

BILKENT UNIVERSITY
INSTITUTE OF ECONOMICS AND SOCIAL SCIENCES

**The Refugee Crisis
(Legal and Political Implications)**

BY
SEDA MUMCU

A THESIS SUBMITTED TO THE DEPARTMENT OF INTERNATIONAL
RELATIONS IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF INTERNATIONAL RELATIONS

AUGUST 1999
ANKARA

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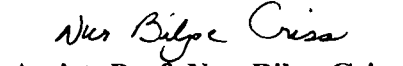
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I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of International Relations.


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ABSTRACT

During the recent years, the world has experienced severe human rights abuses and many conflicts that turned into violence, which consequently produced massive refugee flows. As the numbers increased to crisis levels, the international community started to adopt a new approach to refugee issues. Today, refugees are no longer considered as a humanitarian concern, but as a global problem with legal and political implications. As well as presenting a historical overview of the existing international refugee regime, and pointing out to the challenges facing the United Nations High Commissioner for Refugees (UNHCR) as the core organization in this regime, this thesis aims to underline the nature of the refugee problem in the post-Cold War era and its implications on international politics.

ÖZET

Son yıllarda, dünya ciddi insan hakları ihlalleri ve şiddet boyutuna ulaşan anlaşmazlıklara salınmış ve bunun sonucunda da kitlesel mülteci akınlarıyla karşılaşmıştır. Mülteci sayıları kriz noktalarına ulaştıkça, uluslararası topluluk bu konuya başka bir yaklaşımla bakmaya başlamıştır. Günümüzde, mülteciler sadece insani bir kaygı olarak değil, aynı zamanda hukuki ve siyasi etkileri olan uluslararası bir sorun olarak görülmektedir. Bu tezin amacı, şu anda varolan uluslararası mülteci sorununu düzenleyen sistemin tarihsel sürecini incelemenin ve bu sistemin temel örgütü olan Birleşmiş Milletler Mülteciler Yüksek Komiserliği'nin (BMMYK) karşılaştığı sorunları ortaya koymanın yanı sıra, Soğuk Savaş sonrası mülteci sorununun niteliğini ve uluslararası siyasetteki etkilerini vurgulamaktır.

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I would also like to express my gratitude to my parents who were my first instructors, and whose support and encouragement in every stage of my life were invaluable. Thanks also go to my sister who had to put up with my stress during the whole time I was working on this thesis.

And finally, I give my deepest thanks to my soul-mate, Gürhan, with whose affection, support and love, and whose shoulder to cry upon at times I felt depressed, I was able to complete this work...

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INTRODUCTION

It has not been infrequent that we came across headlines in the newspapers such as ‘Fresh wave of displaced people arrives in Afghan capital’, ‘Rwandan refugees dying in Kisangani’, ‘Thousands displaced by violence in Colombia’, ‘Violence drives Bosnians out’, ‘Millions of Iraqi Kurds streamed towards the Turkish and the Iranian borders’, and recently we have read about the flight of Kosovars due to the conflict and instability in their region. As these headlines suggest, the problem of forced displacement now affects many parts of the world and has attained increased attention both publicly and politically.¹

As a scholar on refugee issues remarks, ‘Refugees are living reminders of the conflict and injustice present in the world today’.² In the same line, United Nations High Commissioner for Refugees (UNHCR) states,

Refugee movements and other forms of forced displacement provide a useful barometer of human security and insecurity. As a rule, people do not abandon their homes and flee from their own country or community unless they are confronted with serious threats to their life or liberty. Flight is the ultimate survival strategy, the one employed when all other coping mechanisms have been exhausted.³

Refugeehood is not a new phenomenon. Throughout centuries, people have been obliged to flee from their countries as a result of persecution, armed conflict and violence. Also, in every part of the world, governments, armies and rebel movements have implemented the policy of moving people out by force in order to reach their political and military objectives.⁴ It was in fact the religious pressures in Europe that

¹ UNHCR, The State of the World's Refugees: A Humanitarian Agenda, New York: Oxford University Press, 1997, p.1.

² Claudena M. Skran, Refugees in Inter-War Europe: The Emergence of a Regime, Oxford: Clarendon Press, 1995, p.1.

³ UNHCR, The State, op. cit., p.11.

⁴ *ibid.*, p.1

had caused the movement of nearly 50 million migrants out of the continent who later founded America.⁵ At the beginning of the twentieth century, the dissolution of the ancient empires after the First World War and the revolution in Russia had uprooted millions of people. Likewise, one of the most important consequences of the Second World War had been the movement of millions of people across borders. Later on, the formation of newly independent and ethnically heterogeneous states out of colonial empires have also left the stage for new refugee flows. These independence movements in the Third World and the violent ethnic conflicts experienced during the process of the determination of new boundaries, and the emerging authoritarian regimes produced millions of refugees especially in Africa and Asia.⁶

While it may be an old problem, the issue of forced displacement has taken some particularly important and some new dimensions in recent years with the start of a new era in international relations after the end of the Cold War. First of all, the numbers have been rising considerably. In 1951, when the UNHCR was established, there were about 1.5 million refugees by the strict international definition; by 1980, there were 8.2 million.⁷ In the aftermath of the Cold War, the re-birth of the ancient communal and regional conflicts which had been suppressed before has multiplied the number of refugees fleeing persecution based on ethnic, political or class affiliation.⁸ Today, UNHCR is responsible for about 22 million people around the world. There is additionally the existence of a very large number of uprooted people who remain within the borders of their own country and who do not receive any form of

⁵ İhsan D. Dağı, "İnsan Hakları, Sığınmacılar Sorunu ve Uluslararası Güvenlik," *Yeni Türkiye*, C. 4, S. 22, July-August 1998, s.1252.

⁶ *ibid.*

⁷ Alan Dowty and Gil Loescher, "Refugee Flows as Grounds for International Action," *International Security*, Vol.21, No.1, Summer 1996, p.46.

⁸ *Journal of International Affairs*, Vol.47, No.2, Winter 1994, p. i.

international protection or assistance. In total, some 50 million people around the world can be described as victims of forced displacement.⁹

The post-Cold War era started with large and dramatic refugee movements involving nearly 2-3 million Iraqi Kurds and Shiites building up at the borders of Iran and Turkey following Saddam Hussein's genocidal attacks; about 2.5 million ex-Yugoslavs expelled from their homes as a result of "ethnic cleansing"; millions of starving Somalis forcibly displaced as a result of violent communal warfare and food insufficiency,¹⁰ and about 2 million Rwandan refugees escaping from ethnic violence.

In fact, refugee movements have constituted and continue to constitute one of the most important and difficult problems facing the international community. It has become evident that in today's world, fundamental political and economic changes in the international system result in large-scale movements of people. It has also become evident that mass migrations themselves affect political, economic and strategic developments worldwide. Indeed, a scholar argues that it was the movement of refugees from East to West Germany in late 1989 that had led to the collapse of the Berlin Wall, and assisted the unification of the two Germanies, and brought about the most significant transformation in international relations since the Second World War.¹¹

In this new era, the international community has started to recognize the implications of these changes, the most important of which is that the refugee crisis in today's world is no longer a national or a regional problem, but a global one which necessitates increased international cooperation.¹² In fact, the refugee problem clearly

⁹ UNHCR, *The State*, op. cit., p.2

¹⁰ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, New York: Oxford University Press, 1993, p.3.

¹¹ *ibid*, p.11.

¹² *Journal of International Affairs*, op. cit., pp.i-ii.

sets forth an example of the interdependence of the international community. That is, it fully displays how the problems of one country can have immediate consequences for other countries.¹³

Until recently, it was not the practice of policy makers to classify refugee flows as a significant factor affecting local, regional and international stability. The common understanding was that these issues were humanitarian and therefore, they demanded a humanitarian response.¹⁴ Indeed, after the Second World War, and as recently as the late 1980s, scholars and policy makers had concentrated on a rather short list of issues often described as matters of ‘high politics’. Among these issues were ‘the search for military security, the prevention of nuclear proliferation, and the establishment of a dynamic international trading system’. It was asserted that if these and other similar strategic issues of high politics could be resolved, global stability would be achieved since threats to state security would have been diminished.¹⁵ Being a matter of ‘low politics’, migration issues were seen as part of the work of social affairs ministries, nongovernmental organizations dealing with human rights issues, church groups, international humanitarian organizations, and the like.¹⁶ However, new and unprecedented developments in the world gave signals that previous matters of ‘low politics’ would pose potential or actual threats to state security and global stability. Among these issues which were previously considered to be low politics, the problem of international migration was on top of the list.¹⁷ With its new connotations, it started to appear on the agendas of presidents, prime ministers, finance ministers,

¹³ “Human Rights and Refugees,” *Human Rights Fact Sheet*, No.20, June 1993, p.2.

¹⁴ Loescher, *Beyond*, op. cit., p.12.

¹⁵ Gerald E. Dirks, “International Migration in the 1990s: Causes and Consequences,” *International Journal*, Vol.48, No.2, Spring 1993, p.191.

¹⁶ Sharon Stanton Russell, “International Migration: Global Trends and National Responses,” *The Fletcher Forum of World Affairs*, Vol.20, No.2, Summer-Fall 1996, p.1.

¹⁷ Dirks, “International”, op. cit., pp.191-192.

parliamentarians and other participants in high politics issues.¹⁸ Evidently, the movement of refugees as a form of international migration was one that raised the highest concern with its humanitarian dimension.

However, refugees are not only a humanitarian concern. Millions of people escaping from their countries and seeking refuge across borders is indeed a heavy burden for the international community. As it will be examined throughout this study, refugee movements have important political and security repercussions. To count a few, it would be apt to say that the arrival of large groups of refugees may disrupt an established pattern in a host country, such as a fragile ethnic balance or a stable economy. The financial costs of refugee relief, maintenance and resettlement can be very high, and this economic burden may lead to xenophobic feelings and attitudes towards refugees by the native population. The presence of refugees in a host country can also complicate its relations with the refugee-producing country.¹⁹ Loescher remarks that “Today, peace is no longer threatened primarily by aggressors marching across the borders of sovereign states.”²⁰ In the post-Cold War world, factors leading to instability are more complex, and they definitely include refugee and mass migration movements. Although it is true that refugee protection and assistance around the world still depend on the generosity of states, the refugee problem itself is political, which therefore calls for political solutions at the international level.²¹

In light of the above-mentioned points stressing the significance of the refugee problem in today’s world, the purpose of this study is to present an examination of the historical context and the implications of the refugee problem that faces us today. The study examines the scope and nature of the global refugee problem in the

¹⁸ Russell, “International”, op. cit., p.1.

¹⁹ Skran, Refugees, op. cit., p.2.

²⁰ Loescher, Beyond, op. cit., p.12.

²¹ *ibid.*, p.12.

twentieth century, and the national and the international responses to it. Another issue addressed by the study is whether the contemporary refugee regime is capable of dealing effectively with the new global refugee crisis, based on the argument that in the post-Cold war era, it is no longer sufficient to respond to the refugee crisis solely as a humanitarian problem which requires humanitarian solutions, but that there exists a strong need for a more comprehensive political response to the pressures of refugee flows.²²

The first chapter of the study will present a historical overview of the refugee problem starting from -after a short discussion on refugees in the previous centuries and in the early twentieth century- the emergence of a refugee regime during the inter-war period and pointing out to the legacy of that regime on the formation of the contemporary international refugee regime established under the 1951 Geneva Convention. The evolution of the regime in the following decades until the late 1980s, namely the Cold War period, is also covered within this chapter with special emphasis on what kind of refugee movements characterized each decade. As the historical evolution of the regime is examined, the definition of the term “refugee” and the expansion of its meaning are also referred to.

In the following chapter, the emphasis will be on the post-Cold War era which is characterized by changing dimensions of the refugee problem. Important aspects of the refugee problem, such as concern of the international community with the root causes of the refugee flows and shifting attention from the country of asylum to the country of origin in order to prevent further flows, the threat that the refugee movements pose for local, regional and international stability and security, and the

²² *ibid.*, p.10.

policy responses of the receiving states are addressed in this chapter as well as the causes that have generated refugee flows.

Having explained the dimensions of the refugee problem in the post-Cold War world and the causes that underlie it, a third chapter will follow which will focus on issues of concern and challenges to UNHCR in this new era. A discussion on the newly emerging concept of humanitarian intervention in the face of massive refugee flows, the problem of internally displaced people, challenges such as the inadequacy of UNHCR's resource base and mandate will be dwelt upon in this chapter. Finally, in the concluding section, the need for international cooperation and the responsibility of states in dealing with refugee matters will be emphasized in order to be able to successfully cope with this problem which has transcended the humanitarian arena and which now has a significant place on the political agenda.

CHAPTER I

HISTORICAL OVERVIEW OF THE REFUGEE PROBLEM

1.1. REFUGEES IN THE PREVIOUS CENTURIES

As it has been stated before, refugees have been present in all eras; they are not a new phenomenon. The concept of asylum has existed for at least 3500 years and is found, in one form or another, in the texts and traditions of many ancient societies. In the middle of the second millennium B.C., as clearly defined borders began to develop throughout the Near East between state-like entities, several treaties were concluded between rulers which contained provisions for the protection of international fugitives. The examples of this tradition are quite numerous in the ancient era. This practice has also been evident in the tradition of Christianity, Judaism and Islam.¹

In the sixteenth and seventeenth centuries, refugees from religious persecution had proliferated throughout Europe. Protestants, Catholics and Jews were expelled by some regimes and admitted by others according to their beliefs, ideologies, and economic necessity. By the late seventeenth century, a higher degree of religious homogeneity was accomplished in most parts of Europe, and the era of religious persecution was replaced by an era of political upheaval and revolution during which individuals were persecuted for their political opinions and their opposition to new revolutionary regimes. The nineteenth century produced relatively small refugee flows, mostly from revolutionary and nationalist movements in Poland, Germany, France and Russia. During this period, Europeans who feared persecution could

¹ UNHCR, The State of the World's Refugees: The Challenge of Protection, Harmondsworth-Middlesex: 1993, p.33.

move to one of the many immigrant countries in the New World.² In the acceptance of most refugees to the territories of other states before the twentieth century, an important factor played a role: refugees were regarded as assets rather than liabilities; countries granted refuge to people of similar political, religious or ideological views of their own; and control over large populations was viewed as an indicator of power and national greatness for rulers.³

Under the conditions of the period before this century, there was no international protection for refugees as we know it today; in a way, they were expected to take care of themselves without any international assistance. Asylum was a gift of the rulers, the church and municipalities; and individuals and groups who had escaped from their own countries could present no claims of asylum or protection based on the violation of their human or political rights.⁴ It would be right to state that the protection of refugees was not viewed as a legal matter, but most of the time as a social and moral responsibility.⁵

1.2. REFUGEES IN THE EARLY TWENTIETH CENTURY

Compared with the characteristics of forced displacement in earlier periods, the twentieth century refugee movements have significant differences. Most importantly, it was in this century that they started to attract the attention of political leaders and became international issues. One factor that caused this change was the fact that refugees started to number millions, not thousands as it had been previously.⁶

² Gil Loescher, Beyond Charity: International Cooperation and the Global Refugee Crisis, New York-Oxford: Oxford University Press, 1993, pp.33-34.

³ Michael Marrus, The Unwanted: European Refugees in the Twentieth Century, New York: Oxford University Press, 1985; cited in Loescher, Beyond, op. cit., p.32.

⁴ Loescher, Beyond, op. cit., p. 33.

⁵ Tevfik Odman, Mülteci Hukuku, Ankara: A.Ü. Siyasal Bilgiler Fakültesi, İnsan Hakları Merkezi Yayınları, No.15, 1995, p.19.

⁶ Claudena M. Skran, Refugees in Inter-War Europe - The Emergence of a Regime, Oxford: Clarendon Press, 1995, p.13.

The rise in numbers was the result of a radical change in both the causes and dimensions of the refugee problem since the beginning of this century. The new nature of international warfare which was unprecedentedly violent, the dissolution of the old empires, namely Austria-Hungarian, Ottoman, German and Russian empires, after the First World War, and the following formation of nation-states were accompanied by upheavals, persecution of minority and stateless groups, and elimination of the former ruling classes and political opposition groups. During this process, millions of uprooted people were excluded from citizenship in the new nation-states on the grounds that their language, ethnicity and religious affiliation were different.⁷ Consequently, these people were left without any official documents, that is, without any identification or protection.⁸ This change in political and social circumstances after the First World War was the immediate cause of most refugee movements during the first several decades of this century.⁹ Inherently, these causes made it very unlikely that the refugees would be able to return to their home countries easily. For instance, for the Jews, Armenians and other refugees from minority groups, the desire of the European countries to form ethnically homogeneous nation-states meant that they would never again be welcomed as citizens in the lands where they had been born.¹⁰ In addition to the chaos in Europe and Asia Minor, huge refugee movements were generated due to the collapse of czarist Russia. The Russian refugees mostly included people whom the Communist Party perceived as being obstacles in the way of establishing their revolutionary regime in the new Soviet Union.¹¹

⁷ Loescher, *Beyond*, op. cit., p.34.

⁸ Gil Loescher, "The International Refugee Regime: Stretched to the Limit?", *Journal of International Affairs*, Vol.47, No.2, Winter 1994, p.353.

⁹ Loescher, *Beyond*, op. cit., p.34.

¹⁰ Skran, *Refugees*, op. cit., p.60.

¹¹ Loescher, *Beyond*, op. cit., p.35.

It is a fact that war has always generated some refugees. However, the uniqueness of the twentieth century was that international conflict started to affect entire populations. With the advent of wider technological, economic and social changes, the scale and the destructiveness of military conflict increased enormously. Besides the armed forces of the opposite side, civilians also became military targets. In other words, discarding the distinction between combatants and non-combatants produced vast numbers of refugees, escaping from indiscriminate violence against which they had no protection.¹² Given the circumstances, the fact that there was no international organization except for the International Committee of the Red Cross to assist and support these millions of uprooted people increased the severity of the problem on the humanitarian side.¹³

Besides the humanitarian aspect of the problem, the refugees of inter-war Europe formed an important part of the political, economic and social history of the period. It can be said that they came from or went to nearly every country in Europe and many others world-wide. Moreover, the period experienced frequent emergence of new refugee groups. Their presence also significantly affected both refugee-producing and host countries. Consequently, the refugee problem became a permanent characteristic of the domestic and international politics of the inter-war period.¹⁴

In fact, the emergence of refugees as an international issue during the first decades of the twentieth century was related to the growth of interdependence which was a wider process affecting the world as a whole. Stemming from the view that countries are no longer isolated in an interdependent world and that what happens in

¹² *ibid.*, p.34.

¹³ Odman, *Mülteci*, op. cit., p.15.

¹⁴ Skran, *Refugees*, op. cit., pp.60-61.

one country has its effects on others, and vice versa¹⁵, it followed that refugee flows from one country potentially threatened the economic and social stability, and even the national security of a host country.¹⁶

Consequently, fearing huge flows of refugees across their borders, European governments started to establish protective barriers and to close their borders. Most responded to the plight of refugees simply by expelling them. Besides the fact that this response caused misery for the refugees, it also led to tension between European states due to the fact that governments were in fact violating the territorial sovereignty of neighboring states by pushing refugees across their frontiers to the other side. In addition, refugee movements significantly affected domestic politics and local economies of the host countries, and negatively affected bilateral relations between sending and receiving states.¹⁷ Another problem was that the New World was no longer willing to accept the forced migrants of Europe and was in the process of imposing immigration restrictions. Consequently, the fact that the refugees had to be re-established in Europe added to the severity of the problem.¹⁸ Furthermore, by 1921, the resources of voluntary agencies that assisted refugees were exhausted. Under these circumstances, the principal humanitarian organizations of the period, headed by the International Committee of the Red Cross, pressured the League of Nations to create an international mechanism to deal with at least some of the refugees.¹⁹ Within this context, the international refugee regime came into existence to promote the protection and resettlement of refugees in Europe.

¹⁵ Robert O. Keohane and Joseph S. Nye, Power and Interdependence, Boston: Little, Brown, 1977; cited in Skran, Refugees, op. cit., p.65.

¹⁶ Skran, Refugees, op. cit., p.65.

¹⁷ Loescher, Beyond, op. cit., p.36.

¹⁸ Skran, Refugees, op. cit., p.29.

¹⁹ Loescher, Beyond, op. cit., p.36.

1.3. THE ESTABLISHMENT OF THE INTER-WAR REFUGEE REGIME

In international relations theory, the term “international regime” refers to the governing arrangements created by a group of countries to deal with a particular issue in world politics. “These arrangements reflect shared principles and norms, and have established rules and decision-making procedures”.²⁰ Because the emerging cooperation among the Western states on the issue of refugees reflected common principles and norms, and led to the creation of rules which occupied a place in international law, it is commonly found to be appropriate to speak of this cooperation as an international refugee regime.²¹

As a first step in the creation of this regime, Western governments established the first multilateral institution for refugees in 1921, which was called the “High Commissioner for Refugees”, with the aim to regularize the status and control of stateless people in Europe. “Since then, international laws specifying refugees as a unique category of human rights victims to whom special protection and benefits should be accorded have been signed and ratified by over a hundred states and enforced for several decades.”²² Evidently, states had a significant, self-serving interest in resolving the refugee crisis of the period as soon as possible. By then, it was obvious that refugee movements were prone to create domestic instability, generate inter-state tension and threaten international security. Thus, “states created the international refugee regime not by purely altruistic motives, but by a desire to promote regional and international stability and to support functions which would serve the interests of governments”.²³

²⁰ Skran, *Refugees*, op. cit., p.65.

²¹ *ibid.*, p.66.

²² Loescher, “The International”, op. cit., p.351.

²³ *ibid.*

The first High Commissioner appointed in 1921 was Fridtjof Nansen of Norway. In the beginning, he had specific responsibilities for Russian refugees only. His responsibilities were then extended to cover Greek, Turkish, Bulgarian and Armenian refugees.²⁴ The League established strict guidelines within which refugee work had to take place. Financially, the League provided only for administrative costs, and aid to refugees and host governments depended on direct financial assistance from individual states or voluntary agencies. There was no understanding that refugee aid should be institutionalized or that it should be administered through one permanent international agency.²⁵

Initially, Nansen was concerned with the practical problems of Russian refugees, and in particular with the problems of refugee travel. Nansen dealt with the problem by persuading fifty-one governments to recognize travel documents termed “Nansen passports” for stateless Russians in 1922. With these documents, not only Russian refugees but also others could legally move from areas where they had originally found refuge, but where their stays were temporary and often illegal, to more welcoming areas in Europe and elsewhere.²⁶ In fact, the Nansen Passport enabled thousands of refugees to return to their homes or to settle in other countries, and it represented the first chain in a series of international legal measures designed to protect stateless people and refugees.²⁷

In the same year, with the generation of new refugees due to a war between Greece and Turkey, Nansen proposed a population exchange.²⁸ As a result, half a

²⁴ *ibid.*, p.354.

²⁵ Loescher, *Beyond*, *op. cit.*, p.37.

²⁶ *ibid.*

²⁷ UNHCR, *The State*, *op. cit.*, p.4.

²⁸ The efforts of Nansen in regard of the population exchange between Greece and Turkey had led to the conclusion of 30 January 1923 Convention. For the details of this Convention, please refer to Yüksel İnan “Aren’t There Any Turks in Western Thrace?”, *Foreign Policy*, Vol.XIV, No.1-2, pp.77-88; and Baskın Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, Ankara: Bilgi Yayınevi, 1991.

million Turks moved from Greece to Turkey and several hundred thousand Greeks moved from Turkey to Greece. The League of Nations provided compensation to help both groups to reintegrate.

During the following years, the number of activities that Nansen undertook on behalf of refugees increased and the functions of the High Commissioner expanded. The international refugee regime grew to cover issues such as refugee settlement, employment opportunities for refugees, and the linkage between refugee assistance and economic development.²⁹ In addition to developing a more comprehensive set of provisions covering employment and social services for refugees, governments reached agreements to create a more stable and secure legal status for refugees.³⁰ Yet, it should be noted that the international refugee regime did not develop according to a comprehensive plan. Instead, it turned out to be a series of ad hoc responses by governments to successive refugee crises, which had begun with the exodus of more than one million Russian refugees after the Bolshevik revolution.³¹

a. Restrictions Upon the Inter-War Refugee Regime

As it has been stated before, a significant characteristic of the inter-war period was that the emerging international refugee regime operated within a highly politicized context in which governments supported refugee assistance programs for security and foreign policy reasons as much as out of humanitarian concern. Although the High Commissioner for Refugees was formally independent, Nansen always depended on governments for donations. With his lack of any official funding

²⁹ Claudena M. Skran, The International Refugee Regime and the Refugee Problem in the Inter-War Period, Oxford University Press, (no date); cited in Loescher, Beyond, op. cit., p.38.

³⁰ Loescher, Beyond, op. cit., p.38.

³¹ Skran, Refugees, op. cit., p.84.

body to undertake his relief programs, Nansen's ability to intervene actively in situations which raised the concern of his office was largely determined by his ability to find funds and to convince governments that they should increase refugee aid, be softer on immigration barriers and provide further legal protection for refugees within their borders. The significance of this issue is comprehended much more when it is remembered that it was a period when assistance and protection of refugees was intensely political and thus was influenced by the foreign policy interests of governments.³²

The refugee assistance programs of the 1920s especially depended on the financing of the two great powers, Britain and France, and on the support of smaller European countries. Decisions as to which refugees qualified for aid were political made by the Council and the Assembly of the League of Nations. Governments were more likely to offer aid to refugees fleeing from enemy states than from their friends. For instance, the League members would prefer to avoid facing refugees fleeing from important states and from criticizing their human rights records so as not to arise their hostility. As a consequence, some major refugee groups -such as refugees from fascist Italy and Spain- were excluded from League assistance. Such political considerations evidently underlined the limitations of humanitarian work.³³

b. 1930s: The Emergence of New Refugee Groups

In the 1930s, Europe was flooded with new groups of refugees, this time escaping from fascism in Germany, Italy, Portugal and Spain. Perceiving ethnic and minority groups as threats to their rule, these fascist regimes embarked upon policies to force out those whom they considered to be unassimilable. Their main targets were

³² Loescher, *Beyond*, p.39.

³³ *ibid.*, pp.39-40.

not only political opponents, but also members of “racially inferior” population groups -mainly Jews, Slavs and Gypsies.³⁴

Fridtjof Nansen died in 1930. During the next ten years, the international refugee regime which owed a great deal to his personal initiatives, proved to be totally incapable of dealing with the problem of Jewish refugees. In 1930, duties involving protection of refugees were placed under the aegis of the League Secretariat, while responsibility for administering the remaining assistance programs was transferred to an agency that became to be known as the International Nansen Office.³⁵

In 1933, the Convention on the International Status of Refugees was drafted. A number of rights to which refugees were entitled were specified, including education, employment in the receiving country and travel documents.³⁶ However, the Convention was ratified by only eight states and of those eight, half undermined their commitment to the convention by putting various reservations and issuing declarations.³⁷ Nevertheless, the Convention was important because it set the first universal standard on the treatment of refugees, a standard with which refugees were better treated in the host countries than they had been before.³⁸ A similar convention was adopted in 1938 for the refugees coming from Germany which was extended in 1939 to cover those fleeing from Austria. Although it was true that “these conventions were purposely limited to benefit narrowly defined national groups and provided only minimal protection for the members of these groups, they were a step toward the formulation of more permanent international laws and institutions.”³⁹

³⁴ *ibid.*, p.40.

³⁵ *ibid.*, p.42.

³⁶ *ibid.*, p.38.

³⁷ Tom J. Farer, “How the International System Copes with Involuntary Migration: Norms, Institutions and State Practice”, *Human Rights Quarterly*, Vol.17, No.1, February 1995, p.77.

³⁸ Skran, *Refugees*, *op. cit.*, p.129.

³⁹ Loescher, *Beyond*, *op. cit.*, p.38.

However, it should also be noted that the measures adopted in the conventions were only partly successful. For instance, providing identity documents allowed refugees to cross international borders legally, but it did not guarantee that a foreign government would actually grant them entry visas. That is, the right to grant or deny admission to refugees remained under the jurisdiction of sovereign states.⁴⁰ Furthermore, these agreements did not commit states to give financial assistance to the refugees. Nor did states commit themselves to provide documented refugees with residence and work permits. “Each government remained at liberty to determine the targets and the extent of its philanthropy.”⁴¹ In addition to these shortcomings, it was also a fact that many refugees were not covered under these international arrangements and continued to lack any travel and identity system.⁴²

Again in 1933, in response to the first outflow of Jewish refugees following Hitler’s accession to power in Germany, the League established another refugee organization called the “High Commissioner for Refugees from Germany.” To avoid the hostility of Germany at a time when it was still a member of the League, this organization was set up outside the formal structure of the League of Nations; and it did not even receive funding for its administrative expenses from the League.⁴³

c. The Incapability of the Regime in Dealing with the New Refugee Groups

The incapability of the international refugee regime was not totally the result of the weakness of the League, but there was also a far more important factor. During this decade, the ruling atmosphere was characterized by the absence of any

⁴⁰ *ibid.*, pp.38-39.

⁴¹ Farer, “How”, *op. cit.*, pp.76-77.

⁴² Loescher, *Beyond*, *op. cit.*, p.39.

⁴³ Loescher, *Beyond*, *op. cit.*, pp.42-43.

consistent or coherent international commitment to resolving refugee problems. Instead, there was a common perception in almost every industrialized state, particularly during the years of the Great Depression, that

national interests were best served by imposing and maintaining rigid limits on immigration; that humanitarian initiatives on behalf of refugees had to be limited by tight fiscal constraints and the need to employ the nation's own citizens; and that no particular foreign policy benefits would accrue from putting political and moral pressure on refugee-generating countries or from accepting their unwanted dissidents and minority groups.⁴⁴

These views prevailed in the United States, Canada and Australia, although each of these countries had accepted a substantial majority of the world's emigrants, and had been areas of safety for the forced migrants of Europe until the First World War.⁴⁵

Frustrated with the international reluctance to accept Jews or to confront the German government on the refugee issue, the High Commissioner for German Refugees, James G. McDonald, resigned from his post in 1936 with a letter in which he underlined the political roots of the refugee problem and the limitations of the international response. He believed that simply assisting those who had fled from Germany was not a sufficient response. Initiatives had to be taken to face the causes that created the refugees and to negotiate with the country that was responsible for the flow. He pointed to the League of Nations who would be the body to deal with the political aspect of this problem which could not be addressed within the framework of the humanitarian work of the High Commissioner.⁴⁶ However, the High Commissioner's effort in trying to draw attention to the human rights abuses of Germany as the immediate cause of the Jewish refugee problem did not lead to any

⁴⁴ *ibid.*, p.41.

⁴⁵ Loescher, "The International", *op. cit.*, p.355.

⁴⁶ Loescher, *Beyond*, *op.cit.* p.43.

international action against the Nazis. In fact, Western governments viewed the refugee problem as an internal matter of the German government, particularly since Germany was still a member of the League. Even after Germany withdrew from the League in 1938, France and Britain attempted to appease it and, therefore, were not willing to criticize its persecution of the Jews.⁴⁷

After Germany quit the League, the two offices for refugees, the International Nansen Office, and the High Commissioner for Refugees from Germany, were merged under the title “High Commissioner for Refugees”, which functioned until after the end of the Second World War in 1946. The powers of the new High Commissioner were even more limited than they had been in the past. As political conditions deteriorated in the late 1930s and as an increasingly restrictive political environment emerged, the influence of the High Commissioner on governments was further undermined.⁴⁸

d. The Evian Conference

The only significant international effort to address the problem of Jewish refugees was the international conference held at Evian, France, in 1938 convened by the call of Franklin Roosevelt, as a result of the pressure from Jewish groups and private voluntary agencies. However, the conference did not offer any solution, and it served to display the reluctance of the United States and the rest of the world to come up with any resettlement alternatives for Jewish refugees.⁴⁹

The only concrete outcome of the Evian Conference was the creation of a new refugee mechanism outside the League of Nations structure, which was called

⁴⁷ *ibid.*, pp.43-44.

⁴⁸ *ibid.*, p.44.

⁴⁹ *ibid.*, pp.44-45.

the Intergovernmental Committee on Refugees (IGCR) with the purpose to negotiate with Germany about Jewish migration. For the next eight years (until 1946), the IGCR existed alongside the League of Nations' Office of the High Commissioner for Refugees. However, the negotiations between Germany and IGCR were fruitless and Germany regarded Evian and the Western nations' policy of closing their doors against refugees as shifting the blame away from itself, and it began to implement even harsher measures to get rid of the Jewish population on its territory. In 1943, the United States and Great Britain convened another conference in Bermuda to voice their concerns for European Jews, but no effective steps were taken to change the policy of the Western states towards refugees which was based on "rigid barriers to immigration."⁵⁰

e. The Impact of the Inter-War Refugee Regime

In light of the above-mentioned points relating to the characteristics of the inter-war refugee regime, it would not be incorrect to state that it failed to constitute an effective regime. Throughout this period, governments, fearing pressure from a supragovernmental authority to recognize political dissidents of other countries, avoided adopting a universal definition of the term "refugee". Instead, they defined only specific national groups as refugees, providing them with only minimal protection and keeping the mandate of the High Commissioner deliberately narrow. As the League's political effectiveness and credibility declined - "particularly after the withdrawal of Germany, Japan and Italy from its membership and after its failure to resolve the Manchurian and Ethiopian conflicts during the 1930s"- its competence to deal with refugee problems also decreased.⁵¹ Ultimately, the inter-war refugee regime

⁵⁰ *ibid.*, p.45.

⁵¹ Loescher, "The International", *op. cit.*, p.354.

proved to be totally ineffective in responding to the Holocaust prior to the Second World War.⁵² It would be a mistake, however, to make an assessment of the international refugee regime solely on the experience of one refugee group in the last year before the outbreak of the Second World War. There is also the other side of the coin. Taken as a whole, the inter-war period is “remarkable for the very large numbers of refugees not in fact sent back to their countries of origin, whether they fled Russia after the revolution, Spain, Germany or the Ottoman Empire.”⁵³ During this period, over 1 million Russians, 350,000 Armenians, 2 million Greeks and Bulgars, and 400,000 Turks could find refuge as a result of the efforts of the refugee regime. In addition, France alone granted refuge for about 10,000 Italians and 400,000 Spanish Republicans. Even in the case of refugees from Germany, about 400,000 Jews escaped and were able to find refuge elsewhere.⁵⁴

Moreover, the institutions created to respond to the refugee problems during the inter-war period did leave one lasting and important legacy. Twenty years of organizational growth and inter-state cooperation firmly established the idea that refugees were a group of people who were victims of human rights abuses and for whom the international community had a special responsibility.⁵⁵ Legal norms on the protection of refugees were developed and it was established that refugees were a special category of migrants within domestic and international law who deserved preferential treatment.⁵⁶ Such norms, whose foundations could be traced to the Nansen passport system, and to the 1933 and 1938 Refugee Conventions⁵⁷, governed issues like refugee identity and travel, economic and social well-being, physical

⁵² *ibid.*, p.355.

⁵³ Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford: Clarendon Press, 1983, p.71; quoted in Skran, *Refugees*, *op. cit.*, p.223.

⁵⁴ Skran, *Refugees*, *op. cit.*, p.223.

⁵⁵ Loescher, *Beyond*, *op. cit.*, p.46.

⁵⁶ *ibid.*, p.37.

⁵⁷ Skran, *Refugees*, *op. cit.*, p.261.

protection and protection from expulsion. In addition, the understanding that international organizations could defend refugees and could intervene on their behalf was established, which was in fact a unique tradition in the field of human rights.⁵⁸ Finally, the establishment and evolution of the international refugee agencies of the period provided the foundations on which successor institutions would build.⁵⁹

1.4. REFUGEES IN THE POST-SECOND WORLD WAR

a. The First Initiatives to Deal with Post-War Refugee Problem

The Second World War displaced millions of people. At first, international efforts to resolve the post-war refugee problem followed the pattern that was established during the inter-war period. Temporary measures were taken to resolve the emergency situations. To this end, an intergovernmental body, the United Nations Relief and Rehabilitation Agency (UNRRA) was set up in 1943, whose principal function was to promote and oversee the repatriation of millions of displaced people.⁶⁰ Working directly under the command of Allied forces, UNRRA was given a very limited mandate. It was to extend aid to civilian populations in the Allied nations and to displaced persons in countries liberated by the Allied armies. UNRRA had no power to resettle refugees to third countries; its aim was simply to repatriate, as soon as possible, all the people who had been displaced by the war.⁶¹

The contemporary international approach to the refugee problem emerged fully only after UNRRA was abolished in 1945. Despite opposition from the Soviet Union, Western governments undertook new initiatives to resettle Eastern European refugees. In 1947, the Western powers established the International Refugee

⁵⁸ *ibid.*, pp.144-145.

⁵⁹ Loescher, *Beyond*, *op. cit.*, p.46.

⁶⁰ Loescher, "The International", *op. cit.*, p.355.

⁶¹ Loescher, *Beyond*, *op. cit.*, p.47.

Organization (IRO), which had as its chief function not *repatriation*, but *resettlement* of refugees created by the war and its aftermath. With the establishment of IRO, the international community adopted, for the first time, a universal definition of refugee based on “persecution or fear of persecution” on the grounds of race, religion, nationality or political opinion.⁶² Previously, international organizations had dealt only with specific groups of refugees, such as Russian or German refugees, and governments had never attempted to adopt a general definition of the term *refugee*. In other words, the international community, for the first time, made refugee eligibility depend on the individual rather than on the group, and accepted the individual's right to flee from political persecution and to choose where he wanted to live. The Soviet Union was against this new approach and it saw the IRO as a tool of the West and criticized the organization for preventing displaced persons from repatriating.⁶³

b. The Establishment of the United Nations High Commissioner for Refugees

When IRO completed its mandate in 1951, the establishment of a new international framework for assisting refugees was necessary. The United States and the other Western states in the General Assembly addressed the international problems of refugees by establishing an *ad hoc* body, which was supposedly independent within the administrative and financial framework of the United Nations. Thus, the Office of the United Nations High Commissioner for Refugees (UNHCR) was established on 1 January 1951 as a “non-political” and “humanitarian and social”

⁶² Loescher, “The International”, op. cit., p.356.

⁶³ Loescher, *Beyond*, op. cit., p.50.

agency devoted to protecting and assisting the world's refugees.⁶⁴ Simultaneously, the emphasis began to shift from relief to all war victims, to assistance and protection for a narrower category of people designated as refugees from persecution - a shift codified in the 1951 Convention Relating to the Status of Refugees which defined persons who would be considered as falling within the mandate of the United Nations High Commissioner for Refugees.⁶⁵

The tense state of East-West relations in the post-war period was also reflected on the refugee question, which became centered on the ideological opposition between capitalism and socialism. Both the United States and the Soviet Union resisted participation in this emerging UN refugee regime. To the Russians, the UNHCR was an instrument of the 'untrustworthy' Western states. Thus, the Soviet Union and Eastern Europe, who were in fact the source of most refugee movements during this period, did not participate in UN refugee programs, while the United States chose to implement an independent (and principally anticommunist) refugee policy through the agencies created outside the UN system.⁶⁶

Besides the doubtful positions of the United States and the Soviet Union towards the newly emerging refugee regime, even those states who had become parties to the Convention had some hesitations due to their concern over territorial sovereignty. As a result, UNHCR mandate and the Convention Relating to the Status of Refugees adopted by the General Assembly in July 1951 reflected a philosophy of "cautious liberality". On the one hand, there was the influence of a general philosophy of 'Western liberalism' which perceived refugees as a European problem within the Cold War. On the other hand, there were xenophobic pressures for the

⁶⁴ Alex Cunliffe, "The Refugee Crises: A Study of the United Nations High Commission for Refugees," *Political Studies*, Vol.43, No.2, June 1995, p.280.

⁶⁵ Farer, "How", *op. cit.*, p.78.

⁶⁶ Loescher, *Beyond*, *op. cit.*, p.55.

maintenance of 'nationhood'. Consequently, the 46 articles of the Convention establishing minimal rights for refugees, reflected a dichotomy between the recognition of the basic right to seek asylum, and of the fact that nation states had no obligation to grant asylum to refugees; that the ultimate decision on who may cross their borders lied with them.⁶⁷

American attitude towards UNHCR changed fundamentally during the first major Cold War refugee crisis when the 1956 Hungarian Revolution erupted and when 200,000 Hungarians sought refuge in Austria and Yugoslavia. This was the first major occasion where the agency was authorized to respond to large scale movements of people without referring to the limited guidelines of the 1951 Convention. UNHCR's management of the crisis demonstrated that it was the only international refugee agency capable of dealing with a humanitarian problem which at the same time involved high political issues between the East and the West. With the Hungarian operation, the funding capacities and operational services of UNHCR grew; the High Commissioner managed to win the confidence of both the United States and the communist states for his repatriation efforts and UNHCR became the centerpiece of the emerging post-war international refugee regime.⁶⁸

As the core of this international refugee regime, UNHCR has a unique and a special role: it provides international protection to refugees under the auspices of the UN and together with governments, it seeks permanent solutions to their problems in the form of voluntary repatriation, integration in the country of first asylum or third country resettlement. It is the agency to provide "substitute protection" of the international community for those who lack national protection as a result of their states' practice of persecution and who succeed in crossing an international border. In

⁶⁷ Cunliffe, "The Refugee", op. cit., p.281.

⁶⁸ Cunliffe, "The Refugee", op. cit., p.283; and Loescher, "The International", op. cit., p.358-359.

fact, no other international agency enjoys quite the same authority and quite the same responsibility, and no other agency would find itself in the frontline of “conflict, violence, persecution and deprivation”.⁶⁹

i. The 1951 Convention⁷⁰:

The current international refugee regime is primarily based on the 1951 Convention Relating to the Status of Refugees, the first international document “to set out the rights of refugees as well as the responsibilities of the world community to refugees” and on the 1967 Protocol Relating to the Status of Refugees.⁷¹

The Convention, in Article 1A(2), provides a general definition of the term “refugee”. The term applies to any person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it.⁷²

⁶⁹ Guy S. Goodwin-Gill, “Editorial,” *International Journal of Refugee Law*, Vol. 5, No.1, 1993, p.2.

⁷⁰ The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. It entered into force on 22 April 1954. For the text of the Convention, please refer to Jean-Pierre Colombey (ed.), Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons, Vol.I, Geneva: Division of International Protection of the Office of the United Nations High Commissioner for Refugees, 1995. A full text of the Convention is also provided in Appendix.

⁷¹ Emek M. Uçarer, “The Global Regime: Continuity and Change,” *Boğaziçi Journal*, Vol.10, Nos.1-2, 1996, p.11.

⁷² In section B of the same Article, the following provisions have been adopted:

“(1) For the purposes of this Convention, the words ‘events occurring before 1 January 1951’ in Article I, Section A, shall be understood to mean either

(a) ‘events occurring in Europe before 1 January 1951’; or

(b) ‘events occurring in Europe or elsewhere before 1 January 1951’, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.”

Although sponsored by a global organization, i.e. the United Nations, the refugee definition in the Convention had two additional criteria in the determination of the eligibility of individuals to receive refugee status: firstly, the Convention considered only “events occurring before 1 January 1951”, thereby introducing a temporal limitation (*ratio temporis*), and secondly, it took into account only “events occurring in Europe” before 1 January 1951, which accordingly introduced a geographical limitation (*ratio loci*).⁷³ These limits meant that the Convention applied largely to refugees from Soviet bloc countries, which was, in fact, an outcome clearly intended by the United States and its allies.⁷⁴

The most fundamental right protected under international refugee law is the right of a refugee not to be returned to a place where he or she may face persecution. Referred to as *nonrefoulement*, this principle stipulates that even before the receiving country grants formal recognition as a refugee, “No Contracting State shall expel or return (refouler) a refugee in a manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (Article 33). The Convention also protects arriving refugees from “penalties” on account of their illegal entry, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Moreover, the Convention

⁷³ Ucarer, “The Global”, op. cit., p.12.

⁷⁴ Farer, “How”, op. cit., p.78.

The limitations on the refugee definition had caused much criticism and within 16 years, the need to adopt a Protocol to complement the Convention emerged. The Protocol was adopted in 1967. In Article I/2 of the Protocol, it is stated that “For the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words ‘As a result of events occurring before 1 January 1951 and...’ and the words ‘...as a result of such events’, in Article 1A(2) were omitted.” Article I/3 of the Protocol stipulated that “The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1B(1)(a) of the Convention shall, unless extended under Article 1B(2) thereof, apply also under the present Protocol.” A discussion on the 1967 Protocol is found on p.39.

requires signatories to abide by obligations regarding various civil, economic and social rights of refugees. Most importantly, states must not prevent asylum seekers from gaining access to asylum procedures and from enjoying equal treatment and fundamental human rights confirmed in the UN Charter and in the 1948 Universal Declaration of Human Rights accorded to its citizens or non-citizens.⁷⁵

ii. A Critical Approach to the 1951 Convention:

There are certain criticisms that are directed to the Convention and the refugee definition that it provided. One of the most significant factors causing criticism of the Convention is the changing nature of the refugee phenomenon since the drafting of the Convention in 1951. Whereas the refugees of concern to the drafters of the Convention in 1951 were racial and religious minorities in Europe and dissidents from the Soviet bloc, the contemporary refugee problem is vastly different in scope and nature. Rather than originating solely in Europe, the majority of refugees today flee from the poor nations of the South, and have needs that differ substantially from those of the typical refugees of the Cold War era. For example, the European refugees for whom the Convention was drafted were considered to be primarily in need of legal protection, rather than material assistance. The Convention, therefore, provides rights in such areas as personal status and intellectual property, while failing to address the contemporary problems of physical security and the fulfilment of basic survival needs in the context of large-scale refugee influxes. In other words, “the Convention’s focus on individual rights does not translate easily into actual protection of large numbers of refugees, whose basic needs include food,

⁷⁵ Arthur C. Helton and Pamela Birchenough, “Forced Migration in Europe,” *The Fletcher Forum of World Affairs*, Vol.20, No.2, Summer/Fall 1996, p.90; and UNHCR, *The State*, op. cit., p.53.

shelter, clean water, sanitation, group rights and protection from cruel, inhuman and degrading treatment.”⁷⁶

Another major change since the Convention came into force is that whereas refugees of concern to its drafters were usually moving from a European country to another Western state, the vast majority of contemporary refugees originate in and are protected by the poor countries of the South. Assumptions during the drafting of the Convention about the prosperity of countries of asylum, and the kinds of rights typically enjoyed within them, are therefore no longer valid. That is, the regime foreseen in the Convention as a whole is too expensive for a poor country, with employment rights and welfare rights being the most costly. In fact, it is very difficult for a less developed state to provide for the economic needs of a large refugee population when the needs of its own citizens even cannot be met.⁷⁷

The refugee definition’s rather limited scope is also criticized. The definition only covers those individual refugees who can present a well-founded fear of persecution. In fact, this was a reflection of the ideology that dominated the thinking of the Western states who had prepared the Convention. The persecution-based standard could be interpreted to include most of the dissidents who emigrated from the Eastern bloc, and leading to the immigration of Eastern Europeans to Western states, this would meet the needs of the latter who were then experiencing shortage of manpower. Moreover, since finding that an asylum applicant faces the possibility of persecution would imply negative things on the part of the country of origin, each

⁷⁶ James C. Hathaway and J.A. Dent, *Refugee Rights: Report on a Comparative Survey*, North York: York Law Press, Inc., 1995, pp.38-39.

⁷⁷ *ibid.*

recognition of refugee status would simultaneously support efforts to present the political systems in the communist countries of origin as evil.⁷⁸

Furthermore, the Convention did not specify that the grant of asylum was a basic human right, but rather it implied that it was a sovereign area of discretion for governments.⁷⁹ Indeed, the procedures governing the determination of refugee status are not covered by the Convention, and they fall wholly within the purview of national sovereignty. While contracting states are expected to cooperate with UNHCR and provide it with information on measures taken to implement the Convention, the organization has no role in either the formulation or the implementation of the state protection systems. The lack of any concrete international examination of the procedural dimensions of refugee protection has resulted in a wide range of protection practices and interpretations of the Convention definition.⁸⁰

It is argued that the lack of uniformity in the application of the refugee definition leads to its being subject to national interests. Indeed, different definitions exist for different interest groups, and in practice, governments, lawyers, and others are often able to manipulate the interpretation within their complicated legal systems which provide such an opportunity.⁸¹

As has been emphasized, there are many perspectives on the issue of who exactly merits protection under international refugee law. Some argue that the 1951 Convention refugee definition is too rigid to encompass all those fleeing to the West in need of protection and, therefore, that various other categories, such as 'de facto' or 'humanitarian' refugees, are necessary. Others believe that the definition is

⁷⁸ James C. Hathaway, "Fear of Persecution and the Law of Human Rights," *Bulletin of Human Rights*, No:91/1, 1992, p.98.

⁷⁹ Cumliffe, "The Refugee", op. cit., p.282; and Hathaway & Dent, *Refugee*, op. cit., p.35.

⁸⁰ Hathaway and Dent, *Refugee*, op. cit., p.36.

⁸¹ E. Arboleda and I. Hoy, "The Convention Refugee Definition in the West: Disharmony of Interpretation and Application," *International Journal of Refugee Law*, Vol.5, No.1, 1993, p.77.

sufficiently flexible, and that it can be applied in such a way as to provide international protection to those who really need it. Whatever the approach is towards the refugee definition provided in the 1951 Convention, the important thing, it is argued, is that discussion of the asylum issue in the Western states often discards the basic starting point on the definitional problems. It is stated that unless the problems of definition and application are resolved, both the Convention refugee definition and international asylum law may become manipulated in the domestic arena, and they may lose their relevance.⁸²

The greatest controversy in the definition revolves around the meaning of the key criterion of the Convention refugee definition: 'persecution'. In fact, leaving the term 'persecution' undefined led to different rates of acceptance for people fleeing the same conflict. As Gallagher concluded in his consideration of the formative years of UNHCR, 'these restrictive definitional efforts were motivated, of course, to keep the numbers down'.⁸³ There was also the fact that the drafters of the Convention realized the impossibility of enumerating in advance all of the forms of persecution which might entitle persons to benefit from the protection of the international community.⁸⁴

Both UNHCR and academic and other commentators have pointed out that no universally accepted definition of persecution exists. Usually, any threat to life or freedom on account of one of the five Convention reasons is accepted as persecution, and generally serious violations of human rights on account of such reasons would also be sufficient. However, not everyone actually or potentially suffering human rights violations can be considered to have a 'well-founded fear of persecution'.⁸⁵

⁸² *ibid.*, pp.75-76.

⁸³ Cunliffe, "The Refugee", *op. cit.*, p.282.

⁸⁴ Hathaway, "Fear", *op. cit.*, p.99.

⁸⁵ Arboleda and Hoy, "The Convention", *op. cit.*, p.77.

The refugee recognition would be restricted to situations in which there was a risk that is inconsistent with the basic duty of protection owed by the state to its citizens. That is, the drafters were not concerned to respond to certain forms of harm, but were rather motivated to intervene only where the persecution was a consequence of a breakdown of national protection. The existence of past or anticipated suffering alone, therefore, does not make one a refugee, unless the state has failed in relation to some duty to defend its citizens against the particular form of harm.⁸⁶ In other words, refugee law is designed to provide the protection of the international community only in situations where there is no reasonable expectation that adequate national protection of basic human rights will be forthcoming. It is, therefore, a “substitute protection” in the sense that it is a response to the lack of the usual benefits of nationality.⁸⁷

Governments are left with a wide margin in interpreting the concept of persecution and, to date, coherent or consistent jurisprudence is lacking. Various attempts to formulate a universal definition of persecution have met with little success. The trend today is to interpret and apply the concept of persecution restrictively. Many governments and refugee advocacy groups criticize the ambiguity of the refugee definition, but no constructive and realistic proposals have been made to resolve the problem. At one extreme, some point out to the over-burdened and often abused refugee determination systems of Western countries to justify a restrictive definition of persecution, hoping to resolve the international migration of non-refugees. As a matter of principle, large scale international migration should not be dealt with at the expense of the integrity of the Convention refugee definition, even though it is increasingly mixed in with the refugee issue. At the other extreme,

⁸⁶ Hathaway, “Fear”, *op. cit.*, pp.99-100.

⁸⁷ *ibid.*, pp.101-102.

some refuse to admit any abuse of the asylum procedures in the West and exaggerate the scope of the Convention refugee definition. Advocates of this approach also want to resolve the international migration issue within the context of asylum law, primarily by trying to interpret the concept of persecution in a rather open-ended way. This is also mistaken because it is prone to abuse and may destroy the integrity of any refugee determination system. A good faith effort is required by both sides of the argument, as well as by all other interested parties, in order to establish some tangible criteria for interpreting “persecution” in the context of today’s world.⁸⁸

Although this definitional problem occupies an important place in discussions over refugee law, there are also others who point out that the attention should be focused on bringing refugees to the attention of policy-makers and assistance organizations instead of worrying over definitions. That is, while it is recognized that there are valid concerns about the boundaries of definitions, there is also a clear recognition that improving the definitions alone will not resolve the problem of protecting and assisting refugees. In fact, solutions require essentially more of “political will” of states acting in the international refugee regime more than anything else.⁸⁹

iii. Refugees versus Economic Migrants:

It would be appropriate in this context to discuss to some extent the differences that distinguish refugees from economic migrants since such a question occupies an important place in the determination procedures of eligibility for refugee status.

⁸⁸ Arboleda and Hoy, “The Convention”, *op. cit.*, pp.77-79.

⁸⁹ Emily Copeland, “Global Refugee Policy”, *International Migration Review*, Vol.26, No.3, Fall 1992, p.994.

Basically and quite obviously, refugees are those people who leave their countries of origin against their own will, who move to a new environment reluctantly and who lack any kind of positive motivation to settle elsewhere, as distinguished from voluntary migrants⁹⁰ who flee from their country to improve their living standards. In other words, their need for international protection sets refugees apart from economic migrants. Refugees leave their countries because their governments are unwilling or unable to protect them from persecution on reasons denoted in the 1951 Convention refugee definition or from the brutal effects of civil conflict and violence. Economic migrants on the other hand, move in search of improved employment opportunities or with other motivations for personal convenience.⁹¹

However, from a human rights perspective, it will not always be possible to distinguish, with certainty, between a refugee and an economic migrant. For instance, it may be argued that if the emphasis is placed on threats to life and freedom, there is little to distinguish between a person facing death through starvation and another threatened with arbitrary execution because of political beliefs.⁹² However, there is, in fact, a quite sensible basis for not including in the refugee regime victims of famine and extreme poverty. The argument is that since their situation results from the mere indifference or inability of public authority, not its deliberate hostility, assistance can be brought to them by other governments and private groups. In other words, the

⁹⁰ E. Kuntz, "The Refugee in Flight: Kinetic Models and Forms of Displacement," *International Migration Review*, Vol.7, No.2, 1973, pp.125-140. Cited in A. Bariagaber, "Linking Political Violence and Refugee Situations in the Horn of Africa: An Empirical Approach," *International Migration*, Vol.33, No.2, 1995, p.209.

⁹¹ Sadako Ogata, "Mixed Migration: Strategy for Refugees and Economic Migrants," *Harvard International Review*, Vol.17, No.2, Spring 1995, p.30.

⁹² "Human Rights and Refugees", *Human Rights Fact Sheet*, No.20, June 1993, pp.14-15.

danger can be alleviated by uncoercive means which do not challenge the authority of governments or the sovereignty of states.⁹³

In addition, since there exists a close relationship between political conflict and economic and social problems in most contexts, it again makes it difficult to draw a line between refugees and migrants. Indeed, there are people who flee from countries where poverty is the direct consequence of the political system.⁹⁴ In other words, it is often the poorest members of the society who are discriminated against and people flee from economic conditions which are the direct results of a political failure to provide a fair distribution of the economic resources of the country.⁹⁵ For example, in Haiti, the state has served as a tool for the enrichment of a small elite at the expense of the majority of the population. Thus, the Haitians who have fled from their country in numbers reaching to tens of thousands in the past decades had in fact escaped poverty caused by political exploitation.⁹⁶

In this context, it would be apt to underline the relevance of economic, social and cultural rights with respect to accession to refugee status. In principle, just as the serious risk of violation of civil and political rights of an individual indicates a lack of state protection on the part of that person, so too does the failure to respect the basic economic, social and cultural rights. However, this principle often leads to misunderstandings such that it is assumed to be implying that everyone who leads a life with material disadvantages, can successfully attain refugee status. What is misperceived in this line of thinking is that unlike the Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights does not

⁹³ Farer, "How", op. cit., p.98.

⁹⁴ Loescher, Beyond, op. cit., p.6.

⁹⁵ Sadruddin Aga Khan, "Population Movement: Its Effect on European Stability", in The Living Law of Nations by G. Alfredsson and P. Macalister-Smith (eds.), Arlington: N.P.Engel, 1996, p.4.

⁹⁶ Loescher, Beyond, op. cit., p.16.

create obligations that states are required to fulfil immediately upon accession to the Covenant. Rather, the duty of each state party is “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized and to guarantee that the rights will be exercised without discrimination of any kind.” Accordingly, states must oversee that such rights are implemented on a non-discriminatory basis. However, persistence of non-discriminatory poverty and economic difficulties do not constitute violation of the Covenant *per se*. Therefore, it can be deduced from the Covenant that an absence of state protection exists only when a government fails to ensure the non-discriminatory distribution of available resources. It is in this context that refugee protection becomes relevant, not as a means of providing a “good life” but rather to guarantee those basic economic, social and cultural rights that are essential to human dignity. In other words, people whose only motivation for leaving their country is to escape the general difficult economic conditions are economic migrants, whereas those individuals for whom economic suffering has a political, racial or a similar reason may qualify as refugees.⁹⁷

c. Late 1950s to Late 1970s: Expansion of UNHCR to the Third World

The narrowly European orientation of the international refugee regime established in the aftermath of the Second World War was not seriously challenged until the late 1950s.⁹⁸ The era of refugee crises in Europe (except for exodus of Czechs in 1968 and Poles in 1980) had mostly ended and the problem would not re-

⁹⁷ James C. Hathaway, “Labelling the Boat People,” *Human Rights Quarterly*, Vol.15, No.4, Nov. 1993, pp.694-696.

⁹⁸ Astri Suhrke, “A Crisis Diminished: Refugees in the Developing World,” *International Journal*, Vol.48, No.2, Spring 1993, p.217.

appear until the late 1980s. Although political oppression in Eastern European countries and the Soviet Union continued to produce refugees, fewer and fewer of them were able to flee to the West, due to the fact that once these countries consolidated their rule, they imposed strict exit controls and closed their borders.⁹⁹

Then, suddenly, Africa moved to the fore with many, nearly simultaneous outflow of millions of displaced people which was the result of the decolonization struggles and post-independence civil strife and wars on the continent. Refugees fled political repression and ethnic conflict in these newly independent states. Many of these states had very weak civil societies and economies, and governments were unrepresentative and ineffective. There was also the fact that the former colonial powers had established the borders between the African countries in such an arbitrary fashion that “tribes and ethnic groups were split up across state boundaries creating dual loyalties in the systems of most of the newly independent countries.”¹⁰⁰ The tension generated by these unstable conditions usually turned into violence. Indeed, communal conflict became a basic characteristic of most African societies and created large number of refugees.

In the following decade, for the first time, large flows of refugees also appeared in Central and South America. Repressive military regimes in Chile, Uruguay, and Argentina compelled about one million people to flee, though most never acquired official refugee status. In addition, a steady stream of refugees from Cuba suddenly peaked with the Marielito flow of about 125,000 people in 1980. The refugee crisis of the 1970s reached a peak with the Soviet invasion of Afghanistan which eventually led to the exodus of nearly 5 million.¹⁰¹

⁹⁹ Loescher, *Beyond*, op. cit., p.75.

¹⁰⁰ *ibid.*, p.78.

¹⁰¹ Suhrke, “A Crisis”, op. cit., p.218.

In the face of such newly emerging refugee movements, UNHCR underwent a period of sustained growth; and its functions, operations, and geographical outreach expanded to meet the increasing demands being placed on it in Africa, Asia and Latin America.¹⁰² As it will be explained in the following sections, the extension of the rules and the expansion of the activities of the international refugee regime occurred through a series of resolutions, conventions and declarations, i.e. through the introduction of the concept of “good offices”, through the adoption of the 1967 Protocol to the UN Convention on Refugees, the 1969 OAU Convention, and continued with the adoption of the 1984 Cartagena Declaration in the following decade.¹⁰³

i. The 1967 Protocol¹⁰⁴:

The 1951 Convention only comprises persons who had become refugees as a result of events which occurred prior to 1 January 1951. However, the years following 1951 showed that the circumstances of the new refugee movements could not be related to the events prior to 1951. Throughout the late 1950s and 1960s, new refugee groups emerged, particularly in Africa. With rapid decolonization, the character of refugee problems changed, and the regime came under increasing pressure to adapt its programs and policies to give greater priority to Third World

¹⁰² Loescher, *Beyond*, op. cit., p.76.

¹⁰³ Loescher, “The International”, op. cit., p.361.

¹⁰⁴ The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967 in line with the text of the General Assembly Resolution 2198 (XXI) of 16 December 1966. It entered into force on 4 October 1967. For the text of the Protocol, please refer to Jean-Pierre Colombey (ed.), *Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons*, Vol.I, Geneva: Division of International Protection of the Office of the United Nations High Commissioner for Refugees, 1995. A full text of the Protocol is also provided in the Appendix.

Turkey maintained the geographical limitation in the 1951 Convention by putting the reservation on the Protocol that “The instrument of accession stipulated that the Government of Turkey maintains the provisions of the declaration made under section B of Article 1 of the Convention Relating to the Status of Refugees, made at Geneva on 28 July 1951 according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe...”

refugees. Anticolonial struggles, coupled with post-independence civil conflict and wars in Africa generated vast numbers of refugees. The central problem regarding the international refugee regime was its inability to respond effectively to these new kinds of refugees.¹⁰⁵ While General Assembly resolutions made many new refugee groups the concern of UNHCR with the practice of the extension of the “good offices” of the High Commissioner, the measures were only recommendations and could not impose greater obligations on sovereign states.¹⁰⁶ These new refugees were in need of protection which could not be granted to them under the limited time-frame of the 1951 Convention. In an attempt to respond effectively to these new refugee groups, signatories to the international refugee instruments were compelled to adjust the geographical and time limits of the refugee definition in the 1951 Convention, expand the assistance capacities of the High Commissioner and reorient the programs and priorities of the regime from Europe to the Third World¹⁰⁷ by means of a “protocol”. The 1967 Protocol extended the application of the Convention to the situation of “new refugees”, i.e. persons who, while meeting the Convention definition, had become refugees as a result of events that took place after 1 January 1951, by asserting that “equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951” because “new refugee situations have arisen since the Convention was adopted and ...the refugees concerned may therefore not fall within the scope of the Convention.” The 1967 Protocol further redefined the refugee by lifting the geographic limitation stipulated in the 1951 Convention. Aside from these distinctions, the Protocol was fashioned after the 1951 Convention.¹⁰⁸

¹⁰⁵ Loescher, “The International”, op. cit., p.359; and “Human Rights”, op. cit., p.9.

¹⁰⁶ Loescher, *Beyond*, op. cit., p.80.

¹⁰⁷ Loescher, “The International”, op. cit., p.360.

¹⁰⁸ Ucarer, “The Global”, op. cit., p.13.

The new Protocol Relating to the Status of Refugees was drafted in such a way that a government signing it would in effect agree to undertake all the obligations of the original Convention. The High Commissioner was able to guarantee ratification by a number of governments, including the United States, who had not signed the original Convention. The most important effect of the 1967 Protocol was that it brought the 1951 Convention on Refugees into line with the universal mandate of the Statute of UNHCR.¹⁰⁹

ii. Extended Refugee Definitions:

While the refugee definition contained in the 1951 Convention is important so far as the principle of legal responsibility and international commitment to protect refugees, increasingly large numbers of displaced people do not fall within the boundaries of the Convention's strict definition. As a result, people who flee from insecure circumstances, such as generalized violence like civil war, ethnic conflicts and massive human rights violations, but who do not face individualized persecution on reasons of race, religion, nationality, political opinion or membership of a particular social group have not been widely accepted as refugees, although many have been provided with humanitarian assistance and treated on an *ad hoc* basis as de facto or non-Convention refugees.¹¹⁰ In terms of numbers, non-Convention refugees fleeing civil wars, ethnic conflicts and generalized violence in the Third World are, in fact, a bigger problem for the international community than Convention refugees and they are not adequately protected by the existing international norms.¹¹¹

¹⁰⁹ Loescher, *Beyond*, op. cit., p.80.

¹¹⁰ Loescher, *Beyond*, op. cit., p.6; and Janina W. Dacyl, "Europe Needs a New Protection System for 'Non-Convention' Refugees," *International Journal of Refugee Law*, Vol.7, No.4, October 1995, pp.579-80.

¹¹¹ Loescher, *Beyond*, op. cit., p.6.

In order to provide some protective measures to these new categories of refugees, the mandate of the High Commissioner has from time to time, and in a rather *ad hoc* manner, been broadened through a series of resolutions by the United Nations General Assembly, the UN Security Council or the Economic and the Social Council. Eventually, the so-called “good offices” of UNHCR emerged as an operational means in order to legitimize the provision of temporary legal protection and material assistance to specially categorized groups, referred to as non-Convention refugees. The first occasion in which the General Assembly authorized UNHCR to use its good offices in dealing with a refugee problem that was outside its mandate was in 1957 when a series of UN resolutions enabled UNHCR to assist Chinese refugees in Hong Kong. Over the years, the General Assembly included within UNHCR’s sphere of competence large groups of refugees such as those from Algeria in Morocco and Tunisia and others who had similarly fled violent struggle for national liberation.¹¹²

Indeed, these growing trend in the number of refugees fleeing wars and civil strife, especially in Africa, starting in the late 1950s, led to the adoption of a convention which is generally considered as the most comprehensive and significant regional arrangement dealing with refugees. On September 10, 1969, the Organization of African Unity (OAU) adopted the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The primary importance of this Convention is its expanded definition of the term refugee. African states recognized that “well-founded fear of persecution” was not a sufficiently wide criterion to cover all the refugee situations in Africa. The second paragraph of Article 1 of the African Convention provides that “the term ‘refugee’ shall also apply to every person who,

¹¹² Goodwin-Gill, “Editorial”, op. cit., pp.3-4; and Loescher, “the International”, op. cit., p.361.

owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” It can be deduced from this definition that the OAU Convention was a complementary instrument to the 1951 Convention.¹¹³

In the 1980s, the outbreak of civil strife in Central America resulted in massive refugee flows consisting of close to a million people, who posed serious economic and social problems for the countries in which they sought refuge. In 1984, these “host” countries adopted the Cartagena Declaration on Refugees which laid down the legal foundations for the treatment of Central American refugees. The definition of “refugee” in the Declaration is similar to that of the OAU Convention. It includes those “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.¹¹⁴

The United Nations respects the OAU and Cartagena definitions when working in these regions, and some argue that the enlarged definitions have achieved some status in customary international law. The UN General Assembly and the Secretary-General have, on an *ad hoc* basis, frequently asked the UNHCR to concern itself with groups of people who are not covered by the narrower definition of the 1951 Convention, including even some groups who have not left their own countries, but are internally displaced.¹¹⁵

¹¹³ “Human Rights”, *op. cit.*, p.9.

¹¹⁴ *ibid.*, pp.10-11.

¹¹⁵ Kathleen Newland, “Ethnic Conflict and Refugees,” *Survival*, Vol.35, No.1, Spring 1993, p.82.

Nevertheless, it would be unrealistic to believe that the definition of the term refugee as contained in Article 1 of the 1951 Convention could be amended in the near future for the purpose of including such additional categories of people. Neither the OAU Convention nor the Cartagena Declaration nor any other instrument could serve as an example for such an extension. On the contrary, in view of the continuing influx of illegal immigrants and of people abusing the right of asylum, national policies and practices in the West tend to be more restrictive than ever. Administrative authorities in the countries of asylum hold the suspicion that any extension of the definition of refugee as defined in the Convention, would encourage even more people to emigrate for whatever reason. Thus, for the time being, Western states are by no means prepared to accept any proposal to amend the definition of refugee as stipulated in the 1951 Convention.¹¹⁶

d. 1980s: The Reflection of Superpower Rivalry on the Refugee Problem

The intensification of the Cold War during the 1980s shifted the structure of the bipolar conflict. Both of the powers established Third World governments and provided them with relatively easy access to weapons. As a result, internal wars with external involvement in Indochina, Afghanistan, Central America, the Horn of Africa and Southern Africa became protracted and more violent which, in turn, generated large flows of refugees.¹¹⁷

Another dimension of the refugee issue during this period was that the refugees from these struggles became an important element in the conflicts themselves. When fleeing from the territory of the opponent, the refugees would

¹¹⁶ Erich Kussbach, "European Challenge: East-West Migration," *International Migration Review*, Vol.26, No.2, Summer 1992.

¹¹⁷ Loescher, "The International", op. cit., pp.362-363.

represent a victory in terms of propaganda for the other side, who claimed that such people were “voting with their feet.”¹¹⁸

In such an atmosphere of intense Cold War politics, refugee policy issues in Western countries, especially in the United States, focussed on those who fled from communism, a policy that fit their ideological and strategic interests. Important operations and funding focussed on resettling ‘victims’ of communism. The additional burdens of resettlement were accepted because the flows were welcome evidence of the failure of the communist system. The United States was the leading state in the encouragement and resettlement of those who escaped from communism.¹¹⁹

In a similar way, Germany received all Germans from any communist country. Obviously, it was a demonstration that post-war Germany was a legitimate and a desirable state; that it was not any more a “bad” Germany which had produced refugees in the past. In that sense, receiving refugees was part of German foreign policy.¹²⁰

In 1980, the United States passed the Refugee Act which “perpetuated the Cold War mentality that foreign policy considerations should control refugee determinations”. The Foreign Operations Act of 1990 and the Immigration Act of 1990 continued the politicization of the American Refugee Law. The Foreign Operations Act established that Soviet Jews, Evangelical Christians, Ukrainian Catholics and certain Vietnamese, Cambodians and Laotians would qualify as refugees if they could prove a “credible fear” as opposed to the more cautious

¹¹⁸ Suhrke, “A Crisis”, op. cit., p.223.

¹¹⁹ Charles B. Keely, “How Nation-States Create and Respond to Refugee Flows,” *International Migration Review*, Vol.30, No.4, Winter 1996, p.1058.

¹²⁰ Aristide Zolberg, “Commentary,” *Journal of International Affairs*, Vol.47, No.2, Winter 1994, p.49.

standard of “well-founded fear”. In the same manner, the Immigration Act favored Polish, Hungarian, Panaman and Nicaraguans, which was a clear bias towards those fleeing communist regimes.¹²¹ Indeed, determining who is a refugee turned out to be a political decision. This preferential treatment was most obvious in the United States’ reluctance to admit applicants from “friendly” countries such as El Salvador or Guatemala during the late 1980s, while unconditionally admitting all Nicaraguans who sought asylum.¹²²

United States’ refugee admission policy towards communist states was guided by the belief that refugee flows serve to embarrass another country and discredit their political systems. The decision to grant refugee status to citizens of a particular state usually implies condemnation of the sending state for persecuting its citizens. On the contrary, a decision not to grant refugee status to people from certain nationalities often implies that such countries enjoy the support of the potential asylum country. Thus, whether or not real refugees receive official recognition may, in some instances, depend more on the particular asylum country in which they arrive, rather than on the strength of their cases. Such foreign policy considerations explain, for example, the different treatment by the United States to Salvadorans, Guatemalans and Haitians who had a very low rate of recognition as refugees, and Cubans, Indochinese and Nicaraguans who were easily accepted as refugees. For instance, of the 711,303 refugees admitted to the USA during the Reagan administration, 96 % were from communist countries.¹²³

In conclusion, during the Cold War years and especially in the 1980s when superpower rivalry reached its climax, Western States granted refugee status to

¹²¹ Colleen V. Thouez, “New Directions in Refugee Protection,” *The Fletcher Forum of World Affairs*, Vol.22, No.2, Summer/Fall 1998, p.93.

¹²² Rosemarie Rogers, “The Future of Refugee Flows and Policies,” *International Migration Review*, Vol.26, No.4, Winter 1992, p.1123; and Thouez, “New”, *op. cit.*, p.93.

anyone who fled from communist regimes without any question and without close investigation into their motives; thus, without determining whether or not they met the requirement of the 1951 Convention.¹²⁴ The fact that they were seeking asylum in the West, whatever their motives, was generally viewed as a sufficient basis for granting them refugee status. If the restrictive interpretation of the definition of refugee currently being applied by the Western states had been implemented then, it is questionable how many would have been recognized as “genuine refugees” and how many might have been labelled as economic migrants.¹²⁵ In fact, the anti-communist refugee policies of the West during this period encouraged refugee flows, and in this way, they had a role in the collapse of communism in the Soviet Union and in the Eastern European states, which was the desired end. However, there is no doubt that they distorted the refugee system in the period¹²⁶ and created distrust for its purposes.

¹²³ Rogers, “The Future”, op.cit., pp.1123-1124; and Loescher, *Beyond*, op. cit., p.21.

¹²⁴ Myron Weiner, “Bad Neighbors, Bad Neighborhoods - An Inquiry into the Causes of Refugee Flows,” *International Security*, Vol.21, No.1, Summer 1996, p.35; and Loescher, *Beyond*, op. cit., p.21.

¹²⁵ B.E. Harrell-Bond, “The Protection of Refugees in the ‘Least Developed’ States,” in *The Living Law of Nations* by G. Alfredsson and P. Macalister-Smith (eds.), Arlington: N.P. Engcl, 1996, p.49.

¹²⁶ Keely, “How”, op. cit., p.1058.

CHAPTER II

REFUGEE PROBLEM IN THE POST-COLD WAR

2. 1. THE NATURE OF THE REFUGEE PROBLEM

The end of the Cold War, it was widely expected, would lead to a general reduction of armed conflicts that was fuelled by superpower rivalry. First of all, it was assumed that with the disappearance of the East-West ideological tension, the underlying reason for such wars would also vanish. Secondly, it was believed that the reduction of superpower support for states and opposition groups in developing countries would bring many conflicts to an end, or at least to diminish in intensity. Thirdly, it was expected by some that a 'peace dividend' stemming from global disarmament might lead to higher flows of development assistance to the poorer countries, enabling them to address their social and economic problems.¹ Indeed, the end of the Cold War did provide valuable opportunities to resolve some of the long-standing conflicts and also facilitated the return of refugees. It meant a reduction of the distorting external influences and their disengagement from some of the major internal and regional conflicts, a fact that in the past had intensified conflict and produced huge refugee flows.² This was the case in Southeast Asia where for over a decade, the displaced Indochinese had represented one of the world's most intractable and massive refugee problems. Likewise, throughout Central America, refugees had returned or were in the process of returning after revolutionary struggle, civil war or repression in much of the region. In South America, the refugee

¹ UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, New York: Oxford University Press, 1997, pp.22-23.

² Astri Suhrke, "A Crisis Diminished: Refugees in the Developing World," *International Journal*, Vol.48, No.2, Spring 1993, p.232.

population from repressive military regimes of the 1970s was rapidly diminishing. In Afghanistan, Ethiopia and in Mozambique, refugees were returning home.³

At the same time, however, the end of the Cold War and the political changes in Eastern Europe and the former Soviet Union unleashed and intensified internal conflicts -particularly ethnic ones- on a scale rarely seen before. Since 1991, the international community has been confronted with numerous emergencies in Iraq, Somalia, the former Yugoslavia, and Rwanda, each of which has produced more than one million refugees.⁴ At the same time, violence in Central Asia and the Caucasus created smaller but difficult refugee problems. Meanwhile, hundreds of thousands of Haitians were obliged to leave their country.⁵ Indeed, very recently, with the break-out of the Kosova crisis, more than 800,000 refugees were produced who tried to find refuge in Albania, Macedonia, Montenegro, Turkey and to a lesser degree in various European countries and the USA.

During the Cold War years, virtually any strong local ruler could obtain assistance from one or the other superpower and many built a repressive regime based on foreign weapons and ethnic favoritism. As the Cold War ended and the superpowers departed, the arms that they had supplied previously to these regimes or opposition movements provided the weaponry for the ethnic and tribal wars that erupted in the post-Cold War era.⁶ This was the disintegrative dynamic that had been witnessed both in Somalia and Liberia, two countries which had been amongst the largest recipients of US military aid in sub-Saharan Africa during the 1980s.⁷ Moreover, the end of the Cold War, it is argued, removed some of the constraints

³ *ibid.*, p.215.

⁴ Sadako Ogata, "Mixed Migration: Strategy for Refugees and Economic Migrants," *Harvard International Review*, Vol.17, No.2 Spring 1995, p.31.

⁵ Suhrke, "A Crisis", *op. cit.*, p.216.

⁶ Roberta Cohen and F.M. Deng, "Exodus Within Borders," *Foreign Affairs*, Vol.77, No.4, July-August 1998, p.13.

⁷ Suhrke, "A Crisis", *op. cit.*, p.228; and Cohen&Deng, "Exodus", *op. cit.*, p.13.

that the two major powers often placed upon other states. While authoritarian rulers could no longer depend upon one or the other of the superpowers to supply them with arms, finances or protection, they also no longer needed to be concerned that one of the powers would intervene upon seeing its national interests at risk. In the post-Cold War period, authoritarian governments can be said to be freer to repress their opponents, and minorities are freer to launch secessionist movements. Authoritarian regimes can engage in repression with little concern that there will be external sanctions.⁸ Today, a good number of states, primarily but not exclusively in Africa, Asia and the Middle East, remain under authoritarian forms of government. In many instances, moreover, such states have come under relatively little pressure to reform, usually because the world's more prosperous countries are more concerned with maintaining opportunities for trade and investment than with pressuring authoritarian regimes to improve democracy and human rights.⁹

The break-up of the Soviet bloc has also led to internal conflicts and massive flights similar to the crumbling of the Ottoman and Habsburg empires at the end of the First World War and the colonial empires at the end of the Second World War. In fact, the disintegration of empires has always been accompanied by the emergence of new ethnic identities, ethnic conflicts within states, and movements for autonomy and self-determination.¹⁰ One reason for this phenomenon is that empires are often governed by creating internal boundaries to divide ethnic communities. Most successor states, therefore, are ethnically mixed, with ethnic groups divided by an international border, a condition which gives rise to secessionist and irredentist

⁸ Myron Weiner, "Bad Neighbors, Bad Neighborhoods - An Inquiry into the Causes of Refugee Flows," *International Security*, Vol.21, No.1, Summer 1996, p.33.

⁹ UNHCR, *The State*, op. cit., p.17.

¹⁰ Myron Weiner, *The Global Migration Crisis - Challenge to States and to Human Rights*, New York: HarperCollins College Publishers, 1995, pp.6-7.

claims. A second reason is that empires often provide privileges to selected ethnic communities to create loyalties in the military, in the bureaucracy, and among trading communities. A legacy for the successor states is often animosity between the ethnic majority from which the new rulers are drawn and the former privileged classes who belong to an ethnic minority. Successor states often have weak institutions, economies that are in ruins, unemployed young men, and an ideological void readily filled by ethno-nationalist appeals.¹¹ Indeed, the process of creating a supranational identity and absorbing non-members into a dominant group includes the possibility of conflict among groups, which may be violent since it requires the destruction or suppression of national identities of at least some citizens and each may lead to resistance. When violence erupts, there is a high possibility that people will flee because they are on the wrong side, be it political, ethnic or religious.¹² As an evident example for this argument, three regions, which had been relatively stable until the disintegration of the Soviet Union can be pointed out, which are now areas where conflict and refugee flows prevail: the Balkans, the Caucasus, and Central Asia.

After the Cold War, the formation of new boundaries in these regions with the collapse of the federal structures resulted in a change in ethnic balance and led to an environment prone to tension, conflict and refugee generation. The most dramatic example of this has been witnessed in the former Yugoslavia with the Bosnian-Croat and Serb confrontations, and recently the Kosova crisis, as well as the severe crises in the ex-Soviet countries, especially in the Caucasus region such as the Armenian-Azerbaijan conflict.¹³

¹¹ Weiner, "Bad Neighbors", op. cit., p.29.

¹² Charles B. Keely, "How Nation-States Create and Respond to Refugee Flows," *International Migration Review*, Vol.30, No.4, Winter 1996, p.1054.

¹³ İhsan D. Dağı, "İnsan Hakları, Sığınmacılar Sorunu ve Uluslararası Güvenlik," *Yeni Türkiye*, C.4, s.22, July-August 1998, pp.1253-54.

Elsewhere, vast inequalities in wealth, land ownership, and power have been at the root of conflict. In Rwanda and Burundi, high population density and limited fertile land worsened the tensions between Hutus and Tutsis. In other cases, struggles between governments and minorities have produced mass displacement.¹⁴

Furthermore, the rise of religious fundamentalism in today's world has brought along the potential for tension and clashes at the national level. For instance, the pressure on the different religious groups and on the Muslims caused by the Hindu radicalism has established a reason for asylum. Likewise, the radical Islamic movement which has gained power in Sudan has caused opposition, even clashes with the Christians living in the southern parts and has caused the flow of refugees to the neighboring countries. In the recent years, the clashes between the radical Islamic movements and government forces and the pressure that this has caused upon the civilian population, have destroyed the state of security within countries, and thus strengthened the demand for asylum.¹⁵

In conclusion, it would not be erroneous to suggest that the 1990s have represented a new era for refugees. In a time of rising nationalism and the consequent violent fragmentation of existing states and formation of new national entities, conflicts can be even more destabilizing and destructive than was during the old East-West division. At present, the most common form of warfare in the developing world and Eastern European is internal conflict¹⁶, fuelled by state disintegration, the increasing availability of modern weaponry, sharp socio-economic inequalities and

¹⁴ Cohen and Deng, "Exodus", op. cit., p.13.

¹⁵ Dağlı, "İnsan", op. cit., p.1255.

¹⁶ For an elaboration of the causes of refugee flows, please refer to Weiner, "Bad Neighbors and Bad Neighborhoods - An Inquiry into the Causes of Refugee Flows," *International Security*, Vol.21, No.1, Summer 1996, pp.9-29; Suhrke, Zolberg & Aguayo, Escape from Violence - Conflict and the Refugee Crisis in the Developing World, New York: Oxford University Press, 1989; and Loescher, Beyond Charity: International Cooperation and the Global Refugee Crisis, New York: Oxford University Press, 1993, pp.13-15, 18-20.

human rights abuses. It should also be noted that one unanticipated consequence of the demise of superpower interests in the Third World is that conflicts in these regions have become harder to mediate, and national resistance forces have attained the potential to create internal anarchy and to disrupt interstate relations.¹⁷

2. 2. THE SHIFT OF FOCUS TO THE COUNTRY OF ORIGIN AND TO ROOT CAUSES OF REFUGEE FLOWS

The world's response to the problem of forced displacement -and UNHCR's role in relation to that problem- has changed significantly during the past decade. Until the mid to late 1980s, the international community was primarily concerned with cross-border refugee movements, and devoted most of its efforts to providing refugee populations with protection and assistance in the countries of asylum to which they had fled. During this period, there was a broad international consensus that UNHCR could only respect its humanitarian and non-political status by confining its activities to the countries of asylum, and by responding to refugee movements after they had taken place. Any effort to address the problems of human insecurity and displacement within countries of origin, it was agreed, would have involved the organization in activities which fell beyond the scope of its mandate. However, in recent years, a number of factors have combined to bring about a fundamental reassessment of this traditional approach to the refugee problem.¹⁸

First of all, there emerged increasing concern of host and donor countries about the financial and other costs of providing refugees with indefinite protection and assistance, and a growing unwillingness to admit large numbers of displaced

¹⁷ Gill Loescher, Beyond Charity: International Cooperation and the Global Refugee Crisis, New York: Oxford University Press, 1993, p.91.

¹⁸ UNHCR, The State, op. cit., pp.39-40.

people. For instance, the director of the US Agency for International Development (USAID) stated that in 1994-95, 28 crises (crises caused by the combination of civil and political conflicts and natural disasters) required the international community to spend \$4 billion in humanitarian assistance and \$5 billion in peacekeeping. It was argued that it does not make sense for the international community to continue to pour resources into emergency relief and post-crisis rehabilitation while it neglects basic causes that produce terrible upheavals and mass displacements.¹⁹ Secondly, there was a growing awareness that refugee movements can constitute a serious threat to the integrity, economic, political, social and cultural security and stability of nations which may then have its repercussions at the regional and international levels.

Combined with the fact that the military and strategic value of refugee populations in the post-Cold War period has changed, an alternative strategy was devised to attempt to influence countries whose internal conditions have led people to flee, and to enable those who have fled to return home. It was believed that if governments and international institutions could successfully prevent or resolve conflicts that create massive refugee flows, then the humanitarian principles that underlie the international regime for the protection of refugees -a regime that works best when the number in need of protection is small- could be more easily sustained.²⁰

In fact, one of the reasons behind the fact that the issue of human rights has become an essential issue in the foreign policy objectives of the European Union and other Western countries is the search for a solution to the refugee crises. It is anticipated that in a world dominated by political regimes which respect human and

¹⁹ Alan Dowty and Gill Loescher, "Refugee Flows as Grounds for International Action," *International Security*, Vol.21, No.1, Summer 1996, p.44.

²⁰ Weiner, "Bad Neighbors", op. cit., pp.5-6.

minority rights, the number of asylum-seekers waiting at the doorsteps of Western countries should decline.²¹

As a result of these and other developments, it has been proposed that the traditional right to asylum, as enshrined in the Universal Declaration of Human Rights and other international instruments, should be joined by another: the “right to stay” in one’s own country and community, in conditions of physical, material, legal and psychological security. While this right has not been formalized in international law, the UN Human Rights Commission has affirmed it.²²

Today, the UN is willing to scrutinize the human rights records of a wide range of countries, and there is in general a greater readiness to question a country’s right to do as it will with its citizens - a readiness to put limits on sovereignty. Strong actions have been and may be undertaken to avert new forced migrations or to protect and assist populations that were displaced within their home countries. This new policy stance represents an important change: from a reactive one, when the international community was essentially waiting until refugees reached an asylum country (where they would then be protected and assisted), or an inactive one (with respect to many of the internally displaced), to a more proactive stance in which the focus is quite explicitly on the countries of origin.²³

In fact, a debate on “root causes” of refugee flows was launched in the United Nations system back in 1980. The UN Commission on Human Rights commissioned a study of “human rights and mass exoduses”. The report was prepared by Sadruddin Aga Khan, the former High Commissioner for Refugees, and was presented at the end of 1981. It included a number of specific proposals for dealing with situations

²¹ Dağı, “İnsan”, op. cit., p.1258.

²² UNHCR, *The State*, op. cit., p.40.

²³ Rosemary Rogers, “The Future of Refugee Flows and Policies,” *International Migration Review*, Vol.26, No.4, Winter 1992, p.1113

that are prone to generating refugees, such as setting up an early-warning system to identify potential conflict areas, and appointing a special representative and observer groups who could intervene in such cases.²⁴

In another move led by the former West Germany, the General Assembly in 1982 established a Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees (the “New Flows” group). Its mandate was to examine the causes of refugee flows and to suggest ways of handling them. The final report of this group, submitted in 1986, recognized the “great political, economic and social burdens of massive flows of refugees upon the international community as a whole, with dire effects on the developing countries, particularly those with limited resources of their own.” Accordingly, it recommended intervention by the international community through the good offices of the Secretary-General, refugee-prevention actions by appropriate UN bodies (including the Security Council), and better use of aid programs to deter massive displacements. The adoption of the final report by the General Assembly marked, in the words of one UNHCR official, an “emerging consensus on the legitimacy of taking action in the country of origin”, so that people would not have to flee.²⁵

However, the involvement with “root causes” of refugee flows and the turning attention towards the country of origin accelerated during the post-Cold War era due to the developments that have been mentioned in the above section. It was during this era that new key words have emerged in the international community like “root causes”, “safety zones”, “safe havens”, “prevention”, “in-country protection”, “humanitarian assistance”, “human rights” which are all more polite synonyms for various types of interventions in the internal affairs of states. “The language of

²⁴ Dowty and Loescher, “Refugee”, *op. cit.*, pp.52-53.

²⁵ *ibid.*

sovereignty has increasingly been replaced with notions of international solidarity and the language of intervention.”²⁶

There is a variety of instruments and alternative strategies for addressing the conditions within countries that actually or potentially generate large-scale refugee flows. These include early warning, preventive diplomacy and ensuring respect for human rights. UNHCR itself has started to develop strategies and approaches intended to address the root causes of refugee flows before they start and to reduce or contain population movements which have already begun.²⁷

The creation of early-warning mechanisms for situations likely to generate refugee flows -especially on violation of human rights- within countries is one of the strategies.²⁸ Early warning modelling is a method of forecasting humanitarian crises before their onset by identifying the underlying causes of past refugee flows. The rationale of an early warning system is that identification will allow preventive measures to be taken to reduce the likelihood of refugee flight. Thus, in order to anticipate, assist and prevent refugee flows, those causes and triggering events of flight have to be identified and monitored. Obviously, precise information on human rights violations can provide a basis for building an early warning system. Also, by monitoring human rights within countries, the international community may be able to put pressure on countries that violate human rights.²⁹

Early warning of potential refugee flows has received wide attention from international agencies, NGOs, and academicians. The Deputy Secretary General for Humanitarian Affairs has the mandate to develop early warning capacity. NGOs on

²⁶ Weiner, *The Global*, op. cit., p.164.

²⁷ Gil Loescher, “The International Refugee Regime: Stretched to the Limit?,” *Journal of International Affairs*, Vol.47, No.2, Winter 1994, pp.365-66.

²⁸ Weiner, *The Global*, op. cit., p.165.

²⁹ Clair Apocada, “Human Rights Abuses: Precursor to Refugee Flight?,” *Journal of Refugee Studies*, Vol.11, No.1, 1998, p.81.

the ground, multilateral agency officials, diplomats, intelligence agents and journalists all provide early warning signals. While most people may be surprised by a refugee flow, professionals who monitor such things are hardly ever surprised. The scope and speed of events, however, cannot always be accurately anticipated. Efforts to provide early warning need refining to provide not just the knowledge that something is about to happen, but also information on the timing, size and characteristics of unfolding events.³⁰

However, it should be noted that early warning is not the same as a political decision to react. The refugee flows from Somalia were long predicted. The fact that civil war would break out in Bosnia unless it was addressed was clear to many interested and involved parties in the region. It was not the lack of information that prevented action as events unfolded. The international community's recent problems with refugee flows were not due primarily to lack of information. Lack of political consensus on what to do, unwillingness to commit resources and military personnel, and the cost of gaining domestic political support generally explain the lack of or delay of preemptive action in Bosnia, Rwanda, Somalia and elsewhere - not the absence of advanced warning. It should be noted that early warning is not a substitute for policy about what to do in the face of refugee flows. The commitment to carry out that policy, and the leadership to earn domestic support for foreign policy initiatives is also what is needed.³¹

Humanitarian assistance to internally displaced populations disturbed by human or natural disasters and the establishment of "safety zones" within the countries of internally displaced persons or for communities threatened by violence

³⁰ Keely, "How", op. cit., p.1062.

³¹ *ibid.*

under international protection also pose as prevention methods for refugee flows.³² The objective of such efforts is to enable such people to remain in safety in their home countries and prevent these internally displaced populations from becoming international refugees.

These strategies mentioned above point out to the supportive role that the international community could play in the prevention of further refugee flows. There are also the deterrent methods by which countries that generate refugee flows are threatened to be denied development assistance and foreign investment, and to be restricted on travel and trade so that states that violate the human rights of its citizens or become security threats to their neighbors are pressurized.³³ For instance, the prospect of inclusion in the European Union (EU) and NATO or of free trade agreements with the EU are incentives to the countries of Central and Eastern Europe and the former Soviet Union to meet a specific set of economic and political conditions, including the liberalization of their economies, respect for individual rights and fair treatment for minorities.³⁴

However, these deterrent policies to effect political change are not always implemented to the full extent, partly because there are costs for domestic exporters, investors and consumers, partly because they are difficult to enforce, and partly because their ultimate effects are not always certain. Indeed, the US and European trade embargo on Serbia, the US trade embargo on Cuba, and restrictions on trade with Iraq and Iran have had little impact on the human rights policies of these countries. However, in certain cases, such embargoes have turned out to be effective

³² Weiner, *The Global*, op. cit., p.165.

³³ Myron Weiner and Rainer Munz, "Migrants, Refugees and Foreign Policy: Prevention and Intervention Strategies", *Third World Quarterly*, Vol.18, No.1, March 1997, p.31.

³⁴ *ibid.*, p.46.

in the long run.³⁵ Finally, at the extreme, there is the strategy of military intervention into a country's internal affairs, a topic which will be elaborated in the following chapter.

In this context, it should be noted that prevention is not easy because it is a political function. It touches upon issues of sovereignty, whether in the context of early warning, preventive diplomacy or conflict resolution. UNHCR has to look to the Security Council and other political bodies to act on early warning signals and initiate to prevent or resolve emerging conflicts.³⁶

In conclusion, there is truth in saying that the international community has currently placed an increasing stress on human rights in general, and the "right to stay" in particular to eliminate the root causes of refugee flows in some cases. However, it should not go without noting that there is concern that the new focus on the country of origin may be at the expense of refugee protection. It is argued that the emphasis on the right to stay should not serve to undermine a person's "right to leave".³⁷ In other words, the emphasis on prevention and return as well as on the obligations of the country of origin must not detract in any way from or be allowed to undermine the responsibility of the receiving country and the fundamental importance of principles for the protection of refugees, and the institution of asylum must be safeguarded.³⁸

In fact, the new "right to remain" has received harsh criticism from certain scholars. It is argued that this so-called new right is meaningless as a "new" right because if already-recognized rights, like freedom from cruel or inhuman treatment

³⁵ *ibid.*, p.31.

³⁶ Sadako Ogata, "Growing Emphasis Being Placed on Provision of Humanitarian Assistance", *UN Chronicle*, Vol.33, No.1, Spring 1996, p.85.

³⁷ Emily Copeland, "Global Refugee Policy: An Agenda for the 1990s", *International Migration Review*, Vol.26, No.3, Fall 1992, pp.996-997.

³⁸ G.L.L. Coles, "Human Rights and Refugee Law," *Bulletin of Human Rights*, 91/1, 1992, pp.72-73.

were in fact respected, the “right to remain” would be redundant. It is also stated that if there is the political willingness to attack not only the symptoms of human rights violations -which is displacement- but rather the real root causes, the human rights mechanism of the UN and regional agencies should be empowered and the rights which have already been articulated should be made present in people’s lives.³⁹

As an important cornerstone in the debate about the shifting attention to “countries of origin”, it is further argued that both material assistance and human rights reporting as activities in countries of origin can be better accomplished by organizations other than UNHCR. In order to maintain its mandate, UNHCR should consider refocussing on countries of asylum rather than countries of origin. The quality of asylum differs greatly from state to state, and more effort must be directed to ensuring uniform respect for human rights standards in countries of asylum. The conditions of refugees in countries of asylum should be the primary concern of UNHCR. Countries of origin must continue to receive economic development, humanitarian, technical and political assistance to eliminate the sources of refugee generation. But organizations other than the UNHCR, organizations with mandates expressly incorporating such activities, are better able to manage this. For instance, within the UN system, UNDP, UNICEF, WFP and WHO, and also NGOs undertake and sometimes duplicate humanitarian activities for which UNHCR also claims responsibility. It is argued that by extracting itself from countries of origin, UNHCR will satisfy the “non-political” and “humanitarian” requirements in its Statute and avoid issues of political nature.⁴⁰

³⁹ James C. Hathaway, “New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection,” *Journal of Refugee Studies*, Vol. 8, No.3, 1995, p.294.

⁴⁰ “The UNHCR Note on International Protection You Won’t See,” *International Journal of Refugee Law*, Vol.9, No.2, April 1997, pp.267-68.

2. 3. REFUGEE PROBLEM POSING A THREAT TO SECURITY AND STABILITY

With the end of the Cold War, the concept of 'security' has taken on an entirely new dimension. Traditionally, security has been defined in terms of power relations between states, specifically in terms of preserving the territorial integrity of the state or the physical safety and continuity of a particular government in the face of external and internal military threats. In the post-Cold War era, a new approach to national security sees the concept in terms of three dimensions. The 'strategic' dimension adheres to the traditional view of security, i.e. the ability of the state to defend itself militarily against external aggression. The 'regime' dimension is the capacity of the government to protect itself from internal threats arising from domestic disorder and conflict. The 'structural' dimension addresses the balance between a state's population and its resource capacities such as food, water, living space. This balance is upset when population demands on resources become too great and the government is unable to manage or contain them. In fact, a refugee influx potentially threatens all three security dimensions of host countries, either by creating new security threats or by aggravating existing ones.⁴¹

In today's world, war, persecution, and the consequent population flows are not just the refugees' problems; they are also perceived to be a major problem by practically every state and community in the world. Because people are supposed to be under the protection and normally within the boundaries of their own state, any large, uncontrolled movement of people beyond their borders threatens international stability. On the one hand, it is thought that instability and radical changes generate

⁴¹ Karen Jacobsen, "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," *International Migration Review*, Vol.30, No.3, Fall 1996, pp.671-72; and Loescher, *Beyond*, op. cit., pp.24-25.

refugee flows, on the other hand, the problem of refugees breeds further instability and security concerns.⁴²

The hopes of millions of refugees for freedom from violence and repression are matched by the fears of many governments and their citizens that a mass influx of refugees will endanger social and economic security -particularly in countries already suffering from economic underdevelopment-, upset a precarious ethnic balance, weaken the national identity and destabilize the political system.⁴³ They fear that they are now being invaded not by armies and tanks but by refugees and migrants who speak other languages, worship other gods, belong to other cultures, and whom they fear, will take their jobs, occupy their land, be a burden on the welfare system, threaten their way of life, their environment and even their political system.⁴⁴ That is why, in recent years, refugee and migration issues, once solely the concern of ministries of labor and immigration, have become recognized as affecting a country's security and stability and for this reason have engaged the attention of heads of states, cabinets, and key ministries in defence, internal security, and external relations. The most dramatic example of international migration affecting the security of a state was the exodus of East Germans to Austria through Czechoslovakia and Hungary in July and August 1989. The flow precipitated the decision of the German Democratic Republic to open its Western borders, which in turn resulted in a massive migration westward, the subsequent fall of the East German government, and the absorption of the German Democratic Republic by the Federal Republic of Germany. It was flight, not invasion, that ultimately destroyed the East German state.⁴⁵

⁴² Keely, "How", op. cit., p.1057; and Dağı, "İnsan", op. cit., p.1250.

⁴³ Myron Weiner, "A Security Perspective on International Migration," *The Fletcher Forum of World Affairs*, Vol.20, No.2, Summer/Fall 1996, p.17.

⁴⁴ Weiner, *The Global*, op. cit., p.2.

⁴⁵ *ibid.*, p.131.

Similarly, the profound impact of refugee movements on regional and international politics and security has been displayed during the Great Lakes crisis of 1993-1997 when the cross-border movement of refugees between Eastern Zaire and Rwanda -including soldiers and militia posing as refugees- contributed to a major regional crisis, the overthrow of a government and the emergence of the Democratic Republic of Congo. As a result, the politics of Central Africa have been transformed.⁴⁶

Four broad categories of situations can be identified in which refugees may be perceived as a threat to the country that produces them, to the country that receives them, or to the relations between sending and receiving countries:

a. Refugees as Opponents of the Home Regime

An international conflict arises when a country classifies individuals as refugees with a well-founded fear of persecution, thereby accusing and condemning their country of origin for engaging in persecution. Hence, the host country's decision to grant refugee status often creates an adversary relationship with the country that produces the refugees. The receiving country may have no such intent, but even where its motives are humanitarian, the mere granting of asylum can be sufficient to create an antagonistic relationship.⁴⁷

Moreover, a refugee-receiving country may actively support the refugees in their struggle to change the regime of their country of origin. For instance, the United States armed Cuban refugees in an effort to overthrow the Castro regime at the Bay of Pigs, Pakistan, Saudi Arabia, China and the United States armed Afghan refugees

⁴⁶ Jeremy Giner, "Protecting Displaced Persons Through Disarmament," *Survival*, Vol.40, NO.2, Summer 1998, p.162.

⁴⁷ Weiner, "A Security Perspective", op. cit., p.23.

in order to force Soviet troops to withdraw from Afghanistan, Palestinian refugees received Arab support against Israelis. The examples are numerous. Refugee-producing countries may thus have good reason for perceiving threat due to an alliance between the adversary countries and the refugees.⁴⁸

Another dimension of this situation is that refugees sometimes actively lobby in the host countries in order to compel those governments to adopt specific foreign policies towards their home countries. For instance, in the United States, the presence of nearly one million Cuban refugees, most of whom opposing the Castro regime, has clearly made the normalization of the US-Cuban relations more difficult.⁴⁹ In such cases, the home country may hold the host country responsible for their activities. Thus, struggles that might otherwise take place only within a country become internationalized if the country has a significant overseas population.⁵⁰

b. Refugees as a Political Risk to the Host Country

Governments are often concerned that refugees to whom they give protection may turn against them if they are unwilling to assist the refugees in their opposition to the government of their country of origin. The receiving country takes the risk that refugees will attempt to direct the host country's policies towards the sending country. For instance, the support of Iraqi invaders by Palestinians in Kuwait was an asset to Iraq since some of the 400,000 Palestinians in Kuwait held important positions in the Kuwaiti administration. The decision after the war by the Kuwaiti

⁴⁸ *ibid.*, pp.23-24.

⁴⁹ Loescher, *Beyond*, *op. cit.*, p.26.

⁵⁰ Weiner, "A Security Perspective", *op. cit.*, pp.23-24.

government to expel Palestinians reflected its view that Palestinians had become a security threat.⁵¹

Likewise, there have been situations that refugees have launched terrorist attacks within their host country, smuggled arms, allied with the domestic opposition against host governments' policies, participated in drug traffic, and in other ways eroded governments' willingness to admit refugees. For instance, Palestinians, Sikhs, Croats, Kurds, Armenians, Sri Lankan Tamils, and Northern Irish, among others, have been regarded with suspicion by intelligence and police authorities of other countries and their requests for asylum have been scrutinized not only for whether they have a well-founded fear of persecution, but for whether their presence might constitute a threat to the host country. Such fears, it should be noted, are sometimes exaggerated, and governments have often gone to extreme lengths to protect themselves against such threats, but these fears are nonetheless not always without foundation, especially in the context of an increase in international terrorism.⁵²

c. Refugees perceived as a Threat to Cultural Identity

Refugee movements often threaten inter-communal harmony and undermine major societal values by changing the ethnic, cultural, religious, and linguistic composition of host populations. In countries with racial, ethnic, religious or other splits -like in most countries- a refugee influx can place a great strain on the system. Mass influxes can endanger social and economic stability, particularly in countries where ethnic rivalries may be strong, where the central government is weak and consensus on the legitimacy of the political system is lacking, and where essential

⁵¹ Myron Weiner, "Security, Stability and International Migration," *International Security*, Vol.17, No.3, Winter 1992/93, p.109.

⁵² Weiner, "A Security Perspective", op. cit., p.24.

resources are limited. A large influx with ties to a particular domestic group can upset the internal balance and even threaten the existing system.⁵³

Refugees typically seek to preserve their own cultural heritage and national identity in line with their dream of an eventual return to their country of origin, thus complicating their integration into the host society. This attitude in turn reinforces xenophobic and racist feelings among some segments of the host population.⁵⁴ Yet, with the rise of xenophobic sentiments in public, many governments fear the establishment of anti-migrant or anti-refugee political parties that could threaten the regime. Under such circumstances, governments themselves may pursue anti-migration policies in apprehension of public reactions.⁵⁵

d. Refugees perceived as a Social or Economic Burden

Societies may react to refugees because of the economic costs they impose or because of their expected social behavior such as criminality, welfare dependency, or delinquency. Societies may be concerned because the people entering are so numerous and so poor that they create a substantial economic burden by straining housing, education, and transportation facilities. In advanced industrial societies, services provided by the welfare state to refugees may generate local resentment. In less developed countries, refugees may illegally occupy private or government lands, they may use firewood, consume water, produce waste and in other ways come to be regarded as an ecological threat.⁵⁶ Moreover, it has been the case that in parts of Asia and the Middle East, an influx of refugees has been accompanied by a vast increase in

⁵³ Dowty and Loescher, "Refugee", op. cit., p.48.

⁵⁴ *ibid.*

⁵⁵ Weiner, "Security, Stability", op. cit., p.114.

⁵⁶ Weiner, "A Security Perspective", op. cit., p.27.

the flow of arms and drugs, which contributed to domestic instability and to the rise in crime and violence in the host countries.⁵⁷

There is no doubt that in today's world, the existence of about 50 million people who are displaced either within their own country or in other countries does not only constitute a humanitarian tragedy, but also threatens national, regional and international stability and security. Therefore, sensitivity shown to violations of human rights is not just a moral and a political concern, but a necessity in the search for peace and security.⁵⁸

Indeed, the states and international organizations who have observed the global effects of human rights violations have started to put the issue of refugees on their agenda. The United Nations, the Security Council, The European Union and Organization for Security and Cooperation in Europe (OSCE) have started to take increased interest in matters of democracy, human rights, minority rights.⁵⁹ In the same line, how countries treat their own populations -once regarded primarily as an internal affair- has become an issue of international relations not simply because human rights issue is now a global concern, but because governments that violate the human rights of its citizens, persecute their minorities or are unable to halt a civil conflict create refugee burdens for others which in turn disrupts stability and security.⁶⁰

2. 4. POLICY RESPONSES OF REFUGEE-RECEIVING STATES

The international framework for dealing with refugees was partly accepted by Western powers only in so far as it served, or did not run counter to their geopolitical

⁵⁷ Loescher, *Beyond*, op. cit., pp.24-25.

⁵⁸ Dağı, "İnsan", op. cit., p.1251.

⁵⁹ *ibid.*, p.1252.

⁶⁰ Weiner, *The Global*, pp.14-15.

interests. Thus, an increase in the number of refugees who were not automatically a product of the Cold War was not so welcomed in the post-Cold War era.⁶¹ The end of the Cold war, the breakdown of communism, and the ongoing transition of Eastern Europe nations from planned to market economies and from authoritarian rule to liberal democracy, implied that refugees from Eastern Europe had ceased to constitute a foreign policy asset for the West. This change in the role of refugee issues in the West-East relations, in fact, seriously decreased the willingness of host nations in the West to admit asylum seekers.⁶²

Moreover, in the bipolar world of the Cold War, states were often interested in maintaining a close alliance with one or other of the superpowers than with neighboring and nearby states. When the Cold War came to an end, and there were no longer two superpowers competing for the support of other states, developing countries have shown a much greater interest in establishing a good working and trading relationship with countries in the same region. In this new political context, refugees tend to be a negative rather than a positive value. Even if the granting of asylum is supposed to be a humanitarian act, there is no doubt that it can act as an irritating element between countries of origin and countries of asylum⁶³ as has been explained in the previous section.

In such a context, it is not surprising that contemporary Western refugee policies are increasingly perceived as part of *Realpolitik*, rather than as 'pure' humanitarian issues. Host states fear losing control of their national borders and of the 'right of entry'. Mass refugee flows are thus perceived as a challenge to the

⁶¹ Alex Cunliffe, "The Refugee Crises: A Study of the United Nations High Commission for Refugees," *Political Studies*, Vol.43, No.2, June 1995, p.285.

⁶² Janina W. Dacyl, "Europe Needs a New Protection System for 'Non-Convention' Refugees," *International Journal of Refugee Law*, Vol.7, No.4, October 1995, p.587.

⁶³ UNHCR, *The State*, op. cit., p.77.

concept of state sovereignty, and hence as a threat to the modern nation-state system. These have also been perceived as a challenge to host states' vital national interests, defined in terms of national identity, economic balance, or even domestic political stability. Altogether, this implies that refugee issues are no longer regarded as merely humanitarian, 'low' politics issues, but instead have increasingly been incorporated into the agendas of 'high' politics.⁶⁴

Although only a small fraction of today's refugees have sought asylum in the Western world, the official reaction to these "irregular movements", as they are termed, has been to label them as "fortune seekers", or "economic migrants", undeserving protection under the 1951 Convention. Governments of these countries have introduced increasingly restrictive policies at their borders and developed mechanisms in order to prevent them from arriving in the first place.⁶⁵

Accordingly, the world's richest and most powerful states have taken a lead in eroding the right of asylum and undermining the principles of refugee protection. When the very countries responsible for establishing the international refugee regime begin to challenge its legal and ethical foundations, then it is hardly surprising that other states, especially those with far more pressing economic problems and much larger refugee populations, have decided to follow in the same line. Increasingly, when low-income countries close their borders to refugees, they tend to justify their actions by referring to the precedents which have already been set by the more affluent states. The world's poorer countries feel that they are expected to bear too great a responsibility for the world's refugees and that they are required to observe standards which the industrialized states themselves no longer attempt to respect.⁶⁶

⁶⁴ Dacyl, "Europe", op. cit., pp.584-85.

⁶⁵ B.E. Harrell-Bond, "The Protection of Refugees in the 'Least Developed' States," in The Living Law of Nations by G. Alfredsson and P. Macalister-Smith (eds.), Arlington: N.P. Engel, 1996, p.48.

⁶⁶ UNHCR, The State, op. cit., p.69.

During the recent years, the West has been building barriers and adopting deterrent measures to curb new arrivals. The result of such measures is that, besides being difficult to obtain asylum, it is now becoming increasingly difficult even to reach a point at which application can be made.⁶⁷

There are several categories of responses that the West has adopted in order to deal with the refugee problem which has reached to a crisis level in the post-Cold War world:

a. Introduction of Deterrent Policies

In an attempt to limit the number of asylum seekers at its source, the governments of the industrialized states have extended visa requirements to the nationals of many countries that produce -or which threaten to produce- significant numbers of asylum seekers and irregular migrants. Sanctions, usually in the form of fines, have also been imposed upon airlines and shipping companies responsible for the arrival of passengers who lack the necessary documents. At the same time, asylum seekers leaving their countries by boat (Cubans, Haitians and Albanians being the most prominent examples) have been interdicted at sea and were returned to their country of origin, or held on another territory until their status was determined. In some cases, new arrivals have been prevented from disembarking and have been sent straight back to their own or another country. Certain states have established detention centers at international airports. More commonly, governments have introduced accelerated asylum procedures with limited or even non-existent right of appeal, intended to facilitate the speedy removal of people who are deemed to have 'fraudulent' or 'manifestly unfounded' claims to refugee status.⁶⁸

⁶⁷ Loescher, Beyond, op. cit., p.97.

⁶⁸ UNHCR, The State, op. cit., p.191.

Within the European Union, a number of agreements have been reached at the intergovernmental level that aim to restrict future entry of asylum-seekers and refugees. The Schengen Agreement of 1985 established a common prototype visa for EU members. The agreement seeks to eliminate borders within the EU by abolishing land frontier controls and checks at airports for flights between signatory states of the Schengen Convention. It also provides for the establishment of a common border police, and judicial cooperation with respect to the adjudication of asylum claims. In addition, a second agreement, the Convention Determining the State Responsible for Examining Applicants for Asylum Lodged in One of the Member States of the European Communities (commonly known as the Dublin Convention) of 1990 provides for the harmonization of asylum claims within the EU. Once a claim has been adjudicated by one European Union signatory state, the decision applies within the entire Union.⁶⁹ The Dublin Convention articulates the notion of responsible state in an effort to deal with the complications of increasing, and often multiple, asylum applications lodged in different member states. This concept attempted to minimize the occurrence of “refugees in orbit” or “asylum shopping” by prohibiting multiple and subsequent asylum applications in various member states.⁷⁰

Against the imposition of deterrent measures, there are certain criticisms. For instance, it is argued that the visa requirement and sanctions imposed on airlines that carry passengers without proper travel documents could prevent genuine asylum seekers from leaving their country since they might not be able to obtain passports from their home governments or officially seek visas from countries to which they

⁶⁹ Colleen V. Thourez, “New Directions in Refugee Protection,” *The Fletcher Forum of World Affairs*, Vol.22, No.2, Summer/Fall 1998, p.96.

⁷⁰ Emek M. Ucarer, “The Global Refugee Regime: Continuity and Change,” *Bogazici Journal*, Vol.10, No.1-2, 1996, pp.18-19.

want to flee.⁷¹ In fact, these requirements are in contradiction with Article 14 of the Universal Declaration of Human Rights which states that “Everyone has the right to seek and enjoy asylum in other countries from persecution.” Moreover, refugees who attempt to cross the outer frontiers of the Schengen countries on their own initiative would come up against a provision establishing sanctions for the unauthorized crossing of the outer frontiers, outside the official crossing points and opening times. This provision could easily conflict with Article 31 of the Refugee Convention, which forbids criminal sanctions for illegal frontier crossing by refugees.⁷²

b. Restrictive Interpretation of the Refugee Definition

Most governments and asylum judges interpreting government policy towards asylum have adhered to a more restricted notion of persecution with an apprehension that a broader interpretation would vastly increase the number of the world’s refugees at a time when the numbers were tried to be curbed.⁷³

In fact, although the Convention’s refugee definition creates a nearly universal base in international law for the determination of refugee status, it has resulted in significantly different acceptance rates in Western countries. The one common factor shared by these rates is their downward trend during the past decade. Restrictive interpretations are increasingly evident and many countries that used to interpret persecution broadly, no longer do so. Consequently, asylum seekers who

⁷¹ Weiner, *The Global*, op. cit., p.52.

⁷² Roel Fernhout, “Europe 1993 and its Refugees,” *Ethnic and Racial Studies*, Vol.16, No.3, July 1993, p.495.

⁷³ Tom J. Farer, “How the International System Copes with Involuntary Migration: Norms, Institutions and State Practice,” *Human Rights Quarterly*, Vol.17, No.1, February 1995, p.97.

once were accepted as Convention refugees may now be denied refugee status though their individual circumstances are identical.⁷⁴

The disparities in the application of the Convention's refugee definition among Western states mirror the lack of a shared interpretation and understanding of the definition itself, a confusion as to who merits international protection and the states' search for a balance between the perception of their own national interests and their international legal obligations.⁷⁵

c. Support for In-Country Protection

The international community has put a recent emphasis on "in-country protection", driven by the growing reluctance of states to admit large numbers of refugees. According to some critics, the willingness of UNHCR and other humanitarian organizations to embrace this new approach of working in countries of origin has legitimized the increasingly restrictive attitude of states towards refugees and asylum seekers.⁷⁶ This policy is also referred to as 'refugee containment' whose precedence had been set at the end of the Gulf War in 1991 when about 2 million Iraqi Kurds and Shiites were impeded from crossing the border of their country by the military intervention of the coalition forces. Acting through the UN, governments have engaged in similar arrangements to provide assistance and protection to would-be refugees in their country of origin in Somalia and former Yugoslavia.⁷⁷

⁷⁴ Eduarda Arboleda & Ian Hoy, "The Convention Refugee Definition in the West: Disharmony of Interpretation and Application," *International Journal of Refugee Law*, Vol.5, No.1, 1993, pp.79-80.

⁷⁵ *ibid.*, p.82.

⁷⁶ UNHCR, *The State*, *op. cit.*, p.48.

⁷⁷ Arthur C. Helton, "Displacement and Human Rights: Current Dilemmas in Refugee Protection," *Journal of International Affairs*, Vol.47, No.2, Winter 1994, pp.391-92.

d. The Introduction of the ‘Safe Country’ Concept

States have devised the notion of ‘safe countries of origin’ in order to facilitate the process of identifying asylum-seekers who have ‘manifestly unfounded claims’ and to channel them into accelerated asylum procedures. Acting on both individual and collective levels, governments in Western Europe have determined that citizens of certain countries are unlikely to have a genuine claim to refugee status because persecution is rare in those states.⁷⁸

Human rights advocates have criticized this approach due to its inherent danger since there is an evident potential for persecution to occur in any state, however democratic it may be. It could also be that a country regarded as safe at one time might later engage in persecution. Moreover, it is argued that once the European states establish a list of countries which fall into this category, they may be subject to influences such as foreign policy considerations and/or factors such as the number of asylum-seekers from a particular country. They may be tempted to include their closest allies and important trade partners to the list or face the risk that those countries which are excluded from the list view their exclusion as a politically hostile act.⁷⁹

In fact, according to international refugee law, the concept of ‘safe country’ does not exist. It is argued that to resort to such a concept in dealing with applications for refugee status would introduce a *de facto* geographical limitation and a *de facto* reservation to the refugee definition of Article 1A of the Refugee Convention of 1951. It would also threaten the principles laid down in Articles 3 and 33 of the Convention (non-discrimination and non-refoulement). This concept is one

⁷⁸ UNHCR, *The State*, op. cit., pp.191-92.

⁷⁹ Weiner, *The Global*, op. cit., p.50; UNHCR, *The State*, op. cit., pp.204-205; and Fernhout, “Europe”, op. cit., p.501.

element to be taken into consideration with many others in a determination procedure along with many others. There is nothing particularly new in the use of the term. However, what is new, and potentially dangerous, is the incorporation of this notion in a mechanism in which certain nationalities are excluded from entering any determination procedure.⁸⁰

e. Introduction of Temporary Protection Status

Until quite recently, people who have been granted refugee status in the industrialized states have normally been allowed to stay and settle permanently in their country of asylum, even if there has been a fundamental improvement in the human rights situation in their country of origin. There was a tentative move away from this approach in the 1980s, when the industrialized states began to grant various forms of 'humanitarian status' to asylum seekers who were in need of international protection, giving them a temporary right to remain in the country.⁸¹

Although those individuals who get temporary refugee status may not qualify for refugee status in the strict sense of the 1951 Convention, it is generally recognized that they need international protection until they can safely return to their place of residence. Moreover, in contrast to lengthy asylum procedures and the political, financial and legal difficulties in granting refugee status to a massive number of applicants, temporary protection schemes grant temporary residence to individuals in need of international protection as a result of civil war, ethnic strife or other unsettling conditions through a fact procedure.⁸²

⁸⁰ Fernhout, "Europe", op. cit., p.501.

⁸¹ UNHCR, The State, op. cit., p.208.

⁸² Uçarer, "The Global", op. cit., p.21.

In fact, this concept has been used in earlier cases such as during the relief efforts for the Vietnamese boat people of the 1970s and 1980s or for the Afghan refugees in the 1980s, but it has been brought to the fore especially in the course of the war in former Yugoslavia and the population displacements that ensued.⁸³

The initial request for offering temporary protection occurred when thousands of Croats fled to neighboring countries in 1991. On 29 July 1992, the UN High Commissioner for Refugees formally called upon the international community to grant temporary protection to individuals fleeing former Yugoslavia. Accordingly, some 800,000 individuals, most of them in Germany, had been granted such protection by 1995 in Europe.⁸⁴ The provision of temporary protection in place of more elaborate asylum procedures was designed to address the urgent needs of those fleeing the conflict, some of whom might not be able to prove the requisite criterion of individual persecution under the international refugee treaties.⁸⁵ Temporary protection status was also politically acceptable to the countries of refuge since they are of limited duration, return oriented and more flexible and naturally less permanent than asylum.⁸⁶ In this sense, as the UN High Commissioner for Refugees has observed, “temporary protection is an instrument which balances the protection needs of people with the interests of states receiving them.”⁸⁷

The temporary protection principle has had some broader benefits in terms of defending the principles of international protection in a situation of mass influx. With the introduction of temporary protection, Western states have adopted a broader humanitarian obligation to provide a place of safety to people who have fled from a

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ Arthur C. Helton and Pamela Birchenough, “Forced Migrations in Europe,” *The Fletcher Forum of World Affairs*, Vol.20, No.2, Summer/Fall, 1996, pp.93-94.

⁸⁶ Uçarer, “The Global”, *op. cit.*, p.21.

⁸⁷ UNHCR, *The State*, *op. cit.*, pp.209-10.

war-torn state. Temporary protection has also helped to reassert the principle of international responsibility sharing. By admitting a substantial number of refugees from former Yugoslavia, the countries of Western Europe provided a concrete demonstration of their commitment to the principle of international protection and thereby provided a positive example to actual and potential host countries in other parts of the world. If the European states had not provided protection to people from Bosnia and other parts of former Yugoslavia during that time, the whole basis of the international refugee regime would have been seriously undermined.⁸⁸

f. Provision of Economic Assistance to Other Refugee-Receiving Countries

Economic assistance can also be used by governments as a policy response to refugee flows in order to persuade other governments to retain refugees and confine the refugee problem within a region. This is in fact done on the pretext that refugees' needs are best served in the supposedly more culturally compatible regions in which they have lived.⁸⁹

For instance, the United States and France have been willing to provide economic assistance to Thailand on the condition that the Thais would hold Vietnamese refugees rather than permit them to seek entrance into the USA and France. UNHCR and other international agencies, financed largely by the West and Japan, provide resources to refugee receiving countries -especially in Africa- not only as an expression of humanitarian concern, but also as a means of enabling refugees to

⁸⁸ *ibid.*, p.210.

⁸⁹ Harrell-Bond, "The Protection", *op. cit.*, p.48.

remain in the country of first asylum rather than attempting to move elsewhere, such as to advanced industrial countries.⁹⁰

g. Intervention with Refugee-Producing Countries⁹¹

Receiving countries may employ a variety of intervention strategies towards the sending country in order to curb the number of people entering its territory. Diplomatic pressures, including coercive diplomacy may be exerted. Coercive diplomacy to compel a country to halt actions that are forcing its people to flee may be more effective when there are collective international sanctions. There is also the extreme sanction of armed intervention to change the political conditions within the sending country so that refugee flow is halted. The Kurdish uprising in Iraq after the Gulf War provides an example of armed intervention to deal with an unwanted refugee flow. As Kurdish refugees started to enter Turkey, the Turkish government made it clear that it was unwilling to add to its own Kurdish population and thus used its troops to seal the border. Hence, the USA, Britain and other allies in the war used their military power to force Iraq to place the Kurdish region under allied protection and the intervention enabled the Kurds to return.⁹²

It should be noted that simply building new barriers around Western countries will not make the refugee problem go away. Restrictive measures taken unilaterally by Western States do not solve the problem but pass it on to some other country to resolve, thus contributing to inter-state tensions, and a breakdown in the international refugee regime. Furthermore, the restrictive measures do not discriminate between illegal aliens and *bonafide* refugees.⁹³ Moreover, there is now a growing consensus

⁹⁰ Weiner, "A Security Perspective", op. cit., p.31.

⁹¹ This is a topic which will be broadly elaborated in the following chapter.

⁹² Weiner, "A Security Perspective", op. cit., pp.31-32.

⁹³ Loescher, *Beyond*, op. cit., p.99.

that the restrictive asylum practices introduced by many of the industrialized states have converted what was a relatively visible and quantifiable flow of asylum seekers into a covert movement of irregular migrants that is even more difficult for states to count and control. There is also widespread agreement that such irregular movements are increasingly arranged and organized by professional human traffickers.⁹⁴

The restrictive measures have thus driven migration underground, prompting it to assume forms that pose a growing threat to the very societies that such practices were intended to protect. While precise statistics on this issue are inherently difficult to collect, there is reason to believe that people who would have a perfectly good claim to refugee status now no longer bother to submit an asylum application, fearing that they might be arrested, detained and ultimately deported. The net result of the asylum and migration policies has thus been an expansion of the marginalized, excluded and criminalized underclass in developed societies.⁹⁵

There is no magical international solution to the problem of uncontrolled refugee flows, and concerted international political action on these multifaceted and complex issues is not easy.⁹⁶ Although it is recognized that governments have a legitimate interest in protecting the safety and stability of their respective societies, they also have an obligation to uphold the traditions of asylum and humanitarianism.⁹⁷ The way forward in this difficult situation is to resolve or prevent the problems of displacement by adopting an integrated approach in which foreign policy, human rights policy, relief and development policies are formulated to address the underlying causes of the problem while at the same time preserving the practice

⁹⁴ UNHCR, *The State*, op. cit., pp.199-200.

⁹⁵ *ibid.*, p.202.

⁹⁶ Loescher, *Beyond*, op. cit., p.127.

⁹⁷ Arboleda, "The Convention", op. cit., p.75.

of asylum.⁹⁸ The real test of such an approach must be the extent to which such measures safeguard human rights and are consistent with humanitarian standards - rather than the extent to which they reduce the number of people submitting claims to refugee status. As authors of the international law relating to refugees, governments in Europe and other affluent regions have a historical and a moral responsibility to uphold the right of asylum. If they do not, then protection standards in other parts of the world will almost inevitably decline as well.⁹⁹

⁹⁸ Loescher, *Beyond*, op. cit., p.127.

⁹⁹ UNHCR, *The State*, op. cit., pp.203-204.

CHAPTER III

ISSUES OF CONCERN TO THE EXISTING INTERNATIONAL REFUGEE REGIME

3. 1. HUMANITARIAN INTERVENTION

The end of the Cold War phenomenon, a resurgence of ethnic, communal and religious conflicts and violence accompanying them and the emergence of 'failed states' have led many to give support to outside intervention in a state's internal conflicts. Today, traditional notions of sovereignty are being challenged, placing refugee issues much higher on the international agenda and creating new opportunities for international action.¹

The changes in the conceptualization of sovereignty has played an important role in the intervention attempts of the United Nations. Although the classical understanding of sovereignty makes a distinction between internal and external affairs of a state, the current global relations undermine the validity of such a distinction. The erosion of sovereignty virtually every state experiences, shakes the theoretical and practical pillars of the principle of non-intervention. It is now the common argument that those states who violate the human rights of their citizens and who create massive refugee flows with their policies undermine their legitimacy both at the national and international level. The state, whose reason of existence is basically to guarantee the protection of its citizens in fact loses its basic pillar by engaging in acts of human rights violations.²

¹ A. Dowty and G. Loescher, "Refugee Flows as Grounds for International Action," *International Security*, Vol.21, No.1, Summer 1996, p.43.

² İhsan D. Dağı, "İnsan Hakları, Sığınmacılar Sorunu ve Uluslararası Güvenlik," *Yeni Türkiye*, C.4, S.22, July-August 1998, p.1260.

Today, the definition of sovereignty is broadened to include responsibility. A state can claim the prerogatives of sovereignty only so long as it carries out its internationally recognized responsibilities to provide protection and assistance to its citizens. It is argued that failure to do so and forcing the same citizens to flee from their country call into question the very basis of their sovereignty and should therefore legitimize intervention of the international community.³

Another supportive argument in this regard is that as a basic principle of international law, a state cannot rely on the provisions of its own laws in defence against a claimed breach of international obligations; that is, international law takes precedence where they conflict. It would follow, therefore, that as refugee flows impose massive burdens on other states, domestic jurisdiction related to such issues would come under increased challenge. It is argued that a country that forces its people to flee or takes actions that compel them to leave in a manner that threatens regional peace and security has in effect internationalized its internal affairs, and provides a justification for policy-makers in other states to act directly upon the source of the threat.⁴

Although there is a well-established principle of international law which stipulates that no state has any right of intervention on behalf of non-nationals who are victims of human rights violations in another state, there is one exception to the principle of non-intervention as enshrined in Article 2(7) of the UN Charter. Accordingly, "...this principle (principle of non-intervention) shall not prejudice the application of enforcement measures under Chapter VII." The Security Council under Article 39 determines whether there is a threat to the peace or breach of the

³ R. Cohen and F.M. Deng, "Exodus within Borders," *Foreign Affairs*, Vol.77, No.4, July-August 1998, p.14; and Dowty and Loescher, "Refugee", op. cit., p.60.

⁴ Dowty and Loescher, "Refugee", op. cit., pp.57-59.

peace, or there is an act of aggression, and decides upon measures to be taken to maintain or restore international peace or security.⁵

In fact, a variety of 'internal' actions by states are increasingly regarded by other states as threats. The spewing of nuclear waste and other dangerous materials into the atmosphere and the contamination of waterways which then flow into other countries are no longer regarded as internal matters. In the same spirit, a country that forces its citizens to leave or creates conditions that induce them to leave has internationalized its internal actions.⁶ In such a case, claim of 'sovereignty rights' do not constitute a defence against outside intervention.

The offending government cannot legitimately object to intervention as a violation of sovereignty because the real violation of sovereignty is the government's mistreatment of its own citizenry. The widespread violation of human rights carried out by government, tolerated by that government or carried out when the government is incapable of stopping it, almost always leads to internal displacement and eventual refugee flows across borders. The probability is high that human rights violations will lead to refugee flows which threaten the stability of receiving countries. This provides an argument justifying self-defensive actions permitted under the UN Charter since it acknowledges that provoking refugee flows can rise to the equivalent of aggression.⁷

As a matter of political realism, a significant increase in the flow of refugees or of unwanted illegal economic migrants is likely to lead the governments of population-receiving countries to consider various forms of intervention to change

⁵ Subrata Roy Chowdhury, "A Response to the Refugee Problems in Post-Cold War Era: Some Existing and Emerging Norms of International Law," *International Journal of Refugee Law*, Vol.7, No.1, 1995, p.115.

⁶ Myron Weiner, "A Security Perspective on International Migration," *The Fletcher Forum of World Affairs*, Vol.20, No.2, Summer/Fall 1996, p.32.

⁷ Charles B. Keely, "How Nation-States Create and Respond to Refugee Flows," *International Migration Review*, Vol.30, No.4, Winter 1996, p.1060.

the domestic factors that force or induce people to leave their homeland. If a people violate the boundaries of a neighboring country, then they and their government should expect others to intervene in their internal affairs.⁸

The Security Council of the United Nations has authority under the UN Charter to intervene through either non-military actions (article 41) or with military force (article 42). Non-military intervention could take the form of active diplomacy, pressures on a country through threats or positive inducements to change certain policies, public condemnation of certain behaviors, economic sanctions, an extensive use of human rights monitors, creation of humanitarian zones or corridors for providing assistance, and peace-keeping efforts.⁹ The final extent of intervention is to take military measures.

Since the beginning of the 1990s, the international community has on a number of occasions deployed multinational military forces in armed conflicts, with the objective of protecting or assisting displaced and war-affected populations within their country of origin. In an effort to meet these objectives, two basic strategies have emerged. First, such forces have been used to protect humanitarian activities and to facilitate the delivery of emergency assistance -an approach adopted in Somalia from 1992-94, throughout the war in former Yugoslavia and in eastern Zaire during the 1994 Rwandese refugee crisis. Secondly, multinational forces have been used to implement what had become known as the 'safe area', 'safety zone' or 'safe haven' strategy. In general terms, this entails the use of such forces to protect a given geographical area from a surrounding situation of armed conflict and violence,

⁸ Weiner, "A Security", op. cit., p.33.

⁹ Rosemarie Rogers, "The Future of Refugee Flows and Policies," *International Migration Review*, Vol.26, No.4, Winter 1992, p.1126.

thereby safeguarding the security of people who are living in or returning to that zone.¹⁰

As the number of refugees has grown in this decade, Western governments as well as those in Africa and elsewhere have become less welcoming to those in flight. Their focus have shifted to keeping people in their homelands.¹¹ The international community's willingness to intervene militarily to protect and assist forced migrants and to prevent the creation of still larger numbers has been illustrated in this decade by the intervention in the Liberian civil war by the Economic Community of West African States (ECOWAS), in Iraq by a multilateral force led by the United States to protect the Kurdish and Shiite populations through the creation of safety zones in the north and south of the country, in the former Yugoslavia by UN peacekeeping forces, in Somalia again by a multilateral force led by the United States¹², in Rwanda by France, in Haiti by the USA and very recently in Kosovo by NATO.

Following the end of the Gulf War in 1991, Iraqi suppression of widespread uprising in northern Kurdish areas created fears that the entire Kurdish population would be uprooted, a particularly grave prospect for neighboring Turkey with its own Kurdish unrest. Accordingly, upon the precedent-setting resolution 688 of the Security Council of 5 April 1991 which declared refugees to be a matter of international peace and security, international forces were deployed to Kurdish areas to protect the population, Iraqi forces were withdrawn from the same areas, and a *de facto* autonomous Kurdish area was established that allowed Kurdish refugees to return to safe havens in Iraqi Kurdish territory.¹³ With this event,

¹⁰ UNHCR, The State of the World's Refugees: A Humanitarian Agenda, New York: Oxford University Press: 1997, pp.131, 134.

¹¹ Cohen and Deng, "Exodus", op. cit., p.14.

¹² Rogers, "The Future", op. cit., p.1126.

¹³ Dowty and Loescher, "Refugee", op. cit., pp.65-66.

a precedent had been set for military intervention in the domestic affairs of a state for the purposes of protecting a minority population from the repression of its own government. A new option to the traditional three solutions for refugees had been created, that is, preventing the refugees from crossing an international border in the first place by 'humanitarian intervention', and then creating safe havens protected by foreign military forces within the national homeland of refugees.¹⁴

Some have argued that Security Council Resolution 688, which created safe havens for Kurds in northern Iraq, provided an important humanitarian precedent that could have far-reaching consequences for traditional notions of state sovereignty. It provided a rare instance of a UN-sanctioned military intervention to protect a minority within a country, without its government's acquiescence. The intervention resolution did not directly use human rights violation as the grounds for intervention. Instead, it was justified by Chapter VII of the UN Charter: Actions with Respect to Threats to the Peace, Breaches of Peace and Acts of Aggression.¹⁵

The creation of safe havens in northern Iraq was deemed by the UN High Commissioner for Refugees as a rare example of a successful humanitarian intervention. But the intervention took place only to block a mass population movement rather than because Iraq was committing serious human rights violations against the Kurdish people.¹⁶

A second case of UN-authorized unilateral intervention was that of the United States in Haiti in September 1994 which again clearly involved refugees as a major factor. At the time, the number of illegal refugees in the USA grew to about three hundred thousand. Apprehensions grew about this number growing much larger. Concerns were also raised about the costs of maintaining the refugees at the

¹⁴ Howard Adelman, "The Ethics of Humanitarian Intervention: The Case of the Kurdish Refugees," *Public Affairs Quarterly*, Vol.6, No.1, January 1992, p.75; cited in Dowty and Loescher, "Refugee", *op. cit.*, p.66.

¹⁵ Nazare A. Abell, "Politics, Migration and Intervention," *Peace Review*, Vol.8, No.4, December 1996, p.536.

¹⁶ *ibid.*, p.537.

Guantanamo Bay safe haven, which was housing about 20,000 Haitian refugees. In response to these fears, military intervention in Haiti became a possibility. The continuing arrival of Haitian refugees was conceptualized as a threat to regional stability and to US borders. Thus, Resolution 940 of the Security Council authorized military action to bring President Aristide back to power. It stated that the Security Council was “Gravely concerned by the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal *de facto* regime of systematic violations of civil liberties, the desperate plight of Haitian refugees...” It determined that the situation constituted a threat to international peace and security. The military intervention occurred seemingly to restore Aristide’s elected government. But ultimately, the USA conducted the intervention for political reasons: largely to stop the massive outflow of Haitian refugees to the US shores. Even so, most Haitians seemed to welcome the intervention. The willingness to use superior force reduced local violence and promoted the efforts of relief officials and human rights monitors.¹⁷

Another case of UN-authorized unilateral intervention involved the French armed intervention in Rwanda in mid-1994 to secure a safe zone inside Rwanda for humanitarian purposes. Yet, humanitarian intervention was significantly different in the Rwandan case than for Iraq and Haiti. The international community reacted slowly and with disinterest to Rwandan events, taking action very late. Even when the Hutus began to flee into Zaire by the hundreds of thousands, and then by millions, the US administration avoided involvement. The fact was that in Rwanda, no political imperative existed for pursuing serious policies to resolve the crisis. Except for France, the major Security Council powers took little interest in a small Central

¹⁷ *ibid.*, p.538.

African country in an area marginal to their economic and political/strategic concerns.¹⁸

In fact, the emerging concept of humanitarian intervention to keep refugees from crossing a border was an attractive idea to a First World in which refugees had lost much of their ideological appeal, once they could no longer be categorized as victims of communist regimes. Moreover, neighboring countries in the developing world were not willing to receive large numbers of refugees that put great pressure on local resources, particularly the environment, which were already under severe stress. Therefore, to take aid to refugees within their own countries instead seemed to many as the preferred solution. At the same time, for the refugees themselves, protection and assistance close to their home meant less disruption, provided that the protection was truly effective.¹⁹

Moreover, institutionally, the United Nations was better equipped than before to internalize the refugee problem by devising the concept of humanitarian intervention. Freed from its Cold War paralysis, the Security Council could act with unity. Except for China, the developing countries were not represented among the permanent five and were therefore not in a position to veto interventionist policies which they increasingly feared would be used against them - despite the humanitarian label attached to them.²⁰ The consensus in the Security Council underpinned collective interventionist policies which previously would have been impossible. Simultaneously, the refugees who earlier had been the human consequence of great power rivalries lost much of their political significance. Increasingly, they were viewed simply as burdens. Under the conditions, the institutional response of the

¹⁸ *ibid.*, p.539.

¹⁹ Astri Suhrke, "A Crisis Diminished: Refugees in the Developing World," *International Journal*, Vol. 48, No.2, Spring 1993, pp.235-36.

²⁰ *ibid.*, p.236.

United Nations was to pursue strategies of cost reduction. UNHCR followed the same course. Internalization of the refugee problem was a principal response, despite its clear interventionist aspects and the uncertain implications for the potential refugees themselves.²¹

A problem with humanitarian intervention is that to date, the international community has devised no systematic strategies for humanitarian intervention. International response to situations in which human rights violations are involved is largely *ad hoc*. It is emphasized that there is the need to agree on a set of principles and criteria for humanitarian intervention so that it cannot be manipulated by interested parties or abused by strong states against the weak.²²

It is a fact that humanitarian intervention is likely to occur in nations that directly affect Western political, strategic and economic interests. The threat of unmanageable and undesirable population flows, rather than the seriousness of human rights violations, now seems especially influential. However, if any humanitarian intervention is justified, then the UN must develop far more principled and far less political grounds for doing so.²³

As there are no fixed principles that determine fundamental questions regarding intervention, the West's new inclination towards intervention is being viewed with scepticism by the Third World countries who are apprehensive that the West could use this new approach as a weapon against them. The fact that the West insists on concentrating on minority rights creates questions especially in those countries which have a multi-ethnic social structure. They perceive the approach of the West as a threat directed to the principles of national unity and state integrity.

²¹ *ibid.*, p.239.

²² Emily Copeland, "Global Refugee Policy: An Agenda for the 1990s," *International Migration Review*, Vol.26, No.3, Fall 1992, p.997.

²³ Abell, "Politics", *op. cit.*, p.539.

One of the reasons behind this apprehension is the Security Council's controversial representativeness. They fear that the power of the Security Council would be used in line with the interests of its permanent members who have the veto power.²⁴

Moreover, these Third World countries believe that the UN Security Council takes "international peace and security" seriously only when events involve the national interests of the five permanent member states, especially the USA and its Western allies. Aggression across borders and government violence against populations do not always provoke international intervention. For instance, the Kurdish situation in Northern Iraq prompted an immediate international response while Rwanda and Bosnia did not. Humanitarian intervention occurs most often in countries where domestic conflicts might produce huge refugee flows that might destabilize neighboring states, especially in regions that the West deems strategically important.²⁵ Such uneasiness of the Third World countries again points out to the urgent need to develop appropriate norms and guidelines that will govern international organizations' and individual states' behaviors with respect to humanitarian intervention.²⁶

One other concern raised with regard to the newly emerging concept of humanitarian intervention is related to the institution of asylum. It is stressed that the international community should not use intervention as an excuse for not helping those who manage to escape from situations of conflict and human rights violations. In other words, the institution of asylum must be safeguarded as a basic right regardless of new approaches that may be devised.²⁷

²⁴ Dağı, "İnsan", op. cit., p.1260.

²⁵ Abell, "Politics", op. cit., p.536.

²⁶ Rogers, "The Future", op. cit., pp.1126-27.

²⁷ Copeland, "Global", op. cit., p.997.

III.2. INTERNALLY DISPLACED PEOPLE

Internally displaced are people who have been forced to flee from their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural disasters. The important point is that they do not cross an internationally recognized state border²⁸ due to reasons such as the nature of the threat affecting people's security; the escape routes available to them and their proximity to international borders, city centers and other places of potential refuge, the financial resources and other assets which they possess, the location of their family and community members, and the availability of protection and assistance from both national and international organizations.²⁹

It is not easy to ascertain the number and location of the world's internally displaced people. Unlike the collection of refugee statistics, a task undertaken by UNHCR, no single UN agency has assumed responsibility for the collection of figures on internally displaced populations. Governments are often unwilling to admit the presence of such populations on their territory, which indicate the state's failure to protect its citizens. In addition, there is evidence to suggest that a large proportion of the world's internally displaced people do not live in highly visible places, but are mingled with family members and friends, often in urban areas where they can enjoy a higher degree of anonymity.³⁰ Despite these difficulties in identifying the number of internally displaced, there is a broad international consensus that the global population of internally displaced people is around 25 to 30 million: up to 16 million in Africa, six or seven million in Asia, around 5 million in Europe (predominantly in

²⁸ Maria Stravropoulou, "Displacement and Human Rights: Reflections on UN Practice," *Human Rights Quarterly*, Vol.20, No.3, August 1998, p.519.

²⁹ UNHCR, *The State*, op. cit., p.105.

³⁰ *ibid.*, p.104.

the former Yugoslavia and the Caucasus region) and up to three million in the Americas. These masses in flight -who, unlike refugees, have not crossed an international border- now constitutes the newest global crisis.³¹

In the 1990s, the concept of 'internally displaced people' has become a frequently used term in the humanitarian vocabulary. Indeed, the recent emergence of the approach of focusing less on the situation of refugees in countries of asylum and more on the plight of vulnerable populations in countries of origin, has pushed this issue to the top of the humanitarian agenda.³²

When people flee from a situation of violence and persecution, those who go to another country may enjoy better protection than those who remain in the country of origin. Indeed, people who are unable to escape from zones of active conflict - such as those trapped in the Chechen capital of Grozny or the Liberian town of Tubmanburg- are sometimes confronted with greater danger than those who are able to move across a border. As the UN Secretary-General pointed out in 1996, "it is inadmissible that those who have managed to cross the border should benefit from the rules of international refugee law, while at times only several hundred meters away, those who were not able to leave their country remain unprotected."³³

Yet, those internally displaced populations cannot appeal to international legal standards governing refugees, even if they fear persecution or other serious harm. Thus, while outnumbering and having similar protection needs as refugees, internally displaced people have no guarantee of protection nor any of the civil, social and economic entitlements set forth in the refugee treaties.³⁴ Thus, no specific

³¹ UNHCR, *The State*, op. cit., p. 105; and Cohen and Deng, "Exodus", op. cit., p. 12.

³² UNHCR, *The State*, op. cit., p. 99.

³³ B. Boutros-Ghali, UN Press Release SG/SM/5866, January 1996; cited in UNHCR, *The State*, op. cit., p. 113.

³⁴ Arthur C. Helton, "Displacement and Human Rights: Current Dilemmas in Refugee Protection," *Journal of International Affairs*, Vol.47, No.2, Winter 1994, p.381.

international organization is formally mandated to protect, assist and find solutions for the internally displaced.

A prominent reason for this situation is that internally displaced people remain under the jurisdiction of their own state which therefore involves political connotations, particularly state sovereignty and non-intervention in domestic affairs. Even if a single agency were to be given a statutory role with regard to the internally displaced, many governments with significant populations of internally displaced people would undoubtedly resist its interference in their domestic affairs and reject its presence on their territory.³⁵

In 1991, the Economic and Social Council examined a report on refugees, and returnees which also dealt with the issue of internally displaced people. The report found that with respect to the protection of the human rights of the internally displaced, the involvement of UN human rights bodies was necessary since there was no institution or mechanism specifically mandated to protect them like the way UNHCR did regarding the protection of refugees. The following year, at the request of the Commission on Human Rights, the Secretariat prepared a report on internally displaced persons, examining the causes and consequences of their displacement and the relevant human rights standards. The Commission examined the report at its 1992 session and appointed a Representative of the Secretary-General, whose first mandate was to prepare a comprehensive study of the human rights issues relating to the internally displaced and possible alternatives for addressing their protection needs. The Representative of the Secretary-General presented his comprehensive study to the Commission in 1993, in which he identified the need for more analysis of the

³⁵ Gill Loescher, "The International Refugee Regime: Stretched to the Limit?," *Journal of International Affairs*, Vol.47, No.2, Winter 1994, p.368; and UNHCR, *The State*, op. cit., p.116.

applicable normative standards as well as a statement of guiding principles or a declaration to guide the treatment of the internally displaced.³⁶

The Representative has been authorized to monitor displacements worldwide, undertake fact-finding missions, begin dialogues with governments, and make proposals for strengthening legal and institutional protection for the internally displaced. He has raised international awareness and mobilized support from governments, foundations, academia, and the legal and NGO communities. The position's effectiveness, however, is limited because it is voluntary and part-time. It has no operational authority and minimal human and material resources at its disposal. Moreover, to date, the international community has focused on providing food, shelter, and medical supplies. Yet displaced persons have regularly pointed out that security is as great a priority for them as food. Providing relief to such people while ignoring the fact that they are being beaten or raped has led some to call the victims the "well-fed dead."³⁷

However, it is also a fact that occasionally, at the request of the Secretary-General and/or the General Assembly of the United Nations, UNHCR extends its mandate to such displaced persons under a "good offices" jurisdiction (e.g. in Sudan and former Yugoslavia), which is based on the UNHCR Statute. The statute provides UNHCR with a mandate for assistance and protection outside the framework of international refugee treaties.³⁸

Although internally displaced people are in principle entitled to protection of their own national laws, they also benefit from the provisions of international human rights law and of international humanitarian law when they are in situations of armed

³⁶ Stavropoulou, "Displacement", *op. cit.*, p.529.

³⁷ Cohen and Deng, "Exodus", *op. cit.*, p.15.

³⁸ Helton, "Displacement", *op. cit.*, p.381; and Copeland, "Global", *op. cit.*, p.995.

conflict. So when UNHCR is called upon to extend humanitarian assistance and protection to the internally displaced, it invokes these internationally recognized norms as a legal basis for its involvement.³⁹

In the past, and still to a large extent today, UNHCR's involvement with the internally displaced has often been in the context of the voluntary repatriation of refugees, where return movements and rehabilitation and reintegration programs have included both returning refugees and displaced persons in circumstances where it was neither reasonable nor feasible to treat the two categories differently.⁴⁰ By recognizing that the problems of the internally displaced and of refugees are manifestations of the same phenomenon of forced displacement, UNHCR has increasingly considered activities on behalf of the internally displaced to be inseparable components of an overall strategy of prevention and solutions. In Sri Lanka, Tajikistan, Azerbaijan, Georgia, the countries of the former Yugoslavia, the Horn and Central Africa, Liberia, Mozambique and Central America which are examples of UNHCR involvement with the internally displaced, the link between internal and external displacement is obvious and the need to address the internal situation in order to satisfactorily resolve the external refugee problem is clear.⁴¹

Concerning UNHCR's activities on behalf of the internally displaced, the UN General Assembly has listed a number of factors to be taken into account. Most importantly, it set out two mandatory requirements: first, a specific request from the Secretary-General or a competent organ of the United Nations (i.e. the General

³⁹ Executive Committee of the High Commissioner's Programme, "Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons," *Refugee Survey Quarterly*, Vol. 14, No. 1-2, Spring/Summer 1995, p.183.

⁴⁰ *ibid.*, p.176.

⁴¹ *ibid.*, p.177.

Assembly, the Security Council or ECOSOC), and second, the consent of the concerned state.⁴²

Moreover, it was acknowledged that given the magnitude of the problem of displacement worldwide, it would be impossible for UNHCR to take responsibility for the internally displaced in every situation. Thus, in 1993, UNHCR established a set of guidelines to clarify the conditions under which it would undertake activities for the internally displaced. First of all, the guidelines state that UNHCR may take primary responsibility for the internally displaced when such people are present in or going back to the same areas as returning refugees. Secondly, as exemplified in locations such as eastern Zaire and northern Afghanistan, UNHCR may work with the internally displaced if they are living alongside a refugee population and have a similar need for protection and assistance. Thirdly, as in Bosnia, UNHCR may extend its services to the internally displaced in situations where the same factors have given rise to both internal and external population movements, and when there are good reasons for addressing those problems by means of a single humanitarian operation. Fourthly and finally, UNHCR may become involved in situations of internal displacement where there is a potential for cross-border movement and where the provision of protection and assistance to the internally displaced may enable them to remain in safety in their own country.⁴³

However, it is further emphasized that the application of the above-mentioned conditions cannot be expected to be automatic. Even in situations which appear to meet these guidelines, request for UNHCR involvement on behalf of the internally displaced must be carefully assessed with regard to the organization's capacity at any

⁴² *ibid.*, p.180.

⁴³ UNHCR, *The State*, *op. cit.*, p.117.

given time to respond effectively in a particular situation while continuing to meet urgent needs for humanitarian assistance and protection elsewhere.

It should be noted that UNHCR's activities on behalf of internally displaced people have caused a degree of concern. For instance, some commentators have pointed out that the organization's criteria allow it to pick and choose the situations of internal displacement with which it wants to become involved, therefore causing a lack of predictability in international response.⁴⁴ One other concern involves funding. If UNHCR were to expand its mandate to cover all internally displaced people, the organization would then be responsible for at least twice as many people as it is now, when it already finds it difficult to fund its most urgent activities on behalf of recognized refugees. There are also other substantive concerns. It has been suggested that by working with displaced populations in their own country, UNHCR increases the risk that assistance to such populations would be used as an excuse by neighboring and nearby states to close their borders to potential refugees, thereby undermining the institution of asylum.⁴⁵

Furthermore, problems could arise for UNHCR when it seeks to protect and assist refugee populations in a given country -and has to work with that country's government to accomplish this task- and at the same time seeks to protect and assist the internally displaced that the same government has created from among its own population.⁴⁶ In other words, in countries where externally and internally displaced people co-exist and the latter are subject to their governments' hostility, trying to

⁴⁴ *ibid.*, p.118.

⁴⁵ Rogers, "The Future", *op. cit.*, pp.1136-37.

⁴⁶ *ibid.*

keep dialogue with the government over its treatment of the internally displaced may compromise cooperation in assisting and protecting the externally displaced.⁴⁷

Today, internal displacement is high on the international human rights agenda. However, although this issue is essential with regard to human rights concerns and should receive unwavering attention, there is still the other side of the coin. It is argued that an over-eagerness to promote international involvement in situations of internal displacement could have the unintended consequence of undermining the notion of state responsibility. The restoration and strengthening of national protection capacities is thus an essential first step in the effort to safeguard the security of internally displaced people and to resolve the problem of internal displacement. In other words, involvement with internally displaced people should not camouflage the fact that UNHCR and other international organizations can only play a supportive role but they cannot be a substitute for governments in the protection of their own citizens.⁴⁸

3.3. CHALLENGES FACING UNHCR

a. Inadequacy of its Existing Resource Base

The most significant institutional weakness of UNHCR as the core of the international refugee regime is its dependence on voluntary contributions to carry out its programs. The international community created an organization, UNHCR, which could be drawn into operations to protect and assist large numbers of refugees without giving it a clear financial mandate. The financial implications were limited in the early years when resource requirements were relatively small. As the number of

⁴⁷ Tom J. Farer, "How the International System Copes with Involuntary Migration: Norms, Institutions and State Practice," *Human Rights Quarterly*, Vol.17, No.1, February 1995, p.86.

⁴⁸ UNHCR, *The State*, op. cit., p.121; and Executive Committee, "Protection", op. cit., p.191.

refugee movements multiplied, the gap between needs and likely resources went up to crisis proportions. Some states staggered or delayed their payments and UNHCR found it increasingly difficult to raise revenue. Indeed, in 1990, the High Commissioner of the time complained about the “crippling effect” of the unstable and unpredictable nature of the funding of UNHCR’s activities. It was stated that living on a month-to-month, sometimes week-to-week basis, it was not only uneconomical, but it also made UNHCR a much less responsible and effective organization.⁴⁹

Less than 5 per cent of the UNHCR’s annual expenditures are covered by the UN regular budget; the remainder of its funding and resources come from voluntary contributions, mainly from national governments most of which are developed states (the United States, Western European countries, Japan, Canada and Australia). While having resources is critical for the organization to be genuinely operational, this process has, of course, created dependency on a small number of developed states for which they are rewarded with permanent membership on the agency’s governing body.⁵⁰

Each year, UNHCR’s Executive Committee approves a General Program budget, comprising activities financed through the annual program, the Emergency Fund, and appeals to all UN members for the resources needed to cover the program year. The primary allocation of these resources goes to the traditional areas of the High Commissioner’s competence: emergency relief, voluntary repatriation, integration into host societies, and resettlement. In addition to its General Program budget, UNHCR, at the request of the Secretary-General or the UN General Assembly, undertakes Special Programs. These include major new and unforeseen

⁴⁹ Alex Cunliffe, “The Refugee Crises: A Study of the United Nations High Commissioner for Refugees,” *Political Studies*, Vol.43, No.2, June 1995, pp.284-85.

⁵⁰ James C. Hathaway, “New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection,” *Journal of Refugee Studies*, Vol.8, No.3, 1995, p.291.

emergency operations and transportation and rehabilitation assistance to refugees and displaced people who have returned to their homes. Special Programs are the subject of specific fund-raising appeals to interested governments and are financed from trust funds framed by particular purposes and conditions. Thus, UNHCR must raise funds for each new refugee problem.⁵¹

However, the continuation of assistance from donor governments is neither reliable nor always in the most appropriate form. In addition, funding is frequently provided late and is often set aside for particular uses with political connotations.⁵²

Moreover, UNHCR's dependence on voluntary contributions forces it to adopt policies that reflect the interests and priorities of the major donor countries. Politics and foreign policy priorities cause donor governments to favor some refugee groups over others. During the 1980s, for example, international aid per Afghan refugee in pro-Western Pakistan was more than three times higher than that allocated to Afghan refugees in anti-Western Iran.⁵³

The High Commissioner herself also accepts the fact that foreign policy considerations are reflected during funding priorities and that some projects are better funded than others. She provides the example that the Yugoslavian operation was heavily funded by European states and that Cambodia by Japan which in fact reflects a kind of geopolitical interest.⁵⁴

The situation being such, UNHCR has often either become subservient to the policies of powerful donors or become immobilized, thereby damaging its credibility as an effective and impartial advocate for refugees. During the 1980s, for instance,

⁵¹ Gill Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, New York: Oxford University Press, 1993, p.131.

⁵² Loescher, "The International", *op. cit.*, p.368.

⁵³ Loescher, *Beyond*, *op. cit.*, p.137.

⁵⁴ Sadako Ogata, "The Evolution of UNHCR," *Journal of International Affairs*, Vol.47, No.2, Winter 1994, p.422.

UNHCR objected to the US policy of returning Salvadorans to their homelands and criticized the substandard conditions of collective accommodation centers for asylum seekers within the Federal Republic of Germany. But in both instances, the High Commissioner could exercise only very limited influence, because American and German donations form an essential portion of the UNHCR budget. Criticism was met with threats to cut off funding. In the 1990s, the United States and West European governments have continued to override UNHCR protests and disregard criticism on their forcible repatriation of thousands of Haitians and Albanians.⁵⁵

Obviously, the High Commissioner lacks the financial independence and institutional strength to challenge such states or to embark upon programs without the cooperation of host governments. As a result, the world's principal refugee protection agency is prevented from bringing up criticism either about donor or host governments' policies.⁵⁶

In fact, in the post-Cold War era, governments of industrialized states are less influenced politically by refugee situations, which they view as local or regional problems of little or no foreign policy or security value. Funding is now more likely to be cut back in favor of the domestic priorities of these industrialized states. Major powers are reluctant to provide funds for humanitarian programs when internal conflicts in aid-recipient countries continue without any prospect of ending. Thus, despite the clear link in situations involving displacement and regional security, there is weak donor interest in funding a comprehensive strategy for dealing with refugees and internally displaced people.⁵⁷

⁵⁵ Loescher, *Beyond*, op. cit., pp.137-38.

⁵⁶ *ibid.*, p.138.

⁵⁷ Loescher, "The International", op. cit., p.368.

All the while, UNHCR is increasingly being asked by the United Nations to bear more responsibility and leadership in a growing number of international crises, but, as explained, with diminishing resources. Although the UNHCR serves twice the number of refugees now than it did in the previous decade, the financial support levels for General Programs of UNHCR have remained virtually unchanged. The overall lack of funds has threatened to reduce and postpone repatriation programs, cancel needed improvements in refugee activities, and make attempts to avert new flows of refugees.⁵⁸

In light of these points, it should be noted that as a first step towards improving its effectiveness, UNHCR must be given a resource base that will permit more autonomous operations. Donor governments must resist setting aside funds to promote their political priorities. Refugees, as a persistent feature of international life, require sustained financial allocations and sustained attention by the international community. Consideration should be given to funding UNHCR by assessed rather than voluntary contributions, thereby acknowledging the permanent character of the refugee problem and the need to deal with the issue systematically.⁵⁹

b. Inadequacy of its Existing Mandate

As an organization which is part of the broader United Nations system, which is guided (and largely financed) by states, which normally relies on the authorization of host governments to establish operations in the field, and which is ultimately incapable of obliging other actors to respect international refugee law, UNHCR does not enjoy complete freedom of action.⁶⁰

⁵⁸ Loescher, Beyond, op. cit., p.136.

⁵⁹ *ibid.*, p.138.

⁶⁰ UNHCR, The State, op. cit., p.80.

UNHCR operates under a recommendatory and formally non-binding legal mandate. In one sense, obligations of states resides in an undefined duty to 'cooperate' with UNHCR. There is no expressly recognized obligation of states to address refugee problems to UNHCR, or any other international institution, or to abide by any particular procedure.⁶¹ The non-existence of a supranational authority to enforce the rules of the international refugee regime aggravates this situation.

Furthermore, the international refugee instruments leave it up to governments to devise refugee determination procedures with respect to their administrative, judicial and constitutional provisions. States consider these procedures as aspects of their national sovereignty and have been unwilling to transfer this authority to UNHCR or to any other international body.⁶²

Thus, UNHCR's activities on behalf of refugees are generally limited to providing material assistance, citing violations of international law, and publicly condemning those violations. The organization has limited influence in persuading host states to protect refugees, given that it needs these governments' permission to maintain existence in their territories. Because the office has no power to force countries to provide refugees with even minimal humanitarian treatment, the High Commissioner's major weapons for urging nations to abide by international refugee law do not go beyond diplomatic pressure and moral appeals.⁶³

However, it should be recognized that international and regional peace, security, human rights, and economic structures must be strengthened with broader mandates and financial support, if they are to become more constructive. The

⁶¹ Janina W. Dacyl, "Europe Needs a New Protection System for 'Non-Convention' Refugees," *International Journal of Refugee Law*, Vol.7, No.4, October 1995, p.604.

⁶² Loescher, *Beyond*, op. cit., p.140.

⁶³ *ibid.*, pp.138-39.

humanitarian mandate of UNHCR cannot be sufficient by itself to achieve these long-run goals which also have political implications.

c. The Need for Further International Cooperation

It is hard to disagree with Francis Fukuyama who remarked that one of the principal points of collision in the coming decade will be the issue of refugees. He states that “the movement of large populations fleeing countries that are poor to ones that are rich and secure will constitute one of the chief forms of global interdependence in the years to come.”⁶⁴

It is a fact that with its dependence on voluntary contributions to carry out activities and its need to obtain the approval of host governments before intervening, UNHCR cannot resolve the problems of refugees, returnees and internally displaced people solely by itself. More attention must be focused on a range of players including development agencies, human rights institutions, peacekeeping and conflict resolution mechanisms and the other relief organizations, all of which must be involved in finding new approaches to resolve conflicts and accompanying displacements.⁶⁵

It should be recognized that promoting respect for fundamental human rights, economic and social development and the maintenance of peace and security are goals which can be achieved with the cooperation and coordination of a wide range of governmental, inter-governmental and non-governmental actors.⁶⁶ Furthermore, a more effective division of labor is needed among the actors involved in responding to

⁶⁴ cited in (no reference is given) Sadruddin Aga Khan, “Population Movement: Its effect on European Stability,” in G. Alfredsson and P. Macalister-Smith (eds.), *The Living Law of Nations*, Arlington: H.P.Engel, 1996, p.5.

⁶⁵ Loescher, “The International”, op. cit., p.369.

⁶⁶ Sadako Ogata, “Mixed Migration: Strategy for Refugees and Economic Migrants,” *Harvard International Review*, Vol.17, No.2, Spring 1995, p.31.

refugee emergencies. The UN General Assembly took an important first step in December 1991 in creating the Office of the Emergency Relief Coordinator, charged with providing a focal point, within governments and between governmental and non-governmental organizations for communication during UN emergency relief operations. Also, the United Nations Department of Humanitarian Affairs was created which was an essential step in clarifying and assigning responsibilities to UN agencies in complex emergencies.⁶⁷

Increased cooperation between actors involved in refugee matters could aim at several issues such as developing a common definition of the concept of *de facto* refugee; agreements on responsibilities of the first asylum country; concerted action towards development assistance in areas in need and where human rights violations threaten to generate refugees; and initiating action towards mediation and conciliation in cases of internal conflict. Furthermore, establishing an embargo on arms sales to areas likely to erupt into armed conflict, with the almost inevitable result of creating refugees, and establishing in the international community greater intolerance towards regimes that violate human rights and generate refugees, may be of utmost help.⁶⁸ It is obvious that if these objectives which definitely require further international cooperation, could be achieved, it would have substantial positive consequences on the global refugee crisis.

d. The Need for Development Activities

Not only the question of providing protection and finding solutions for the refugees is an issue of concern to the international refugee regime, but there is also

⁶⁷ Loescher, "The International", *op. cit.*, p.370.

⁶⁸ Peter Nobel, "Blurred Vision in the Rich World and Violations of Human Rights - A Critical Assessment of the Human Rights and Refugee Linkages," *Bulletin of Human Rights*, 91/1, 1992, p.84.

the aftermath of refugee-producing situations. Repatriation of refugees when conditions which had drawn them out of their countries had disappeared, is not a sufficient end by itself. Just as critical is the support for the reconstruction of their lives after return. Unless displaced populations can go back to their homes and enjoy a reasonable degree of security in their own community, and unless economic prospects are established in these countries, the transition from war to peace may in some situations be delayed or even political instability and new displacements may occur.⁶⁹

An expanded role for international development and financial institutions in post-conflict reconstruction could influence the way these societies reintegrate displaced populations. A global reconstruction fund would be an important step for the success of such transitions.⁷⁰

Refugees frequently return to areas where land mines are abundant and much of the infrastructure has been destroyed. Some of the necessary rebuilding must occur immediately. In order to mitigate the serious economic and social difficulties encountered by returnees and other people in war-torn societies, it is recognized that closer coordination between the United Nations Development Program (UNDP) and UNHCR should be established. In fact, cooperation between UNDP and UNHCR has already taken place in "Quick Impact Projects" (QIPs) which are small-scale initiatives that can be implemented at low cost, with considerable speed and with the participation of the local community. Such initiatives normally include the reconstruction of schools and health centers, the installation of water wells and handpumps, as well as the repair of roads, bridges and other parts of the

⁶⁹ UNHCR, *The State*, op. cit., p.143; and Morton J. Abramowitz, "Exodus: The World Refugee Crisis," *Foreign Policy*, No.95, Summer 1994, p.183.

⁷⁰ Cohen and Deng, "Exodus", op. cit., p.16.

infrastructure. One objective of QIPs is to provide immediate resources in areas which have been devastated by war and which are confronted with the need to absorb large numbers of returning refugees and displaced people. By implementing projects which are of benefit to the population as a whole, which require the participation of the local community, and which require former enemies to work together, the organization has also attempted to avert any conflict between the new arrivals and the resident population.⁷¹

However, far greater reconstruction needs must be met over the long term. The need for removing land mines alone represents a formidable challenge. Also, for refugees returning to rural areas, the issue of available land is very important. Without this issue settled, many refugees will not be able to start a new life.⁷²

Moreover, there are issues concerning human resources and needs. Refugees returning to agriculture often lack the opportunity to use their skills for years or even decades. Their children may have known no other life than that in refugee camps. Another issue is the physical and mental health of the returnees. They will need adequate medical care, and not all will be able to provide for themselves. These all need to be addressed.⁷³

Although there have been efforts for UNDP-UNHCR coordination in the issue of reintegrating returning refugees, far more effective inter-agency planning, consultation and implementation are required. The roles and responsibilities of the UNDP and UNHCR in such efforts continue to be determined on an *ad hoc*, situation-by-situation basis. The task of the overall rehabilitation of displaced communities must be carried out by UNDP, or by other UN agencies, which can

⁷¹ UNHCR, *The State*, op. cit., p.173; and Rogers, "The Future", op. cit., pp.1129-30.

⁷² Rogers, "The Future", op. cit., pp.1129-30.

⁷³ *ibid.*, p.1130

more appropriately deal with reconstruction and development. This requires a full transfer of responsibility from UNHCR to UNDP after the immediate emergency relief phase is over.⁷⁴

e. Need for Human Rights Enforcement

Greater development assistance alone is not enough to create safe conditions for those returning home: international cooperation must also ensure democratization and respect for human rights.

Indeed, the place of human rights in post-conflict peace-building goes without mention. It is stated that the humanitarian mandate that has been vested in UNHCR to protect and assist the displaced victims of war and persecution would be meaningless if these people were to become the “victims of peace.” To achieve a humanitarian solution is not just to achieve a humane settlement; the task involves reinstating people’s rights, dignity, and autonomy as responsible citizens.⁷⁵

It should be noted that in any society recovering from violent conflict, the most important human rights players are the authorities of states whose residents have been forced to flee or have otherwise suffered from the conflict. Those states, not the international community, bear the ultimate responsibility for protecting the human rights of their populations. Local governments, civic groups and indigenous nongovernmental organizations are also important tools for reconciliation and for disseminating a culture of human rights and peace among diverse segments of the population. At the same time, the international community, especially the human

⁷⁴ Loescher, “The International”, op. cit., pp.371-72.

⁷⁵ Sadako Ogata, “Refugee Movements and Respect for Human Rights,” *Mediterranean Quarterly*, Vol.7, No.3, Summer 1996, p.20.

rights organizations must help governments get back on their feet and avert a recurrence of armed conflict.⁷⁶

Efforts can be made to monitor and promote human rights and establish a “culture of peace”, to strengthen the capacity of official institutions, to hold free and fair elections, to address the problem of accountability for previous human rights violations; to build a strong civil society, to reform the security services, to reinstate education and health facilities, and to assist the children affected by war. All of these peace-building activities must be carried out simultaneously if displaced populations are to be effectively and sustainably reintegrated in their own society.⁷⁷

⁷⁶ *ibid.*, p.22.

⁷⁷ UNHCR, *The State*, *op. cit.*, p.174.

CONCLUSION

As it can be deduced from this thesis, the refugee problem is no longer a First World problem as it was in the late 1940s, nor just a Third World problem as many people have seen it in the last three decades. It is now a truly global problem whose effects transgress national borders, just like terrorism, drugs, AIDS and pollution. The humanitarian, legal and political implications that the refugee problem simultaneously brings forth are indicative of the fact that this problem is sure to present a formidable challenge in the approaching millenium just as it did since the beginning of this decade.

In the face of this challenge, UNHCR, which constitutes the core of the international refugee regime, is confronted with many difficulties. First of all, it is operating under a number of constraints which are predominantly political and financial as have been explained in the last chapter. Given the situation, it is argued that any stance adopted by UNHCR towards refugee issues is constrained both by the scope of its mandate and the willingness of governments to cooperate with it. UNHCR has been accused of formulating its refugee policies in line with donor, rather than refugee interests. For instance, the organization has been criticized for promoting voluntary repatriation as the most desirable of the three durable solutions to the refugee crises. The emphasis upon promoting repatriation is perceived to be in line with the ambitions of donor governments who are concerned about restricting numbers and reducing their financial obligations.¹

Being an organization which is mandated to defend refugee rights, UNHCR has an obligation to uphold the principles of international protection, to ensure that

¹ Alex Cunliffe, "The Refugee Crises: A Study of the United Nations High Commission for Refugees," *Political Studies*, Vol.43, No.2, June 1995, pp.288-89.

states respect their obligations under international law, and to make the necessary public and private representations when governments and other actors put refugees at risk. Yet, it is impeded from realizing such actions to the full extent due to the constraints with which it is confronted. To give one example, refugee-producing states are included in the membership of UNHCR's Executive Council. As a result, on more than one occasion, the Executive Committee has prevented UNHCR from condemning the actions of refugee-producing states which have committed hostilities towards its citizens. As clear from this example, even the daily operational activities of UNHCR are potentially subject to political pressures from member states.²

Furthermore, UNHCR suffers from the fact that the international refugee regime was built after the Second World War to address a far different kind of world. International instruments governing worldwide refugee protection, i.e. the 1951 Convention Relating to the Status of Refugees and its subsequent protocol amending certain provisions of it, rested on the premise that the bulk of refugees were fleeing from some form of persecution, in most cases, communist governments, and could not return home. They were therefore allowed entrance into other countries. Today, the majority of the millions of refugees have fled from their homes not because of individual persecution, but because of violent conflict and the destruction of the civil order. Once across the border, they find little possibility of obtaining new citizenship or even gaining semi-permanent admission to some countries.³

Moreover, during the 1990s, UNHCR has been confronted with one refugee emergency following another in rapid, sometimes overlapping succession. Refugee crises in Iraq, Bosnia, Kenya, Bangladesh, Nepal, the Caucasus, Tajikistan, Benin,

² B.E. Harrell Bond, "The Protection of Refugees in the 'Least Developed' States," in *The Living Law of Nations* by G. Alfredsson and P. Macalister-Smith (eds.), Arlington: N.P.Engel, 1996, p.52.

³ Morton I. Abramowitz, "Exodus: The World Refugee Crisis," *Foreign Policy*, Vol.95, Summer 1994, p.177.

Ghana, Rwanda and recently in Kosovo, have strained the capacities of UNHCR almost to the breaking point. At the same time, UNHCR has been trying to resolve the long-standing refugee problems of the previous decade primarily through repatriation in a context of continuous instability and insecurity. Also, in the post-Cold War era, UNHCR is becoming increasingly involved in providing assistance and protection to internally displaced people.⁴ The growing scale and complexity of the refugee problem during this era has really challenged UNHCR's capacity to cope with them. All the while, the organization also had to deal with the growing unwillingness of traditional donor governments to support the system in terms of finance and upholding the institution of asylum.

In the face of increasing refugee numbers, UNHCR was also confronted with receiving-countries' pressure for it to concentrate more on the root causes of refugee flows and shift its attention to countries of origin, rather than meeting the needs of those refugees who had already left their countries. When UNHCR was intended to be an agency with a strictly humanitarian mandate, it found it questionable to adapt itself to this situation where it was asked to pursue political ends; that is, finding solutions to causes of refugee flows in countries of origin.

As well as the changing nature of the refugee problem in the 1990s, another reason for the difficulties that UNHCR has been going through is directly related with the stance of individual states regarding the refugee matters. It should be recognized that the task of protecting refugees is ultimately the responsibility of states and other political actors. Of course, UNHCR and other humanitarian organizations have an important role to play in this area, whether by acting as advocates of the refugee cause, monitoring the situation of exiled populations, providing them with material

⁴ Gill Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, New York: Oxford University Press, 1993, pp.127-28.

assistance or ensuring that they are able to repatriate on a voluntary basis. But there is a severe limit to what such organizations can do in situations where refugees are prevented from crossing a border, where they are subjected to armed attacks and where they are expelled from their country of asylum.⁵

The global refugee problem is not going to disappear soon. The urge to seek asylum in a world where people experience threats to their security and where they cannot enjoy their basic human rights is deemed to prevail. As long as they live in such conditions, people will continue to move to more secure areas, whatever obstacles may be placed on their way.

Today, the refugee problem requires political approaches outside the mandate of UNHCR. As it had been emphasized, the refugee crisis is not solely a humanitarian problem as it had been in the past. Providing humanitarian aid to populations in flight is not the solution to the problem. It has attained the characteristics of a political problem which therefore necessitates political solutions with the contribution of international actors.

In this context, UNHCR can continue to play a major role, either by providing emergency aid and technical support or by offering legal protection to asylum seekers. It can also serve as a forum to bring governments and international agencies together to consult on international responses and to achieve more effective cooperation on refugee issues. However, it cannot be expected to resolve the political causes of refugee problems. It should be the responsibility of other international actors with different mandates to cope with that problem. All the while, states should be more willing to accord more autonomy to UNHCR in order for it to be able to standardize refugee determination and protection.

⁵ UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, New York: Oxford University Press, 1997, p.97.

The main role of UNHCR should be to uphold the institution of asylum. It should not be forgotten that asylum continues to have great importance for people whose lives and freedom are at risk and who can only find security by seeking refuge in another country. Until permanent solutions can be found to the plight of people in countries where conflict and human rights violations continue, keeping the asylum door open will save lives.

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APPENDIX A

STATUTE OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

United Nations General Assembly, 14 December 1950

CHAPTER I

GENERAL PROVISIONS

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees if it is created.

2. The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.

4. The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of representatives of States Members and States non-members of the United Nations, to be selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.

5. The General Assembly shall review, not later than at its eighth regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1953.

CHAPTER II

FUNCTIONS OF THE HIGH COMMISSIONER

6. The competence of the High Commissioner shall extend to:

- A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the constitution of the International Refugee Organization.
- (ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

- (a) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (b) Having lost his nationality, he has voluntarily re-acquired it; or
- (c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (e) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or
- (f) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

7. Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:

- (a) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or

(b) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

(c) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or

(d) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by:

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(g) Keeping in close touch with the Governments and inter-governmental organizations concerned;

(h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;

(i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.

10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance. The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized. The High Commissioner shall not appeal to Governments for funds or make a general appeal, without the prior approval of the General Assembly. The High Commissioner shall include in his annual report a statement of his activities in this field.

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies. The High

Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

12. The High Commissioner may invite the co-operation of the various specialized agencies.

CHAPTER III

ORGANIZATION AND FINANCES

13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly. The High Commissioner shall be elected for a term of three years, from 1 January 1951.

14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

15. (a) Within the limits of the budgetary appropriations provided, the staff of the Office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

(b) Such staff shall be chosen from persons devoted to the purposes of the Office of the High Commissioner.

(c) Their conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

(d) Provision may also be made to permit the employment of personnel without compensation.

16. The High Commissioner shall consult the Government of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, there may be appointed a representative approved by the Government of that country. Subject to the foregoing, the same representative may serve in more than one country.

17. The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

18. The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations.

19. The Office of the High Commissioner shall be located in Geneva, Switzerland.

20. The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the Office of the High Commissioner shall be borne on the budget of the United Nations

and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

21. The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

22. Transactions relating to the High Commissioner's funds shall be subject to audit by the United Nations Board of Auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated. Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the Financial Regulations of the United Nations and rules promulgated thereunder by the Secretary-General.

APPENDIX B

CONVENTION RELATING TO THE STATUS OF REFUGEES*

Done at Geneva: 28 July 1951

Adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Geneva: 2-25 July 1951

Entered into force: 22 April 1954

PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

* Turkey signed the Convention on 24 August 1951 and ratified it on 30 March 1962.

CHAPTER I

GENERAL PROVISIONS

Article 1

Definition of the term "Refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of Section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it, or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under Section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2
General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3
Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4
Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5
Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6
The term "in the same circumstances"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7
Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 **Exemption from exceptional measures**

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this Article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9 **Provisional measures**

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 **Continuity of residence**

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 **Refugee Seamen**

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their

establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II

JURIDICAL STATUS

Article 12

Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to relating to movable and immovable property.

Article 14

Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15

Right of association

As regards non-political and non-profit making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16
Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatem solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III
GAINFUL EMPLOYMENT

Article 17
Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
 - (b) He has completed three years' residence in the country,
 - (c) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse
 - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18
Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19
Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV

WELFARE

Article 20
Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21
Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22
Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23
Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24
Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

- (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
- (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V

ADMINISTRATIVE MEASURES

Article 25

Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26

Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27

Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a

travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29 **Fiscal charges**

1. The Contracting States shall not impose upon refugee duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 **Transfer of assets**

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31 **Refugees unlawfully in the country of refuge**

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32 **Expulsion**

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34

Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35

Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) the condition of refugees,

- (b) the implementation of this Convention, and
- (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36
Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37
Relation to previous Conventions

Without prejudice to Article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII

FINAL CLAUSES

Article 38
Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39
Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall hereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40
Territorial application clause

1. Any state may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

Article 41
Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those Articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States,

(b) With respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment.

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42
Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43

Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44

Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45

Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in Article 39:

- (a) of declarations and notifications in accordance with Section B of Article 1;
- (b) of signatures, ratifications and accessions in accordance with Article 39;
- (c) of declarations and notifications in accordance with Article 40;
- (d) of reservations and withdrawals in accordance with Article 42;
- (e) of the date on which this Convention will come into force in accordance with Article 43;

- (f) of denunciations and notifications in accordance with Article 44;
- (g) of requests for revision in accordance with Article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at GENEVA, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in Article 39.

APPENDIX C

PROTOCOL RELATING TO THE STATUS OF REFUGEES*

Adopted by United Nations General Assembly: 16 December 1966

Signed by the President of the General Assembly and by the Secretary-General: 31 January 1967

Entered into force: 4 October 1967, in accordance with Article VIII

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article 1 **General provision**

1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . ." and the words ". . . a result of such events", in Article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1 B (1)(a) of the Convention, shall, unless extended under Article 1 B (2) thereof, apply also under the present Protocol.

* Turkey acceded to the Protocol on 31 July 1968.

Article 2
Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 3
Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article 4
Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 5
Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6
Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the

legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article 7

Reservations and declarations

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article I of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under Article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraphs 2 and 3, and of Article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article 8

Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article 9 Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article 10 Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article 11 Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above.

APPENDIX
GENERAL ASSEMBLY RESOLUTION 2198 (XXI)

Protocol Relating to the Status of Refugees

The General Assembly,

Considering that the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the date-line of 1 January 1951,

Taking note of the recommendation of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees that the draft Protocol relating to the Status of Refugees should be submitted to the General Assembly after consideration by the Economic and Social Council, in order that the Secretary-General might be authorized to open the Protocol for accession by Governments within the shortest possible time,

Considering that the Economic and Social Council, in its resolution 1186 (XLI) of 18 November 1966, took note with approval of the draft Protocol contained in the addendum to the report of the United Nations High Commissioner for Refugees and concerning measures to extend the personal scope of the Convention and transmitted the addendum to the General Assembly,

1. *Takes note* of the Protocol relating to the Status of Refugees, the text of which is contained in the addendum to the report of the United Nations High Commissioner for Refugees;
2. *Requests* the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol.

1495th plenary meeting,
16 December 1966.