading jurisprudence from other countries.

Rwandan refugees at Amisi Camp, Zaire



Part of the mandate of any body responsible for ensuring implementation of the Convention could include the ability to determine how the Convention is to be interpreted. This could be by way either of referring questions of interpretation or of considering individual cases of those who can show a dubious interpretation of their right to protection. It is important to underline at this point that at issue are the rights of individuals; errors of interpretation or misapplication of the Convention have consequences for human suffering and may endanger lives.

3. Individual complaints to stop a human rights violation

Any system would have to include the opportunity for an individual to have their case heard in order to stop the transgression of their rights as refugees and for a government to be ordered to comply with the findings of the body to whom the case is referred. It is not uncommon in the international human rights system to have such authorities with the power to review individual cases and to invoke some form of redress for the victim. This could include injunctive relief, a reference back to the government with advice on how properly to decide the case, or a disposition that agrees with the interpretation.

This article does not seek to argue that all three elements of an independent, impartial and efficient system would need to be separately established. Nor does it suggest where in the UN system this body would be placed. The criteria of independence, impartiality and efficiency, however, would dictate certain requirements. The current UN Refugee Convention or the Statute of the Office of the High Commissioner as currently configured could accommodate these new roles and responsibilities but it would most likely be the case that a new instrument, such as an optional or additional protocol, would need to be created.

Conclusions

It is difficult to reconcile the recent and abundant evidence of the failure of state responsibility, the increased incidence of violations of the most fundamental of refugee protection (the principle of *non-refoulement*), the acknowledged tension between the assistance and protection agenda of UNHCR and the challenge by some governments of the authority of

treaty bodies deciding on refugee rights with the view that supervision as it now stands - using diplomacy and institutionalised dialogue - is sufficient. Most would agree that states in all parts of the world continue to flout their obligations under international refugee law. Given the interdependency of the refugee protection regime, it would seem that members of the international community have an interest in ensuring that states are held accountable for implementing their international obligations towards refugees and asylum seekers.

As in other areas where rights are at issue, a system of monitoring and public reporting is required. Refugees, governments, UNHCR and NGOs all have an interest in such a system being established.

In addition, in the past few years there has been an increase in governments, either singly or as part of a group, taking 'parallel approaches' to refugee protection. Confidential strategy papers to regional fora, governments announcing that they were considering withdrawing from their treaty obligations, governments announcing their proposals for selecting refugees offshore rather than recognising refugees who make it to their borders: all are signs of a system in distress and one where UNHCR has limited room to respond given its precarious position as an agency held hostage to the financial ties of powerful governments. UNHCR is a powerful voice when allowed to be so; it is frequently faced, however, with the dilemma of remaining publicly silent in order to secure either the access needed to provide protection or the funds to support its protection initiatives.

It is widely accepted that compliance to international standards is significantly enhanced through systems of accountability and in this regard the role of both human rights and humanitarian assistance NGOs is indisputable. It is equally true that the international instruments and institutions of refugee protection are ultimately only as strong as states allow. All roads lead back to state responsibility and when governments violate basic principles of refugee protection the system itself is weakened. One corrective measure is to hold such states openly accountable.

The international human rights and refugee law framework for the rights of refugees is not perfect but it does provide a foundation in law for core rights to be asserted. A system to monitor the implementation of these rights, to prevent further violations of them and to lead in the development and interpretation of legal standards affecting the rights of refugees would militate against the tendency to find solutions to refugee problems which depend on political

solutions and are subject to negotiation or interpretation at a time of crisis. The challenge to

UNHCR is a powerful voice when allowed to be so;

refugee protection advocates is to resolve where and how these important rights can be monitored and decided without being led primarily by political considerations.

All parties involved in refugee protection and assistance must be alert to ensuring that the quality of protection of refugees, whether they be individuals fleeing oppression and violation of their fundamental rights or those forcibly displaced as part of a mass movement, is not left subject to such uncertain and *ad hoc* approaches.

Leanne MacMillan and Lars Olsson work at Amnesty International at the International Secretariat Refugee Team. They may be contacted at LMacMill@amnesty.org and LOlsson@amnesty.org. The views expressed in this article do not necessarily represent the views of Amnesty International.

1 Chaloka Beyani. 'Human Rights and the Protection of Refugees', *Interrights Bulletin*, 1997, Vol 11 No 2.
2 Statute 8 (B) and the UN Refugee Convention specifically through Article 25.
3 Beyani *op cit*

Refuge!

From March to December 1997, Amnesty International ran a refugee rights campaign called 'Refuge! Rights have no Borders', supported by an award-winning website which included an online petition.

The website and full campaign report can be accessed at www.amnesty.org/ailib/intcam/refugee/index.html

UNHCR and emergencies: a new role or back to basics?

by John Telford

The fall of the Berlin wall was to usher in a new world order of peace and prosperity. The 'peace dividend' has proven short-lived.

Militarisation is rampant, from nuclear sabre-rattling in the Indian sub-continent, the first Pan-African war engulfing the Congo to the proliferation of murderous gangs in countries such as Colombia, Indonesia, Timor, Afghanistan, Sierra Leone and Sri Lanka (to name but a few). Successful voluntary repatriations of refugees (seen in Mozambique, Central America and Burma) proved ephemeral. Nowadays many refugee emergencies fester like incurable ulcers (Afghanistan, Tajikistan, Burundi, West Timor and Western Africa). The horrors of the hurried returns from Tanzania, the Democratic Republic of the Congo, and, more recently, West Timor will haunt the humanitarian community, UNHCR in particular, for years to come.

Working in emergencies has now become second nature to UNHCR staff. Whereas most UNHCR Duty Stations were formerly considered family-friendly, by the end of the 1990s half were categorised as 'non-family'. As it turns 50 and a new High Commissioner learns the ropes, what is UNHCR's role in emergencies to be? Do current financial difficulties indicate a critical loss of support? Is UNHCR being by-passed by governments and other key actors?

The politics of financial crises

Financial crises are cyclical in UNHCR. A decade ago UNHCR experienced a major gap between the budget and resources available. Refugee programmes, including camp water systems, were cut back. A staff retrenchment programme aimed to pare staffing back to the complement of 2,700 employed in 1987. This objective was not achieved. The Kurdish exodus from northern Iraq prompted an unprecedented level of donations – money, materials and staff –

which pulled UNHCR out of the doldrums. Former Yugoslavia, the Great Lakes and Somalia continued the expansion. As throughout its history, the number of UNHCR staff has continued to grow dramatically; whereas in 1959 it had 242 employees, by 1997 it had 5,491.

UNHCR's budget expanded almost threefold in little more than ten years – from \$398m in 1983 to approximately \$1.2bn in the mid-nineties. Now, once again the period of office of a new High Commissioner coincides with a major shortfall between the agency's 'needs based' budget and donations received. Total income in 2000 of some \$700m fell well short of the budgeted \$1.1bn.

Irrespective of the wisdom of budgeting well above expected income, the shortfall will have very serious effects. Once more, programmes will be cut and staff made redundant. While some 'organisational fat' will and should be shed, refugees will again suffer.

Most governments state quite explicitly that they regard humanitarian aid as a component of foreign policy. When their interests are involved, governments seem to be able to provide unlimited funds. So-called financial crises are really not financial crises. They are political crises. Funding does not seem to be tied to the availability of cash to donor governments nor depend on economic cycles. Recessions do not necessarily coincide with reduced funding for UNHCR and periods of growth do not lead to increased resourcing of refugee programmes. While by no means synchronised, we are witnessing a general downward trend in donations from most Western governments at a time when most are enjoying unprecedented budget surpluses.

A donor giveth and a donor taketh away. Why the current contraction is happening is anyone's guess. Has the organisation become, as argued by many both internally and externally, less effective? Why is the plug being pulled now? Or are there other forces at play, such as the oft referred to 'bilateralisation'? These questions become especially important when we examine UNHCR's role in emergencies.

The perils of bilateralisation

While the 1999 Kosovo refugee emergency was by no means a representative UNHCR emergency scenario, its significance cannot be underestimated. Like it or not, the Kosovo crisis is currently shaping international emergency preparedness and response as few other previous operations have done. UNHCR's independent evaluation of the Kosovo crisis' frequently laments the bilateralisation of the

emergency response.

Funding channelled through UNHCR was a

*A donor giveth and
a donor taketh away.*

pittance compared to that channelled directly by interested governments to international NGOs and to state emergency aid bodies, including the military.² Senior UNHCR officials bitterly lamented the widely recognised ignoring of UNHCR's multilateral mandate to coordinate. In turn, donors, host governments and NGOs were scathing about UNHCR's perceived incapacity to respond and to play a central coordinating and managing role.

There are several indications of the bilateralisation of emergency programmes. A dramatic change, with sweeping consequences for refugees, is that core funding for refugee programmes has decreased as a proportion of overall UNHCR expenditure. In ten short years UNHCR's activities have changed dramatically. Prior to the post-Gulf War crisis, the bulk of UNHCR's total budget was contained in the Annual/General

Programme (in 1988 72% of the total) with the remainder budgeted for Special Programmes. The former pays for core UNHCR refugee work in countries of asylum, the latter for whatever other UNHCR activities that donors wish to fund. Special Programme activities normally include returnees, internally displaced populations and even populations who have never moved from their homes, as was the case of the massive Sarajevo airlift. Special Programmes are essentially implemented at the behest of whoever pays.

It is widely accepted that there is a 'glass ceiling' of around \$400m for General Programmes. When the annual budget reached \$1.2bn, the total for General Programmes hardly changed. Thus the ratio of General to Special Programme spending has been reversed dramatically. Since the early 1990s General Programme activities have been by far the smaller part of UNHCR activities. Most of the budgetary growth has been for non-core (non-refugee) operations, taking place in countries of origin, rather than countries of asylum. In the 1990s governments have funded principally non-refugee programmes. The political decision of donors to focus increased assistance to non-refugee programmes has been facilitated by UNHCR's

expansionist strategy. UNHCR has willingly agreed to be contracted for more and more non-refugee activities. The direct, bilateral influence of governments on what UNHCR does (and, by extension, what it does not do) has grown. The negative effects are to be seen in UNHCR programmes all over the world.

Bilateralisation was very evident during the Kosovo crisis as UNHCR was systematically by-passed by governments and NGOs. The independent evaluation, in explaining the predominant role of non-multilateral actors, especially NATO forces, commented that:

"Donors ... prioritised national visibility over coordination, [some] NGOs ... failed to participate in any coordination mechanism at all" (para 432).

"External actors had an optional regard for [UNHCR's] coordinating authority" (para 322).

"The refugee crisis was not to be allowed to jeopardise the military operation" (para 37).

The International Council for Voluntary Agencies (ICVA) has further noted that "the entire concept of multilateralism has been weakened ... The bilateral

efforts of many governments and the intrusion of the military into the humanitarian sphere draw into question the dedication of states to the role and mandate of UNHCR and concepts of multilateralism".³

UNHCR complained bitterly that it did not receive the funding that would have permitted it to coordinate effectively. Governments funded NGOs, increasingly referring to them as 'our' NGOs. One influential Western government attempted to expel NGOs of another nationality from 'their' camp in Macedonia, on the pretext that they wanted only 'their own NGOs'. In this case it took UNHCR's intervention to assure even a veneer of multilateralism.

In Kosovo, as in Northern Iraq, Western governments funded NGOs directly. Resources received by agencies from their national governments exceeded the money they raised from appeals to the general public. This global trend has turned a handful of Western international NGOs into multinational corporate bodies, reinforced with governmental or inter-governmental (eg ECHO) funding. In most operations they can boast better technical and material resources than UNHCR itself. They agree to coordinate as much or as little as they choose, or as influential donors cajole or insist.

Reception centre for Kosovan refugees, Brazde, Macedonia



UNHCR/Howard J. Davies



Zairean refugees crossing Lake Tanganyika

The mounting global evidence of the inexorable spread of bilateralisation does not necessarily mean that UNHCR has lost the support of major donors. UNHCR is needed, though not perhaps as before. The trend towards bilateralisation is neither all pervasive nor uniform. In some lower profile 'forgotten' emergencies it is still business as usual - little direct funding by donors to NGOs and no rush by others to usurp the coordination role or even, in some cases, to be there at all. 'Forgotten' emergencies are typified by the absence of the direct emergency response units of major humanitarian funders and organisations. There, UNHCR is called upon to continue its coordination and fund-channelling role. It almost seems as if the organisation is used as a safety net when the political stakes are not high.

New actors

A further sign of bilateralisation in emergency response is the spawning of donor and other inter-governmental emergency response teams or mechanisms. A multitude of new actors has come on the scene in refugee emergencies, most dwarfing UNHCR's resources. These include donor agency emergency teams, military humanitarian operations and inter-governmental bodies such as the European Commission. This phenomenon can currently be observed in Sierra Leone.

UN agencies, and particularly UNHCR, are being marginalised as non-traditional actors get involved in coordination. The role of the Organisation for Security and Cooperation in Europe (OSCE) in Kosovo is but one example. Multinational NGOs now provide an umbrella function on

behalf of governments and the UN itself. They sub-contract national, smaller international NGOs and even governmental bodies. Just as they once lambasted donors, governments and UN agencies, they are themselves now often criticised by their 'partners' for their perceived arrogance.⁴ This umbrella function transcends operational roles. The SPHERE project on agreed standards and indicators in emergency response has been a major success in a task which one would have seen as pertaining to a multilateral agency. Many of the standards and indicators had already been developed by UNHCR and its sister UN agencies over decades. The NGOs involved correctly point out, however, that UNHCR simply did not achieve the necessary degree of consensus around these standards.⁵ The NGOs got up and did it.

Implications for UNHCR emergency responses

It is perceived or fabricated donor interests which determine funding levels. In responding to the suffering of the Kurds and Kosovars the political and military stakes for the Western governments were deemed to be so exceptionally high that a swift and overwhelming response was called for. We must not forget that Western interests may or may not coincide with humanitarian need. While the death rates in the Gulf crisis were of emergency proportions, the Kosovo humanitarian 'emergency' bore little resemblance to that of the Great Lakes or indeed those in Western Africa, Burundi, Colombia or other parts of the world today. While the Kosovars suffered undeniable hardships and breaches of human rights, we should note the views of expert nutritionist Susanne Jaspars who has observed that

“the main nutritional problem among Kosovars [refugees in Albania and Macedonia] was not undernutrition but obesity”.⁶ Another analysis noted that “over-supply of food aid [existed], together with a clearly well-nourished population ... many agencies were under pressure to distribute resources”.⁷ Camps were constructed at vast expense and often to patently unacceptable standards by inexperienced humanitarian actors at a far higher cost per refugee than in comparable emergencies.

The agency needs to get back to basics

Not a year earlier, this author witnessed in Burundi listless and emaciated children in therapeutic feeding centres. A two (or more) tiered system of international protection and assistance has emerged, perhaps the single most significant development in modern humanitarian programmes. Some victims, through no fault of their own, are less equal than others. If ever there were a need for multilateralism, this is it – to see that meagre resources are applied with at least a semblance of equity.

Despite bilateralisation, UNHCR is needed, albeit grudgingly in some quarters. How else to explain the massive (though erratic) increase in funding in the last decade or the pained criticism when the organisation was late, absent or ineffective in both the Northern Iraq and Kosovo crises? Many governments and NGOs wanted UNHCR to lead and coordinate in both emergencies, albeit for diverse, and arguably vested, interests. As surely as funding has now decreased, so too will it become available again when perceived need presents itself. Even in this ‘financial crisis’, the total funds available to UNHCR are about 20% above the budget of a decade ago.

There is, however, yet another disturbing trend. UNHCR has drifted more and more into direct implementation of assistance programmes. This is despite the High Commissioner’s mandated role to “administer ... funds ... for assistance to refugees [and] distribute them among the private and, as appropriate, public agencies which he [sic] deems best qualified to administer such assistance”. A 1997 UNHCR evaluation of UNHCR’s implementation arrangements highlighted a marked shift to direct implementation, as opposed to imple-

mentation through partners. In essence, UNHCR seems increasingly to be doing the work which could and should be carried out by others, especially host governments. This is instead of its more traditional channelling, guiding and international overseer role. In particular, UNHCR is mandated to facilitate “the coordination of the efforts of private

organisations concerned with the welfare of refugees”. Is it pressure, competition or empire building that has

created this pull factor away from a leadership role? Without any doubt, UNHCR itself has a lot to answer for in facilitating this shift of emphasis and role.

The way forward for UNHCR in emergencies

The blue flag still has its function. Multilateral action to protect refugees will continue to be crucial. UNHCR has rightly been criticised for not playing its mandated role in emergencies. It is for the sake of refugees, above all, that UNHCR must be present, early and effectively, in emergencies. It is UNHCR’s function to promote, to advocate, to oversee, to ensure, to administer, to facilitate, to support and to coordinate, hand in hand with partners – host governments, refugees and those who seek to assist be they individuals, NGOs or third country governments. Here is where UNHCR must act in emergencies. It does not need to have massive budgets to achieve this. It should not and cannot compete with large specialised NGOs and governmental and intergovernmental bodies. Direct implementation of assistance activities is unnecessary unless as a last resort.

Direct implementation can be damaging. UNHCR has been justly criticised for confusing implementation and coordination. The administration of its own resources and those of its contracted implementing partners have been seen by UNHCR as the entire emergency programme. This has been to the detriment of its broader coordination and leadership role, involving non-contracted partners, and communities. Local and national authorities and populations, in particular, are often excluded from UNHCR coordination mechanisms.

UNHCR does not need a new mandate, as some commentators have argued.

The agency needs to get back to basics. It needs imagination in perceiving how best to match donor interests and refugee needs without abandoning the latter. It must play its mandated role as a support to host communities and governments (who historically have provided most protection and assistance to refugees and will undoubtedly continue to do so). An overseer of universal (not selectively applied) standards, a guide to the less experienced, a centre of excellence and high quality refugee protection (including provision of assistance) is increasingly and desperately needed. To achieve this, UNHCR must be present on the ground before emergencies, ready and prepared to act as a catalyst and advocate.

What is required of UNHCR are fewer convoys and sacks of flour and more leadership in international refugee protection and assistance. UNHCR needs coordinators, strategic planners, technical experts and mature emergency managers with a clear vision of and commitment to their responsibilities towards refugees. Above all, they must have the imagination to carry them out.

***John Telford has 20 years’ experience in human rights, development and humanitarian programmes. He has held a number of posts with UNHCR and currently provides consultancy services in emergency training, evaluation and policy analysis through his company, EMMA Ltd.
Email: telford@iol.ie***

1 Downloadable at www.unhcr.ch/evaluate/kosovo/toc.htm

2 ‘Bilateralism in terms of funding was most marked in the EU. The top six EU contributors ... allocated USD 279 million ... (excluding military expenditures); of this UNHCR received USD9.8 million directly, or 3.5 per cent’ (Para 47, p9)

3 *Talk Back*, Vol 2, No 1, 18 February 2000.

4 The author has heard such criticism, first hand, in Burundi, El Salvador, the Great Lakes region of Africa, Sri Lanka, the Balkans, Colombia and Mongolia, to name but a few countries.

5 Not all Western agencies have agreed with SPHERE standards and indicators. An influential group of French NGOs, in particular, argues that such norms are counter-productive and ill-advised.

6 *Field Exchange*, Emergency Nutrition Network, July 2000, issue 10.

7 Humanitarian Practice Group, Report 7, ODI, London, August 2000, p16.

UNHCR and forgotten emergencies: can funds be found?

by Amelia Bookstein

The establishment of UNHCR in 1951 and the parallel negotiations for the UN Refugee Convention were the first pillars in a permanent programme of international protection for refugees.

Fifty years on, both the Convention and UNHCR's mandate still reflect the spirit of the times in which they were drafted. The funding problems that perennially haunt UNHCR result from decisions made in the tense early days of the Cold War.

During the Second World War the need for a distinct international refugee agency was acknowledged. In 1943 the United Nations Relief and Rehabilitation Administration (UNRRA) was established by the Allies and the Soviet Union. Although UNRRA was mandated to assist anyone displaced by the war, the Soviet Union did not allow it to operate in its sphere of influence. As East-West tension mounted, repatriation became ever more politicised. The issue of UNRRA's assistance to people who refused to repatriate became a key point of contention. While the Soviets pushed for assistance to be given only to those who returned to their country of origin, the Allies argued that the access to assistance should not be predicated by the decision, or refusal, to return.

Partially due to this controversy, the US withdrew assistance to UNRRA and created the International Refugee Organisation (IRO) in 1947. The IRO worked solely with European refugees, and resettled more than a million people before 1951. The West pushed resettlement as a preferable option, seen as more morally and politically acceptable than repatriation. Importantly, the US provided most of the funding for the IRO at a time when its operational budget exceeded that of the recently founded UN.

Need for a permanent refugee agency

By 1951 it had become clear that the three-year mandate for the IRO would not permanently settle the question of refugees and displaced persons in Europe. In this context, the negotiations for the establishment of a more permanent UN refugee body were held. Despite the fact that the Soviet Union boycotted many of the talks, the refugee agency was established by the General Assembly by 36 votes to 5, with 11 abstentions. UNHCR was mandated to lead and coordinate international protection and assistance to refugees.

While this was a milestone for safeguarding the rights and well-being of refugees, the agreed compromise limited UNHCR's scope and funding by finding the lowest common denominator: it satisfied both Eastern worries about infringements of sovereignty and

Western concerns about financial obligations. UNHCR's statute declares that the agency's work will be subsidiary to the General Assembly

and "entirely non-political" in nature, dealing only with groups and categories of refugees. In addition, UNHCR was granted only a small administrative budget from the UN General Assembly, and a small emergency fund. For additional funding, the agency was granted the right to seek voluntary contributions for each emergency appeal, with General Assembly approval. In 1957 the General Assembly established the Executive

Committee of the High Commissioner's Programme (EXCOM) to approve UNHCR's annual budget and to advise on assistance and protection issues.

To provide for some 400,000 refugees in 1951 UNHCR's original budget was \$300,000. By 2000, the organisation's budget was over \$1bn. UNHCR currently assists some 26 million people in 120 countries around the world. Although the procedures for fundraising have changed slightly over the years, the essential voluntary nature of funding remains the same. UNHCR's funding base is like no other UN agency. The subsidy from the UN general budget (to cover the costs of 200 core headquarters staff) makes up a mere 2% of UNHCR's total budget. Each year 98% of the budget has to be found from voluntary contributions. In practical terms, this means that the EXCOM approves the proposed budget at each year's plenary session but there is no corresponding obligation for countries to provide the requested amount.

Shortfalls and implications

This unique design leaves UNHCR with consistent shortfalls, the level of which depends on what unforeseen events unfold throughout the year. The extent to which an emergency programme suf-

fers depends on the success or failure of appeals, earmarking of funds by donors and internal decisions within UNHCR.

In 2000 the programmes in the Great Lakes and Eastern Horn of Africa had shortfalls of 18% and 16%, respectively, while those in Central Europe and Baltic states only had a shortfall of 4%.

Funding cutbacks are often passed directly to UNHCR's implementing partners and NGO contractors. Thus in Tanzania UNHCR's 2000 budget for the refugee camps was cut by 55% despite the fact that large numbers of Burundian

80% of funds are earmarked according to donor priorities

refugees continued to arrive in Tanzania each week, adding to the half million refugees already in the country. Tension has arisen between UNHCR and their partners, as budgets and contracts that were previously approved are cut with little warning or consultation. While UNHCR budget shortfalls are just part of the problem, more could be done to handle these situations if UNHCR had greater predictability and transparency in funding.

Compounding the problem of shortfalls is the fact that the top 15 donors to UNHCR - 14 governments and the European Commission - provide 94% of the funding. Almost a quarter comes from the USA, with Japan contributing 10%. Such a small circle of influential donors leaves the agency heavily reliant on particular donors' opinions, priorities and prejudices. A further constraint on UNHCR is the fact that 80% of funds are earmarked according to donor priorities. Victims of humanitarian emergencies

that fail to attract or sustain attention in the media and donor communities are considerably disadvantaged.

When forgotten humanitarian crises fall off the media and donor radar screen they fail to attract adequate funding.

Skewed media coverage ... is very significant

This is not unique to UNHCR but is a symptom of other patterns in the political and cultural environments surrounding complex humanitarian emergencies. In the UN Consolidated Appeal Process (CAP) - a linked fundraising appeal that brings together requests from all UN agencies operating in a specific country or region - the trend of unequal donations is even more marked. CAP provides a useful measure of donor priorities and levels of confidence in the UN agencies. Over the last seven years all the consolidated appeals, with the exception of those in former Yugoslavia and the Great Lakes region in the immediate aftermath of the Rwandan genocide, have been underfunded.

When the responses to specific emergencies are compared on a per capita basis, the differences are stark. In 1999, the donor response to the CAP for the Former Yugoslavia was \$207.29 per capita. In the same year, the response to the emergency in Sierra Leone was \$16 per capita and for the Democratic Republic of Congo a mere \$8.40. Clearly there appears to be little commitment to universal entitlement to humanitarian assistance.

Why is this the case? Since the Kosovo crisis, journalists and academics have tried to explain this phenomenon and arrived at various conclusions. Skewed media coverage (routinely depicting the third world as riddled with primordial, irrational conflicts incapable of solution) is very significant. Perhaps the most troubling explanation is that the Western European and North American donor community is simply biased. In 1999 the European Commission Humanitarian Office (ECHO) spent more than 50% of its budget in former Yugoslavia, four times the amount of aid to the 70 countries in Africa, the Caribbean and Pacific states

Rwandan refugees returning from Tanzania, December 1996.



UNHCR/R Chafasani

"Contracting states shall apply the provisions of this Convention to refugees without discrimination..."

UNHCR/S. Fuzzeou

combined.¹ While ECHO was not alone in pouring resources into Eastern Europe, the difference is, nevertheless, striking.

Unequal burden sharing

While Tanzania hosts one refugee for every 76 Tanzanians, the figure for Britain is one in 530. The European Union, a collection of some of the world's richest nations, hosts less than 5% of the world's refugee population. Often the countries most overburdened with refugees are already among the poorest in the world. Tanzania, although in the lowest bracket of the UNDP's Human Development Index (HDI), hosts more than 400,000 refugees. Guinea, with an HDI rank of 162, hosts some 450,000 Liberian and Sierra Leonean refugees, one refugee for every 17 Guineans. Adding to the financial burdens on countries which are least equipped to cope are increased problems of policing and border control which, as in the case of Guinea, can allow rebel incursions into national territories to go unopposed.

The controversies around refugee assistance and asylum also demand a wider discussion on UNHCR's role in protection. UNHCR and the Red Cross movement have a unique international legal mandate that specifically includes protection. In the last few years critics have asked if UNHCR has become too focused on the provision of relief and services at the expense of its responsibilities for protection. There is a danger that the return to an emphasis on the

core protection mandate might allow donors further scope for avoiding their considerable responsibilities for funding refugee assistance programmes. If UNHCR were to extract itself from the provision of relief, the international community's efforts to fund refugee programmes could become fractionalised into a patchwork of bilateral agreements between donors and NGOs. This would further complicate the fundraising process and detract from efficiency.

Conclusion and recommendations

For all its problems, UNHCR is a significant player in the international community, still usually the lead agency in major humanitarian crises and a partner of more than 500 NGOs, governments, peace keepers and commercial contractors. Measures which could help bring UNHCR's perennial funding problems under control include:

- a concerted effort by both donors and UNHCR to make budgets realistic and transparent (not just constantly re-writing them to suit donor preferences)
- bringing donor representatives closer to the planning process for emergencies (This would increase mutual understanding, improve accountability and boost donor confidence in the agency.)
- donors who participate in the EXCOM meetings to link their participation in the budgeting exercise with pledges of assistance (Whenever possible,

pledges should be delivered in the first quarter of the year, to provide greater stability and budget predictability.)

- flexibility in the earmarking of donations to help limit the 'forgotten emergency' problem
- an increased effort to further expand UNHCR's donor base in order to help address donor bias

All donors need to publicly commit themselves to a global safety net to ensure humanitarian assistance and protection to those in need. An effective burden sharing mechanism should be devised for meeting global humanitarian need based on respective wealth and without diverting resources from long-term aid.

This should not be determined by strategic interest or by media coverage. By ratifying the Refugee Convention, signatory states have accepted responsibility in law to protect and assist those in need. The ability to provide humanitarian assistance with dignity, professionalism and accountability begins with a commitment to work for an equitable and effective system worldwide.

*Amelia Bookstein is the Policy Advisor, Conflict and Natural Disaster Team at Oxfam GB.
Email: ABookstein@oxfam.org.uk*

¹ It must be noted, however, that this trend was somewhat reversed in 2000, and ECHO has made a conscious effort to channel more funds to ACP countries.

UNHCR in Guinea

by Father John Agberagba

UNHCR/K. Diagne

UNHCR is failing to provide protection to those seeking refuge in Guinea.

After recent attacks UNHCR is unable to account for some 150,000 of the half million refugees in the country. Having fled wars in Sierra Leone and Liberia, refugees are caught up in Guinea's conflict as both rebels and the government attempt to recruit young refugees. The scale of the displacement crisis in Guinea suggests the need for the use of force. UNHCR should leave the provision of assistance to NGOs and governments in order to fulfil its primary objective - refugee protection.

UNHCR should stress the legal right of refugees to asylum status in Guinea. UNHCR should more aggressively pursue the policy of refugee protection by working with the Guinean government, Economic Community of West African States (ECOWAS) and the international community to end military attacks on refugee camps and Guinean villages. Combatants and ex-combatants in camps need to be disarmed. Camps along Guinea's borders with Sierra Leone and Liberia need to be relocated further away from the frontier. A military police force, trained to understand the needs of refugees, should be deployed in camps as a matter of urgency.

The protection of refugees must go beyond facile rhetoric. Those who violate the rights of refugees currently do so with impunity. UNHCR should have more protection officers on the ground and collect evidence for the UN to use to prosecute the guilty.

None of the traditional solutions to refugee crises (repatriation, local integration or third country asylum) are viable. Ongoing conflict makes it impossible to return in safety to Sierra Leone and Liberia. After 14 years of hosting refugees, most Guineans have run out of patience. Public opinion has turned against the refugees, with many



Repatriation convoy crosses the Guinea-Liberian border.

convinced that they are supporting the rebel movement in Guinea. The huge numbers of people involved rules out the option of third country asylum. Developed countries are not willing to open their doors. While the US provides logistical support, France food aid and the UK military assistance, what the refugees really need is a safe country of asylum.

Peace agreements have come and gone but rebels have refused to hand over weapons. For too long the situation has been allowed to fester. The only option is a military one. What is needed is not 'safety zones' but the military defeat of the rebels so that refugees can go home in safety and dignity. UNHCR should have the courage to call on the UN, ECOWAS and the international community to use its muscle. The right to belong to a home is the most basic of human rights, the one on which all other rights are pinned. In places like Guinea

where orthodox approaches have failed we need the courage to use military force. In the case of the Kurds, Kuwaitis and Kosovars, the international community has shown it has the capacity to be proactive. Why is this option not pursued in Africa? In this new millennium do not all people have the right to live in a country of their own and not be condemned to life as wanderers?

Fr. Agberagba is a Catholic priest working with refugees in Gueckedou, Guinea. Email: jagberagba@eti.net.gn. This article is extracted from a longer article.

Since this was written, the newly-appointed UN High Commissioner for Refugees, Ruud Lubbers, visited the region to assess the refugee crisis described by UNHCR as the worst in the world. He secured the agreement of protagonists to relocate the refugees to camps further within Guinea and to facilitate the safe return of refugees to Sierra Leone through rebel territory and by boat. An assessment by Human Rights Watch casts doubt on the effectiveness of this 'safe passage' strategy. See www.hrw.org/press/2001/04/refugee-0403.htm



The Norwegian Refugee Council

Global IDP PROJECT



The Norwegian Refugee Council

Humanitarian NGOs cannot act alone in protecting the displaced

by Marc Vincent

Not so long ago, the involvement of humanitarian NGOs in activities directly related to the protection and promotion of the rights of IDPs was considered unlikely: the risks to staff security were thought to be too high, the political sensitivity too great. Today, humanitarian NGOs are cautiously becoming involved in human rights protection. Few, for example, would argue against an increased role in discreetly collecting human rights

information and passing it on to more appropriate actors for intervention. NGOs should be wary, however, lest the pendulum swings too far in the other direction. Expectations are becoming high that humanitarian NGOs should be even more involved in protection but it should be well understood that their greater role cannot replace or be in lieu of rigorous and concerted action from the UN community and human rights NGOs.

In recent months a Senior Inter-Agency Network [see page 25] has been undertaking missions to evaluate the humanitarian response to IDPs. Following a mission to Burundi, the Senior Network found fault with the way the international community was fulfilling its protection role. The mission expressed concern that the UN country team was not vigorously pursuing protection concerns, that OCHA (Office for the Coordination of Humanitarian Affairs) was not well engaged in the protection problem and that the Office of the High Commissioner for

Human Rights was not active enough in monitoring the rights of the displaced. While the lack of a forceful UN protection focus is extremely regrettable, what was surprising was the expressed disappointment among some members of the mission that NGOs were not more involved in protection. Even normally protection-oriented humanitarian NGOs, it seems, were neither documenting human rights violations in Burundi nor passing along human rights information for appropriate intervention by other actors. It is true that humanitarian NGOs have a lot to learn and do need more training and encouragement in protection-type activities. But let us be clear and realistic! NGOs cannot, nor should they be expected to, take on a greater

protection role in the absence of strong UN action. A greater NGO role in protection does not absolve the UN of its responsibilities and obligations.

States are ultimately responsible for protecting and promoting the rights of their citizens but if the international community is serious about protection for IDPs, the Senior Inter-Agency Network provides a unique opportunity to get it right. There might not be another opportunity when the political interest within the UN to address the problems of the internally displaced are so great. In order to be successful in filling the fundamental protection gap, however, a lot needs to happen.

Firstly, the whole humanitarian community has to be more meticulous about monitoring the rights of IDPs. Organisations not traditionally involved in protection, including NGOs and others such as WFP and UNDP, have to ensure that their staff, at a minimum, are able and prepared to collect basic information on violations of human rights and humanitarian law as they are observed. If they

are not able to intervene because of valid concerns about compromising their programmes or staff security, then there should be

arrangements to pass the information to someone else or some other organisation who is able to act.

Secondly, in addition to the global humanitarian responsibility towards protection, the internally displaced also need dedicated protection. The most obvious candidate for dedicated protection responsibilities at the country level is the High Commissioner for Human Rights. She, however, has to be forthright and honest in indicating whether she will or will not become more engaged in defending and promoting the rights of IDPs. At the moment the record at the country level is neither clear nor exemplary. While claims of lack of resources are justified in Burundi, it would seem to an outside observer that

the internally displaced also need dedicated protection

The Directorate

The Global IDP Project is a project of the Norwegian Refugee Council and is administered through its Geneva office.

Staff

Project Coordinator: Marc Vincent
Information Officers: Christophe Beau, Andreas Danevad, Bjorn Pettersson, Frederick Kok, Stacey White, Greta Zeender.
Donor Relations: Tone Faret

Major Donors

The following governments have contributed to the project: Canada, Denmark, Norway, Sweden (SIDA), Switzerland, UK-DFID. Other donors: ECHO, International Development and Research Centre (Canada), Norwegian Church Aid, OCHA, UNDP, WFP, World Vision International and private donors.

Website

Visit our database on internal displacement and get more information about the Global IDP Project on www.idpproject.org

Contact us

If you have any questions or comments, please contact us at:

Global IDP Project

Chemin Moïse-Duboule 59
CH 1209 Geneva, Switzerland
Tel: + 41 22 788 8085
Fax: + 41 22 788 8086
Email: idsurvey@nrc.ch

the emphasis of the High Commissioner in her field operations has been on technical cooperation rather than human rights monitoring and protection. If the Office and its donors are not willing to step up activities for IDPs in other countries then alternatives should be sought. Good protection requires day-to-day interaction with local authorities which could just as easily be done by OCHA field monitors as human rights monitors.

Finally senior UN officials at the country level have to become more adept and willing to raise protection issues with host governments and push authorities to honour their responsibilities under international law. Resident and Humanitarian Coordinators (RC/HC) need more training, more support and more encouragement from headquarters to intervene on protection concerns raised by the humanitarian community. It is not acceptable that RC/HCs should have to worry about becoming *persona non grata* for actively raising such concerns. That is not to suggest that they should no longer act with diplomacy and tact but that if they are forced to confront governments on their human rights record they should not have to do it alone. Senior UN officials should be able to count on support from headquarters, including the UN Secretary-General himself, if necessary.

Increasing NGO involvement in protection activities is positive and to be encouraged; however, it is not a trend that should happen in isolation. Humanitarian NGOs have very valid concerns about being left exposed and vulnerable if they become more active in human rights promotion and protection. After all, it is not too difficult in some countries to trace the source of information if few organisations are physically active in a specific geographic area. Human rights protection and promotion therefore have to remain a global responsibility for the whole humanitarian community. In order to strengthen NGO engagement, the UN has to fulfil its responsibilities and obligations to the NGOs and to act upon information received. As the Burundi mission demonstrates, no NGO will take an active part in human rights protection and promotion if the UN does not play its part in both monitoring human rights and intervening on behalf of the victims.

Marc Vincent is Coordinator of the Global IDP Project.
Email: marc.vincent@nrc.ch

Forced Migration Review

Editorial Advisory Board

Although the EAB members' institutional affiliations are listed below, they serve in an individual capacity and do not necessarily represent their institutions.

Jon Bennett

Oxford Development Consultants

Stephen Castles

Director, Refugee Studies Centre

B S Chimni

Professor, School of International Studies, Department of International Law,
Jawaharlal Nehru University

Khadija Elmadmad

Professor, Law Faculty, Casablanca University

Maurice Herson

Humanitarian Operations Coordinator, Oxfam International

Nicola Jenns

Programme Officer, Conflict and Humanitarian Affairs Department,
UK Department for International Development

Erin Mooney

Special Assistant, Representative of the UN Secretary-General on IDPs

Bonaventure Rutinwa

Centre for the Study of Forced Migration, Faculty of Law,
University of Dar es Salaam

Dan Seymour

SCF UK representative to the UN, New York

Marit Sorheim

Deputy Head, Information Department, Norwegian Refugee Council, Oslo

Marc Vincent

Coordinator, Global IDP Project, Norwegian Refugee Council, Geneva

Laurence Whitehead

Official Fellow in Politics, Nuffield College, University of Oxford

Bhutanese refugees in Nepal: prospects of return?

The tiny Himalayan kingdom of Bhutan has the dubious distinction of being one of the world's highest per capita generator of refugees. In 1990-1991 a sixth of Bhutan's population were expelled from their homes in the southern districts of Bhutan. Some 100,000 Bhutanese refugees of Nepali ethnicity reside in seven UNHCR-managed refugee camps in Nepal with a further 30,000 living elsewhere in Nepal or in India. [For full details see *Forced Migration Review 7*, pp20-22.] After a decade of stalemate, the Bhutanese and Nepali governments have agreed to establish a joint verification team to assess the status of displaced Bhutanese in Nepal. The refugees and their representatives have not been informed about the modalities of the verification process. The verification commission is not accepting previous records created by the Nepali government, UNHCR or the refugees. UNHCR has not been invited to participate in the process. Bhutanese refugee organisations fear that both governments may wash their hands of the displaced population, thus rendering them stateless. They, and a number of NGOs and human rights organisations, have appealed to the international community to put pressure on both governments to allow UNHCR to play its mandated monitoring and facilitating role in the verification and repatriation process.

For further information see: www.bhootan.org and <http://ahurabht.tripod.com>

Afghanistan: sanctions bite as assistance dries up

The suffering of the people of Afghanistan is now without precedent. After two consecutive years of drought and the continuing civil conflict, the



UNHCR/A. Hollmann

country is in the grip of a serious food crisis. Half a million additional Afghans have left their homes and become displaced since January 2000. Unassisted refugees are stranded on islands in the Amu Darya river border with Tajikistan. An estimated 170,000 refugees have entered Pakistan in the last six months (joining the 1.2m already there) despite Pakistani government efforts to discourage them by greatly limiting access to humanitarian assistance. With the expected imminent resumption of conflict between the Taliban and its (covertly re-equipped) enemies, more people are expected to be on the move over the next several months.

Jalozai in Pakistan's North West Frontier Province has become a de facto transit point to which the new arrivals have been gravitating of their own accord. UNHCR is extremely concerned about the plight of 80,000 Afghans squeezed

onto a little parcel of land with little protection against sub-zero temperatures. Despite repeated protests, Pakistan has limited access by UNHCR and NGOs to Jalozai and refused to authorise new camps. After four years of repeated budget cuts, UNHCR is, in any case, unable to provide the level of assistance required by this forgotten emergency.

Security Council sanctions against Afghanistan were imposed in December 2000 despite the expressed reservations of the UN Secretary General. UN humanitarian agencies and NGOs have protested that sanctions have further complicated the delivery of humanitarian assistance and reduced the prospects for peace. The recent destruction of Buddhist statues at Bamiyan indicates the growing recalcitrance of the Taliban regime. The Special Rapporteur of the UN Commission on Human Rights on the



UNHCR/Jesuit Refugee Service

situation of human rights in Afghanistan has repeatedly been denied access. The (already limited) ability of humanitarian agencies to deliver assistance to women has been reduced still further by stricter Taliban enforcement of its decree against relief agencies employing female staff.

For the latest information, visit the new UN website, Assistance Afghanistan www.pcpafg.org. There is a comprehensive listing of Afghan websites in the links section of the FMR website at www.fmreview.org. For information about lobbying within the European Union to address the root causes of displacement in Afghanistan and to prevent *refoulement* of Afghan refugees, contact Aminia Nadig, coordinator of the Dutch Working Group in International Refugee Policy. Email: Anadig@VluchtelingenWerk.nl

Colombia

Pressure is mounting on the Colombian government as it faces criticism for lack of progress in resolving the country's 37-year civil conflict. Meanwhile, as the political killings continue and the number of people internally displaced in the country is reported to have topped the two million mark, its new coca eradication programme threatens to displace many more people.

Last year, the US singled out Colombia (together with Indonesia, Nigeria and Ukraine) as in need of special attention. Not only is Colombia the source of 90% of the cocaine, and much of the heroin, entering the US, but there is increasing concern that the conflict could create regional instability. US support has been provided in the form of Plan Colombia. The US is providing US\$1.3 billion (of the US\$7.5 billion required in total) of mainly military aid, largely to be used to set up three anti-narcotics battalions, trained and equipped by US special forces. They are also being provided with 60 helicopters. In February this year, President George W Bush met with President Andreas Pastrana and gave his backing to the Plan.

Based in Putumayo, the troops aim to eradicate some 6,000 square kilometres of coca, the raw material of cocaine, through aerial fumigation. After destroy-

ing the coca crop, the Plan promises to implement social and economic reform in the region. Much of the income from this lucrative trade benefits both right-wing paramilitaries and left-wing guerrillas. Putamayo is a stronghold of Revolutionary Armed Forces of Colombia (FARC), the larger of the county's two left-wing rebel groups, who claim they will resist. The region is mostly jungle and well-suited to guerrilla warfare.

Many human rights organisations, inside Colombia and internationally, have condemned Plan Colombia. Amnesty International has criticised its drug-focused analysis, ignoring the state's own current and historic responsibility and the deep-rooted causes of the conflict and the human rights crisis. Along with other human rights organisations, they argue that the overwhelming evidence of the right-wing paramilitary groups' involvement in widespread, gross and systematic human rights violations and their ability to operate with the tacit or active support of army personnel will only lead to an escalation in the conflict.

It has also been criticised by some of Colombia's neighbouring countries, concerned that the civil war could spill over their borders. In addition, there is concern in the US that the country's increased involvement in Colombia could lead to another Vietnam-style conflict. The plan has also been criticised by some who believe the initiative will barely dent FARC's finances but will devastate those of peasant farmers. Concerns about public health and environmental damage as a result of the fumigation have also been raised.

More than 35,000 people have been killed as a result of the conflict over the past ten years. Non-combatants are killed or forced to flee, often entire communities at a time. According to human rights groups, some two million persons have been displaced as a result of violence since 1985, with 288,000 persons displaced in 1999 alone. Increasingly

IDPs are moving to the cities or to shanty towns nearby, living in poor housing, with no sanitary facilities and usually no access to assistance, education or employment.

by Sean Loughna

Websites:
www.cinep.org.co/
www.wola.org/
www.state.gov/www/regions/wha/colombia/
www.hrw.org/americas/
www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Colombia

Civilians flee Indonesian crackdown in West Papua

On the 800 km border between West Papua (the Indonesian province of Irian Jaya) and Papua New Guinea (PNG), refugees have been in a state of limbo for the past three months. In December 2000 they fled an Indonesian army crackdown on West Papuan separatists and a wave of arbitrary detentions and extrajudicial executions. The refugees, believed to number around 500, were repeatedly forced back into no-man's land by PNG police. Those who returned to West Papua are alleged to have been tortured. Following representations by UNHCR, the PNG authorities relented and have allowed the refugees to enter PNG and receive assistance from the Catholic Church. UNHCR has received assurances that they will not be forcibly repatriated. Human rights organisations are pressing for assurances that any visits by Indonesian delegations or PNG authorities to the refugee camps should be attended by international observers. Meanwhile, great uncertainty surrounds the considerably larger group of internally displaced West Papuans prevented by the Indonesian army from approaching the PNG border.

For information on West Papua see:
 Oxford Papuan Rights Campaign:
<http://users.ox.ac.uk/~opr/>
 Tapol, the Indonesia Human Rights Campaign:
www.gn.apc.org/tapol/
 The Kabar-Irian Archives: www.kabar-irian.com/
 West Papua Action: <http://westpapuaaction.buz.org/>



Elizabeth Colson lecture : Wednesday 6 June 2001

at the Examination Schools, Oxford
'Surpassing nostalgia: personhood and
the experience of displacement'
presented by Dr Renée Hirschon.
All welcome.

Contact: Dominique Attala for more
details. Tel: +44 (0)1865 270722.

Email: rscmst@qeh.ox.ac.uk

Latest RSC Working Paper

Outside the Protection of the Law:

*The Situation of Irregular
Migrants in Europe*

by Matthew J Gibney.

Working Paper No 6. Dec
2000. 52pp. £3.00/\$4.80.

For overseas delivery,
please add £2.00/\$3.20
p&p; for UK delivery, 50p.

Synthesis report commi-
sioned by the Jesuit
Refugee Service - Europe.
The publication includes
presentation of three
synthesised country
reports on the UK, Germany and Spain.
In the section on conclusions and recom-
mendations, the main implications of
the country reports for Europe as a
whole are outlined and a number of
policy and advocacy recommendations
for responses to irregular migration are
made. Contact the RSC at address at top
of page.



Visiting Fellowships

Visiting Fellowships are open to senior
and mid-career practitioners and policy
makers who wish to spend a period of
study and reflection in a conducive acad-
emic environment, and to academics and
other researchers who are working in
fields related to forced migration. Each
Fellow is assigned an academic adviser
and is expected to undertake a specific
programme of self-directed study or
research. Fellowships may be held for
one, two or three terms.

Contact: Visiting Fellowships

Administrator at the RSC

Tel: +44 (0)1865 270723.

Email: vfp@qeh.ox.ac.uk

Master of Studies in Forced Migration

This nine-month postgraduate degree
course is grounded in a multi-discipli-
nary approach that includes the
perspectives of anthropology, law, poli-
tics and international relations. It
includes courses and seminars on:

- Introduction to the study of forced
migration
- Liberal democratic states, global-
isation and forced migration
- International human rights and
refugee law
- Ethical issues in forced
migration
- Research methods
- Issues and controver-
sies in forced migration

Applications welcomed
now for October 2002

admission. Contact:

Graduate Admissions
Office, University Offices,
18 Wellington Square,
Oxford OX1 2JD, UK.

Tel: +44 (0)1865 270055.

Email: graduate.admissions

@admin.ox.ac.uk

International Summer School in Forced Migration 2001

2 - 20 July 2001

This three-week residential course pro-
vides a broad understanding of the
issues of forced migration and humani-
tarian assistance; participants examine,
discuss and review theory and practice.
Designed for managers, administrators,
field workers and policy makers in
humanitarian fields. Involves lectures
and seminars by international experts,
small group work, case studies, exercis-
es, simulations and individual study.
The course is held at Wadham College in
the heart of Oxford. Course fees: £2,250
(incl B&B accommodation in Wadham
College, weekday lunches, tuition fees,
course materials, social activities).

Contact the International Summer School
Administrator at the RSC.

Tel: +44 (0)1865 270723.

Email: summer.school@qeh.ox.ac.uk

Southeast Asia Regional School in Forced Migration

3 -13 December 2001 : Chulalongkorn
University, Bangkok

The Refugee Studies Centre, in collab-
oration with the Asian Research Centre for
Migration of Chulalongkorn University,
Bangkok, is pleased to announce the 1st
Southeast Asia Regional School in Forced
Migration. The Regional School aims to
provide those who work with refugees
and other displaced people in Asia and
Oceania with a better understanding of
the forces and institutions that dominate
their world and the world of those who
have been uprooted. Participants will
leave the Regional School with insights
into:

- different views on the nature of
forced migration
- the historical context of forced migra-
tion and its location within regional
and global processes, with particular
emphasis on SE Asia
- the multi-faceted realities faced by
forced migrants and how these are
represented
- contemporary responses to forced
migration, at institutional and ground
levels

Participants will typically include host
government officials and intergovern-
mental and non-governmental agency
personnel engaged in planning, adminis-
tering and coordinating assistance.
There are places for a maximum of 40
participants in 2001.

Website: www.qeh.ox.ac.uk/rsc/sea

Enquiries about the course and requests
for application forms should be
addressed to:

either: The SEA Regional School
Administrator, ARCM, Institute of Asian
Studies, 7th Floor Prajadhipok-Rambhai
Barni Building, Chulalongkorn University,
Phyathai Road, Bangkok 10330,
Thailand. Tel: +66 2 218 7462. Fax: +66
2 255 1124. Email:
Ratchada.J@Chula.ac.th.

or: The SEA Regional School Project
Manager, RSC (address at top of page).

Tel: +44 (0)1865 270723/270726.

Fax: +44 (0)1865 270721.

Email: sea.school@qeh.ox.ac.uk

Library

The RSC Library, formerly the Documentation Centre, welcomes all visitors to use its grey literature and book collections. Readers unable to visit the Library in person may access the material through the online catalogue at: www.bodley.ox.ac.uk/rsc/

If you have document requests or enquiries, please contact the Library staff either by post (opposite) or by email at rsclib@qeh.ox.ac.uk

Forced Migration Online

The Refugee Studies Centre has received funding from the Mellon Foundation and the EU to develop Forced Migration Online, an international 'portal' for forced migration. The portal will offer instant access to a wealth of web resources for practitioners, researchers and students in the field and provide the latest in digital information on the situation of forced migrants worldwide. Portal resources will include:

- a searchable catalogue with descriptions of relevant resources in the field of forced migration and links to those resources
- a cross-search agent allowing simultaneous searching of websites, library catalogues, online databases and other electronic resources
- a digital library of full-text documents which can be read online, searched and printed as required
- thematic and country-specific guides including pointers to further information available on the web
- a news feed with regularly updated highlights

Forced Migration Online will be hosted by the Refugee Studies Centre but will rely on a network of international partners to create this global information resource. A preliminary version should be available in late 2001.

For further information about the progress of the Forced Migration Online project, please visit www.forcedmigration.org/portal/home/homepage.htm.

Forced Migration Discussion List

The Forced Migration discussion list aims to encourage the exchange of information and promote discussion on issues concerning refugees and IDPs.

It currently has an international membership of over 540 subscribers. The discussion list is moderated by Elisa Mason, Information Officer for the RSC's Forced Migration Online portal project. Elisa regularly posts update bulletins to the list with information about online publications, periodicals, websites and forthcoming events and opportunities that are likely to be of interest to list members.

To subscribe, visit the list's homepage at www.jiscmail.ac.uk/lists/forced-migration.html and click on the 'join or leave' link. An archive of previous postings is also available.



Nashra Al-Hijra Al-Qasriya and Revista sobre Migraciones Forzosas

Forced Migration Review is also printed in Spanish and Arabic.

All subscriptions to the Arabic and Spanish editions are free of charge.

If you would like to receive one or the other, or if you know of others who would like to receive copies, please send us the relevant contact details.

Email the Editors at fmr@qeh.ox.ac.uk or write to us at: FMR, Refugee Studies Centre, QEH, University of Oxford, 21 St Giles, Oxford OX1 3LA, UK.

Forced Migration Review is funded mainly by grants from institutions and agencies involved in development and humanitarian work. We would like to thank the following organisations for their commitment to Forced Migration Review in 2000 and 2001:

AUSTCARE

Danish Refugee Council

European Commission

Lutheran World Federation

Norwegian Refugee Council

Oxfam GB

SCF (UK)

The Ford Foundation, Cairo Office

UK Department for International

Development

Special thanks to UNHCR's Department for International Protection for their sponsorship of this issue.

Visit the RSC website to read updates on all RSC research projects and details of forthcoming courses:

www.qeh.ox.ac.uk/rsc

RSC contact details

Refugee Studies Centre,
Queen Elizabeth House,
21 St Giles, Oxford OX1 3LA, UK.
Tel: +44 (0)1865 270722.
Fax: +44 (0)1865 270721.
Email: rsc@qeh.ox.ac.uk

FORCED MIGRATION review **10**
April 2001
published by the Refugee Studies Centre in association with the Norwegian Refugee Council/Global IDP Project

UNHCR and the Convention at 50

fighting fit ~
or in need of a by-pass?

conferences

7th IRAP: 8-11 January 2001, South Africa

The 7th International Research and Advisory Panel (IRAP) of the International Association for the Study of Forced Migration (IASFM) was hosted by the University of Witwatersrand. The theme was 'The Refugee Convention at 50,' and over 100 papers on the many different aspects of forced migration were presented by delegates from around the world. Five main plenary sessions were complemented by numerous panels covering a broad range of forced migration issues.

Conference papers discussed how perceptions of forced migrants can be drawn from each of the many disciplines represented at the Conference - forced migrants as economic agents, security

threats, medical patients, criminals. They also emphasised the importance of focusing on particular categories of displaced persons, from the most vulnerable - such as women and children - to groups such as the Palestinians and the Roma. Delegates highlighted broad trends in forced migration policy, such as the shift in certain African countries from restrictive asylum laws but very liberal asylum practice, to improved legal protections but more restrictive practice. The European 'fortress' approach to refugees was criticised, as was the lack of any common migration policy between the countries in South Asia.

Wide-ranging proposals for advocacy strategies were produced, including the greater use of national and international human rights law to secure rights for displaced persons. Papers related the dilemmas faced by practitioners, such as the medical practitioner whose duty is to the patient but who is also called upon to serve the refugee determination process. Delegates also discussed the way language is used in relation to displaced persons, and the social and political meanings that words convey. This is an issue not only in the depressingly familiar terms used to describe refugees in popular discourse - bogus, floods, etc - but also in the concepts that are used by states, UNHCR and academics, such as 'temporary protection'.

The conference was a success in providing an international forum for discussing some of the most pressing issues facing forced migration today. The next meeting - which will be named the Biennial Meeting of the IASFM, dropping the 'IRAP' title - will take

place in 2003. The full report of the 7th IRAP will be published in the *Journal of Refugee Studies*.

Generous support was provided by the Andrew W Mellon Foundation, the Dutch Ministry of Foreign Affairs, the Norwegian Royal Ministry of Foreign Affairs and the Swiss Federal Department of Foreign Affairs.

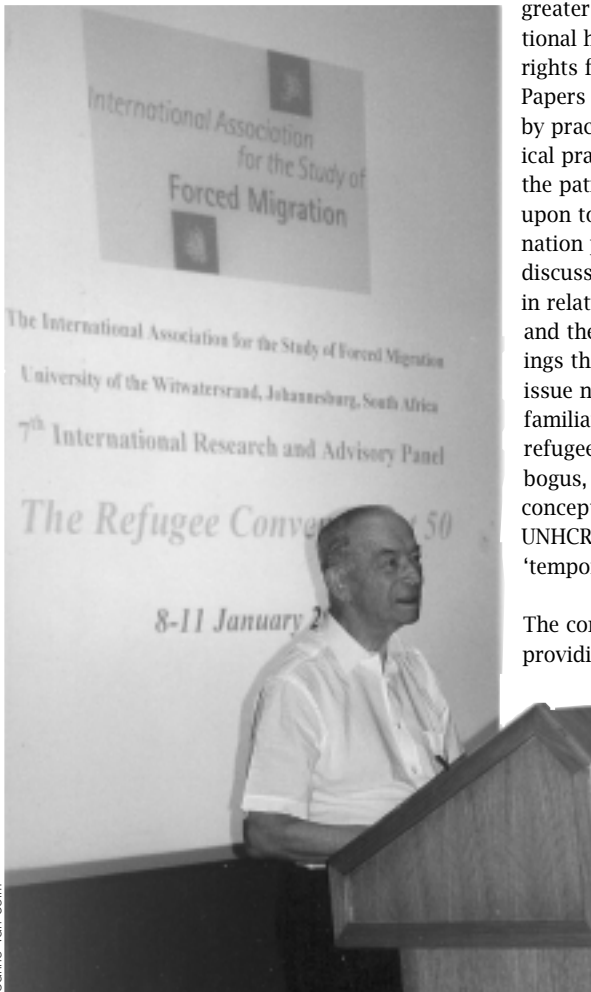
by Ralph Wilde, Trinity College, Cambridge University, Rapporteur for the 7th IRAP

IASFM

IASFM is an independent and self-governing community of scholars and practitioners who are concerned about understanding forced migration and about improving the formulation of policies and administration of programmes dealing with refugees and other displaced persons.

The Association evolved during the 1990s. Its precursor, IRAP, was created to advise the Refugee Studies Centre and the *Journal of Refugee Studies*. Participants at the first IRAP meeting in 1990 tried to define a research agenda for refugee studies; each successive IRAP meeting (1991, 1992 and 1994) was ever larger and the subject matter expanded from refugees to encompass the larger arena of forced migration. The International Association, as an independent organisation, was voted into existence at the 1994 meeting. Its primary mandate is to organise its biennial conferences; it also wants to establish and strengthen international and interactive networks of scholars and practitioners involved in the global issues of forced migration.

**For more information, contact Wolfgang Bosswick (Secretary) at wolfgang.bosswick@sowi.uni-bamberg.de
Website: www.iasfm.org**



Gilbert Jaeger, a key policy figure in the Convention's history.

forthcoming

UNHCR Excom

1-5 October 2001 : Geneva, Switzerland

For accreditation, contact Fabienne Philippe at the UNHCR NGO Unit. Email: Philippe@unhcr.ch
For NGO lobbying contact Simon Russell at ICVA. Email: simon@icva.ch

The Refugee Convention - where to from here?

6-9 December 2001 : Sydney, Australia

Hosted by the Centre for Refugee Research, University of New South Wales, this international conference will discuss:

- Resettlement and settlement in developed countries
- The concept of asylum and the treatment of asylum seekers
- Protection of refugees and IDPs in camps, repatriation, and settlement in developing countries

These will be debated within the historical and legal context of the 1951 Convention, following the themes of UNHCR's Three Tracks Global Consultation process [see page 9 for details].

Papers will be accepted from refugees, community groups and academics. Abstracts (300 words) to be submitted by 29 June 2001 to: The Conference Committee, Centre for Refugee Research, School of Social Work, University of New South Wales, NSW 2052, Australia. For further information, contact Linda Bartolomei. Tel: +61 29385 1961. Email: cenrefre@unsw.edu.au.

Global refugees: the sociology of exile, displacement and 'belonging'

17-19 April 2002 : Stafford, UK

Staffordshire University's international conference aims to explore some of the themes and issues arising from practices and processes of displacement across the globe. A wide range of themes will be covered and papers are invited from journalists, practitioners, NGOs and community groups working at grass roots level as well as academics in different disciplines. To send abstracts (250 words max; deadline 15 December 2001) or request further details, contact: Ann Kempster, Editorial Assistant, Sociology, School of Humanities and Social Sciences, Staffordshire University, College Road, Stoke-on-Trent ST4 2DE, UK. Email: a.kempster@staffs.ac.uk

Subscribe!

to *Forced Migration Review*
published in English, Spanish and Arabic

Please complete and return the form below
or subscribe via our website at www.fmreview.org

I/we would like to subscribe for:

(please tick the appropriate box).

Individual rate £15 (US\$26/ 27)

Institutional rate £25 (US\$43/ 45)

Multiple rate for up to 3 copies £40 (US\$68/ 70)
(For more than 3 copies, add £5/\$9/ 10 per additional copy) Please attach details

Free (English)
 developing country
 student/unwaged
 refugee/IDP
 exchange of publications

Free (translation)
 Spanish edition
 Arabic edition

Subscriptions run for one calendar year. Spanish and Arabic translations: FREE of charge.

Contact details:

Name:

Job Title:

Department:

Organisation:

Address:

City: Postal Code:

Country:

Tel: Fax:

Email:

Website:

Methods of payment

Cheque or bank draft in £ sterling, or US\$ (drawn on UK or US bank) or Eurocheque (£ sterling only) payable to 'University of Oxford/RSC'

Credit Card Payment: VISA Mastercard Eurocard Access

Card number:

Expiry date:

Signature:

Cardholder name/address:
(if different from above)

Bank transfer (£ sterling only) to: Barclays Bank, PO Box 333, Oxford OX1 3HS, UK
Account name: Oxford University Chest Number 1 Account
Account no: 50051675 Bank sort code: 20-65-20
Please quote reference: RSC/MVG4N

Please return form to:

FMR Subscriptions, RSC, Queen Elizabeth House,
21 St Giles, Oxford OX1 3LA, UK
Fax: +44 (0)1865 270721

The UNHCR and World Politics: A Perilous Path

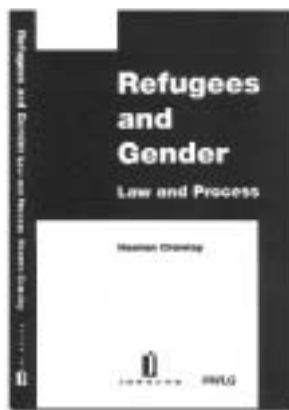
by Gil Loescher, Research Associate, Centre for International Studies, University of Oxford and University of Notre Dame. June 2001. 448pp. ISBN 0 19 829716 5. £45.00 (hb).

This book examines the role of UNHCR in world politics since its founding 50 years ago, its relevance towards reaching solutions to global refugee problems and its effectiveness as the international community's principal protection mechanism for persecuted populations who have been forced into exile. The author raises questions about the adequacy of the agency's mandate in contemporary world politics and the appropriate role of an intergovernmental agency in balancing the protection of individual and group rights against the sovereign prerogatives and interests of states. In addition to analysing the difficulties of resolving past refugee crises, the author offers policy recommendations as to how to cope more effectively with future refugee problems.

Contact: Oxford University Press, Great Clarendon Street, Oxford OX2 6DP, UK. Tel: +44 (0)1865 556767. Website: www.oup.co.uk.

Refugees and Gender: Law and Process

by Heaven Crawley. Published in association with the Refugee Women's Legal Group. March 2001. ISBN 0 85308 690 7. £15.00.



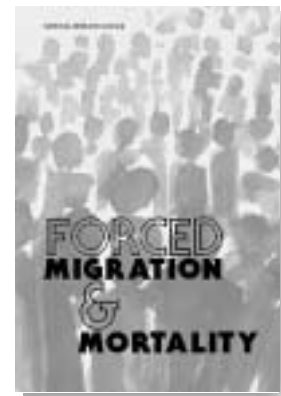
Refugees and Gender: Law and Process examines how those representing asylum seekers can ensure that gender-related aspects of women's experiences are taken into account and appropriately reflected in the determination process. The book aims to ensure that all aspects of women's asylum claims are fully considered, providing a

comprehensive understanding of the concepts of gender persecution, as well as a gendered framework for the interpretation of the key elements of the 1951 Refugee Convention. It also deals with procedural issues facing women as asylum seekers. Detailed guidance is provided on the implications of gender in asylum law, policy and practice in the UK, with comparative case law from other countries including Canada, US and Australia. Annexes include gender guidelines produced in the UK and elsewhere.

Contact: Jordan Publishing Ltd, 21 St Thomas Street, Bristol BS1 6JS, UK. Tel: + 44 (0)117 923 0600. Fax: + 44 (0)117 925 0486. Email: customerservice@jordanpublishing.co.uk

Forced Migration and Mortality: Roundtable on the Demography of Forced Migration

Committee on Population, Holly E Reed & Charles B Keely, editors, National Research Council, USA. April 2001. 150pp. ISBN 0 309 07334 0. \$32.00 (pb); \$25.60 (if ordered online).



Millions of people uprooted by war, famine or natural disasters are on the move in countries across the world, seeking shelter, food and other necessities of life. Using case studies from Cambodia, Kosovo, North Korea and Rwanda, a new collection of papers from the National Research Council examines mortality patterns during recent forced migrations and suggests how these patterns may change during this century.

Contact: National Academy Press, 2101 Constitution Avenue, NW, Washington, DC 20418, USA. Tel: +1 202 334 3313 or toll-free 1 888 624 7654. Fax: +1 202 334 2451. Order online at www.nap.edu.

New Issues in Refugee Research

Three new titles from UNHCR's Evaluation and Policy Analysis Unit Available online at www.unhcr.ch/refworld/refpub/refpub.htm

For a hard copy, contact: EPAU, UNHCR, Case Postale 2500, CH-1211 Geneva, Switzerland. Email: hqep00@unhcr.ch.

UNHCR's mandate: the politics of being non-political

by David Forsythe. No 33.

Environmental refugees: myth or reality?

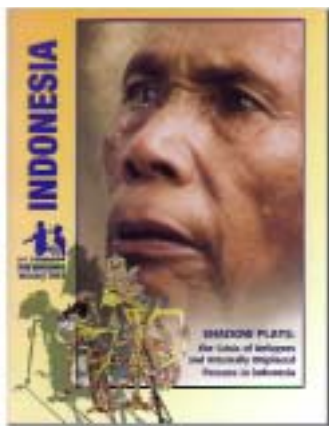
by Richard Black. No 34.

Refugee aid and protection in rural Africa: working in parallel or cross-purposes?

by Oliver Bakewell. No 35.

Shadow Plays: The Crisis of Refugees and Internally Displaced Persons in Indonesia

by Jana Mason, US Committee for Refugees. Jan 2001. 44pp. ISBN 0 936548 04 5. \$5.00.



While the causes of displacement are complex, many Indonesians feel strongly that they are being used to further the goals of one or more 'puppeteers' pulling the strings and casting shadows, hence the title of this Issue Paper on Indonesia. It presents general findings, followed by sections in IDPs in different regions of Indonesia. The final section presents recommendations to the Indonesian and US governments and to the UN and international community.

Contact: USCR, 1717 Massachusetts Avenue, NW, Suite 200, Washington, DC 20036-2003, USA. Fax: +1 202 347 3418. Website: www.refugees.org

The Selfish Altruist: Relief Work in Famine and War

by Tony Vaux. April 2001. 256pp. ISBN 1 85383 776 8. £17.99 (hb).



Tony Vaux (formerly with Oxfam GB for over 20 years) explores the conflicts between subjective impulses and objective judgement and the dilemmas that relief workers contend with. Describing and analysing some of the most traumatic situations of the last two decades, he discusses what it takes to be an aid worker and how important humanitarian action is in today's world. Case studies focus on Kosovo, Ethiopia, Sudan, Mozambique, Somalia, Azerbaijan and Rwanda.

Contact: Earthscan Publications Ltd, 120 Pentonville Road, London N1 9JN, UK. Tel: +44 (0)20 7278 0433. Fax: +44 (0)20 7278 1142. Website: www.earthscan.co.uk

Involuntary Resettlement: Comparative Perspectives

edited by Robert Picciotto, Warren van Wicklin & Edward Rice. World Bank Series on Evaluation & Development, Vol 2. 2001. 146pp. ISBN 0 7658 0018 7. £21.50.



This publication analyses dam-building projects in six countries (India, Thailand, Togo, China, Indonesia and Brazil), reviews the outcomes of Bank policy and assesses outside criticism. In addition to its case by case analysis of countries and projects, the book includes lessons and recommendations to strengthen resettlement policy and practice. [Note that the December issue of *Forced Migration Review* will include a feature section on development-induced displacement; contact the Editors for further information.]

Contact: Transaction Publishers, Rutgers, the State University, 35 Berrue Circle, Piscataway, New Jersey 08854-8042, USA. Website: www.transactionpub.com

Refugee

Refugee is a quarterly inter-disciplinary, refereed journal published by the Centre for Refugee Studies at York University, Canada.

Commemorating 50 Years of UNHCR

May 2001 : Volume 20.1

Authors: Gerald Dirks, Brian Gorlick, Jennifer Hyndman, Edith Kauffer, Jack Mangala Munuma, Elif Ozmenek, Pia Oberoi, Chantal Tie, Nahla Valji, Jelena Zlatkovic-Winter, and an introductory note from Ruud Lubbers.

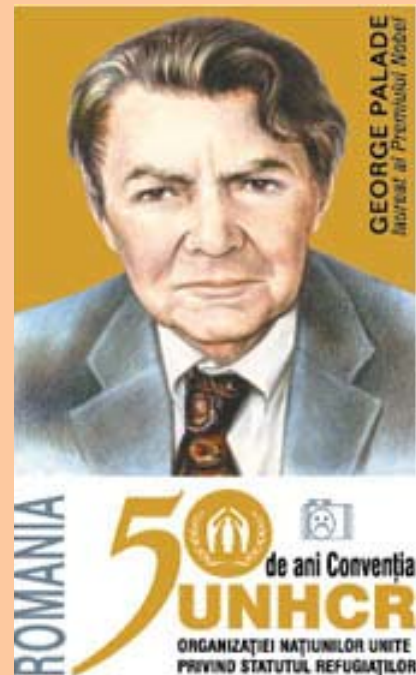
Published in English. Résumés en français. ISSN 0229 5113.

Contact: Centre for Refugee Studies, Suite 322, York Lanes, York University, 4700 Keele Street, Toronto, Ontario, Canada M3J 1P3. Tel: 1 416 736 5663. Fax: 1 416 736 5837. Email: refuge@yorku.ca Website: www.yorku.ca/crs/refuge.htm

If you produce or know of publications which might be of interest to other FMR readers, please send details (and preferably a copy) to the Editors (address p2) with details of price and how to obtain a copy.



The UNHCR-50 Foundation is working to publicise the UNHCR anniversary and World Refugee Day on 20 June. The Foundation is supporting the campaign to improve public awareness of refugee issues and the Refugee Education Trust appeal to raise funds to provide post-primary education to refugees. For information on these and other activities of the Foundation, visit: www.UNHCR-50.org



Commemorative stamps courtesy of the UNHCR-50 Foundation