

Refuge



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UNHCR at Fifty

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Preface / Préface

UNHCR at Fifty: A Message from the High Commissioner / Le HCR à cinquante ans : Un message du haut-commissaire

RUUD LUBBERS

I welcome this special edition of *Refuge* dedicated to UNHCR's fiftieth anniversary and that of the 1951 Refugee Convention. The York University Centre for Refugee Studies has been a longstanding partner for UNHCR in Canada, as well as a focal point for research and teaching on refugees. Many UNHCR colleagues have lectured at the centre's Summer Course on Refugee Issues, while others have benefited from the program as students.

I am also pleased to have an opportunity to address myself to the Canadian friends of refugees and UNHCR. Canada has a proud humanitarian tradition. In 1986, the people of Canada received the Nansen Medal in recognition of their compassion and generosity toward the world's refugees—the only people ever to be honoured in this way. As High Commissioner, I look forward to working together with Canadians—both in government and in Canada's vibrant civil society—to promote understanding and support for refugees and efforts to solve their problems.

UNHCR's history is inextricably linked to the major global political trends and developments of the past half-century. Refugees fleeing repressive regimes in Central and Eastern Europe at the outset of the cold war were followed by those uprooted during the decolonization struggles of the 1960s and 1970s in Africa. During the 1980s, UNHCR's work focused

Je me félicite de cette édition spéciale de *Refuge* consacrée au 50^e anniversaire du HCR et à celui de la Convention relative au statut des réfugiés de 1951. Le Centre d'étude sur les réfugiés de l'Université de York est depuis longtemps un partenaire du HCR au Canada ainsi qu'un point central de la recherche et de l'enseignement sur les réfugiés. Bon nombre de collègues du HCR ont donné des conférences au cours d'été du Centre sur la problématique des réfugiés, et d'autres ont suivi ce programme en qualité d'étudiants.

J'ai également le plaisir de m'adresser aux amis canadiens des réfugiés et du HCR. Le Canada a derrière lui une riche tradition humanitaire. En 1986, le peuple du Canada a reçu la médaille Nansen en hommage à sa compassion et à sa générosité à l'égard des réfugiés du monde, le seul peuple qui ait jamais reçu un tel honneur. En tant que haut-commissaire, je me réjouis de travailler ici avec les Canadiens, tant au sein du gouvernement que dans la société civile animée du Canada, afin de promouvoir la compréhension du problème des réfugiés et de contribuer à résoudre leurs problèmes.

L'histoire du HCR est inextricablement liée aux grandes tendances politiques de la planète ainsi qu'à l'évolution de la situation mondiale au cours des 50 dernières années. Les

on refugees displaced by superpower proxy wars in South-east and Southwest Asia, Central America, and Africa.

The post-cold war period brought tremendous changes in the nature of armed conflict. Internal wars with inter-ethnic or separatist features proliferated, making the patterns of forced displacement more complex. Just weeks after becoming High Commissioner in 1991, my predecessor, Mrs. Sadako Ogata, faced the massive Kurdish refugee emergency that followed the Gulf War. UNHCR ran a large-scale relief operation inside northern Iraq, opening a period of closer cooperation with international military forces and greater involvement in countries of origin.

The break-up of Yugoslavia came soon afterward, initiating a tragic cycle of displacement that continues today—a decade later. In the mid-1990s, the refugee crises in the Great Lakes region of Africa taught painful lessons about the risks of allowing the civilian and humanitarian character of refugee camps to be compromised. The waves of displacement in the Caucasus region drew relatively less international attention, but caused great suffering all the same. The decade ended with UNHCR deeply engaged in the international humanitarian response to the Kosovo and East Timor refugee crises.

UNHCR's functions have expanded dramatically, along with the global scope of our operations. In the earliest days, the Office focused primarily on resettlement, and this remains an important feature of our work. But UNHCR now plays a more hands-on, operational role protecting refugees in the field. Our assistance programs have also evolved—from meeting the basic requirements for food, shelter, health care, and education to addressing the special needs of women, children, the elderly, and the traumatized. Partnerships with refugee communities, governments, non-governmental organizations, and a broad range of other civil society institutions are an essential and integral part of these activities.

Each successive decade has brought new challenges and, in important ways, has shaped a new UNHCR. The capacity to innovate and adapt to the times has been a major strength of the Office. The diverse and far-flung nature of UNHCR's global operations would undoubtedly astonish the first High Commissioner, Mr. van Heuven Goedhart, were he alive today. But he and his tiny staff of thirty-three would also likely find much about today's UNHCR familiar.

Protecting refugees and the search for solutions for their problems continue to be our *raison d'être*. As in those earlier days, the principles enshrined in the 1951 Refugee

réfugiés fuyant des régimes répressifs en Europe centrale et de l'Est à l'issue de la guerre froide ont été suivis par les personnes déracinées au cours des déchirements de la colonisation dans les années 1960 et 1970 en Afrique. Pendant la deuxième moitié des années 1970 et des années 1980, les activités du HCR se sont concentrées sur les réfugiés déplacés par les guerres que se sont livrées les superpuissances par pays interposés en Asie du Sud-Est et du Sud-Ouest, en Amérique centrale et en Afrique.

La période qui a suivi la guerre froide a amené un changement radical dans la nature du conflit armé. Les guerres intérieures avec des caractéristiques interethniques ou séparatistes ont proliféré, ce qui a rendu la structure des déplacements forcés plus complexe. Quelques semaines après son entrée en fonction en tant que haut-commissaire en 1991, M^{me} Sadako Ogata, a été confrontée à la crise dramatique des réfugiés kurdes qui a suivi la guerre du Golfe. Le HCR a organisé une vaste opération de secours au nord de l'Iraq, ouvrant par là une ère de coopération plus étroite avec les forces militaires internationales et une intervention plus marquée dans les pays d'origine.

L'éclatement de la Yougoslavie a suivi peu après, déclenchant le cycle tragique du déplacement qui se poursuit aujourd'hui, une décennie plus tard. Dans le milieu des années 90, les crises de réfugiés dans la région des Grands Lacs en Afrique nous ont enseigné la douloureuse leçon du risque que comporte le non-respect du caractère civil et humanitaire des camps de réfugiés. Les vagues de déplacement dans la région du Caucase ont attiré relativement peu d'attention internationale, mais ont néanmoins causé de grandes souffrances. La décennie s'est terminée sur l'engagement actif du HCR dans la réponse humanitaire internationale aux crises du Kosovo et du Timor oriental.

Les fonctions du HCR ont connu une expansion à la mesure de l'envergure universelle de ses activités. À ses débuts, le HCR concentrait essentiellement ses efforts sur la réinstallation qui constitue toujours un aspect important de son travail, mais il joue aujourd'hui un rôle plus participatif et opérationnel dans la protection des réfugiés sur le terrain. Nos programmes d'assistance ont également évolué, depuis la satisfaction des besoins essentiels en vivres, en abris, en soins de santé et en éducation jusqu'aux besoins particuliers des femmes, des enfants, des personnes âgées et des personnes ayant subi des traumatismes. Les partenariats avec des communautés réfugiées, des gouvernements, des organisations non gouvernementales, ainsi qu'un large éventail d'autres institutions de la société ci-

Convention remain the foundation of the global protection regime. While some have recently questioned its continuing relevance, the Convention has proven its resilience by providing protection to millions of refugees over five decades. It is the hub upon which the entire global governance system for refugees turns, and we would tamper with it at our peril.

At the same time, the international community's commitment to refugee protection is undeniably facing unprecedented pressures. In many countries hosting refugees, massive displacement caused by seemingly insoluble conflicts is placing tremendous strains on social stability, security, and the environment. The dual consequences are weaker support for asylum in these countries and declining interest and funding from donors. The spread of the conflict in West Africa into Guinea, where I visited recently, and the dire state of the Afghan refugees in Pakistan and Iran provide two of the most vivid examples today.

In affluent areas of the world, the entanglement of migration and asylum also poses real dilemmas. Globalization has brought increased human mobility. People searching for protection travel alongside those seeking better economic prospects. Governments are frustrated by the expense and difficulty of sorting out who needs protection and sending those who do not back home. In response, they have created a daunting array of obstacles aimed at preventing migrants from ever reaching their territory, leaving asylum seekers with little choice but to resort to criminal trafficking and smuggling networks. But without effective management of refugee matters, efforts to control irregular migration, migrant trafficking, and associated organized crime cannot succeed.

Against this background, UNHCR has launched Global Consultations aimed at revitalizing the international protection regime. In the last issue of *Refuge*, my representative in Canada, Ms. Judith Kumin, made the case for the Consultations and explained what UNHCR hopes to achieve. I will not review the ground she has already covered, but I would add one personal observation. To be successful, the Consultations must go beyond a debate over legal texts and inspire a renewed commitment by states to refugee protection—both as an international responsibility and a fundamental human value.

Looking forward to UNHCR's next half century, I feel a profound responsibility to ensure that this remarkable institution continues to evolve, adapt, and grow stronger. During my first weeks in office, I have been struck by the

vile, font partie intégrante de ces activités.

Les décennies qui ont suivi ont lancé de nouveaux défis et façonné un nouveau HCR. La capacité d'innover et de s'adapter a constitué l'une des principales forces du Haut-commissariat. La nature variée et universelle des activités du HCR surprendrait indubitablement le premier haut-commissaire, M. van Heuven Goedhart, s'il était encore de ce monde. Toutefois, avec ses 33 collaborateurs, il reconnaîtrait bien des aspects du HCR d'aujourd'hui.

La protection des réfugiés et la recherche de solutions à leurs problèmes demeurent notre raison d'être. Comme au début de l'histoire du HCR, les principes consacrés dans la Convention relative au statut des réfugiés de 1951 restent la pierre angulaire du régime de protection internationale. Si d'aucuns ont récemment remis en question sa pertinence, la Convention a prouvé sa validité toujours actuelle permettant la fourniture d'une protection à des millions de réfugiés au cours de cinq décennies. Elle constitue l'axe autour duquel tourne toute la gestion de la problématique des réfugiés, et nous serions bien imprudents d'y toucher.

En même temps, l'engagement de la communauté internationale à la protection des réfugiés fait indubitablement l'objet de pressions sans précédent. Dans de nombreux pays d'accueil, le déplacement massif engendré par des conflits apparemment sans solution met durement à l'épreuve la stabilité sociale, la sécurité et l'environnement. Il s'ensuit un appui moins important à l'asile dans ces pays ainsi qu'un intérêt et un financement déclinants de la part des donateurs. L'élargissement du conflit en Afrique de l'Ouest vers la Guinée, où je me suis rendu récemment, et l'état inquiétant des réfugiés afghans au Pakistan et en Iran constituent deux des illustrations les plus marquantes aujourd'hui.

Dans les régions riches du monde, la confusion entre la migration et l'asile pose également des dilemmes réels. La mondialisation s'est traduite par une mobilité accrue des populations. Les personnes en quête de protection se mêlent aux personnes cherchant des perspectives économiques plus riantes. Les gouvernements sont frustrés par la difficulté et le coût du tri des personnes qui ont besoin de protection et du renvoi chez elles des personnes qui n'en ont pas besoin. À cet égard, ils ont élaboré un éventail impressionnant d'obstacles visant à interdire aux migrants d'arriver sur leur territoire, ce qui ne laisse aux demandeurs d'asile guère d'autre possibilité que d'avoir recours au réseau de trafiquants et de passeurs clandestins. Toutefois, si l'on ne gère pas de façon efficace les problèmes de

tremendous gap between what the international community expects from my office and the uneven and inadequate support it provides. UNHCR presently depends upon a small group of concerned states—a “coalition of the willing”—in carrying out its global responsibilities. My ambition as High Commissioner will be to transform UNHCR into a truly multilateral instrument for global governance in refugee matters—one for which states feel a sense of ownership and responsibility.

The author is the United Nations High Commissioner for Refugees.

réfugiés, les efforts pour lutter contre la migration irrégulière, le trafic de personnes et les réseaux criminels organisés n'auront aucune chance de succès.

C'est dans ce contexte que le HCR a lancé les consultations mondiales visant à revitaliser le régime de protection internationale. Dans le dernier numéro de *Refuge*, ma déléguée au Canada, M^{me} Judith Kumin, a plaidé pour ces consultations et expliqué ce que le HCR s'efforce d'obtenir. Je ne vais pas revenir sur ce qu'elle a déjà dit, mais j'aimerais ajouter une observation personnelle. Le succès de ces consultations dépendra de leur capacité à s'écarter du débat sur des textes juridiques pour inspirer un engagement renouvelé des États à la protection des réfugiés en tant que responsabilité internationale et valeur humaine fondamentale.

Si l'on se fixe comme point de vue le demi-siècle prochain, je me sens l'important devoir de veiller à ce que cette remarquable institution continue d'évoluer, de s'adapter et de s'affermir. Au cours de mes toutes premières semaines de mandat, j'ai été frappé par le fossé immense entre ce que la communauté internationale attend de mon bureau et l'appui tant inégal qu'inadéquat qu'elle lui fournit. Le HCR dépend actuellement d'un petit groupe d'États concernés – une coalition des gens de bonne volonté – pour s'acquitter de ses responsabilités mondiales. Mon ambition en tant que haut-commissaire sera de transformer le HCR pour en faire un instrument véritablement multilatéral afin de gérer sur le plan international les questions de réfugiés, une institution dont les États auront le sentiment d'être propriétaires et responsables.

L'auteur est haut-commissaire des Nations Unies pour les réfugiés.

Introduction

UNHCR: The First Fifty Years

ELISABETH REHN

I am very pleased to have been asked to guest edit this issue of *Refuge*, which is dedicated to commemorating the first fifty years of the work of the Office of the United Nations High Commissioner for Refugees. In the context of ever-increasing numbers of displaced persons, the fiftieth anniversary of the UNHCR at the end of the year 2000 presents us with an opportunity to analyze and reflect upon the achievements of this important organization as well as its weaknesses and limitations.

The articles published in this issue of *Refuge* present several perspectives. One pair of articles, by Brian Gorlick and Gerald Dirks, presents overviews of the history and evolution of UNHCR, stressing the shifts and expansion in the demands placed on the organization since its creation in 1951, the diversification of the responses of UNHCR to these demands, and the continuing need for the organization to be adaptable and responsive to new dimensions of the flows of the forcibly displaced.

A second group of articles provides regional examples of UNHCR's role in addressing displacement—internally and across borders. Elif Ozmenek provides an analysis of the role of UNHCR in Turkey, highlighting the relationship between the national and international refugee regimes, in a context in which Turkey is simultaneously a producer of refugees and internally displaced persons, a host of refugee populations, and a transit country. Pia Oberoi provides a historical analysis of the relationship of India and Pakistan to UNHCR, offering an explanation for the failure of both states to ratify the 1951 Convention on the Status of Refugees, and the preference of both states for ad hoc relationships with the organization. Jack Mangala examines the response of UNHCR to the “instrumentalization” of refugees and displaced persons, resulting in an increasing linkage by African states of refugees with internal and external security

concerns. Finally, Edith Kauffer Michel explores the programs of UNHCR in Mexico that focus on Guatemalan refugees.

A third pair of papers bring a gendered perspective to the study of refugees and displaced persons, stressing that the needs and perspectives of refugee women deserve particular attention. These papers highlight that—while needing specific protections—refugee women must also be integrated into the decision-making that affects them. Nahla Valji studies historical and contemporary exclusion of women from the 1951 Convention, noting that the “gender-blind” parameters of the Convention have enabled states to largely ignore the realities of displaced women, and that the “gender guidelines” adopted by some states have not remedied the problem. She critiques the tendency to regard women as an indifferent, dependent mass, as “womenandchildren,” separate from men, who are regarded as independent actors. Jelena Zlatkovic-Winter's review of *War's Offensive on Women* reminds us of the multiple contexts from which women flee, and the need for both UNHCR and state asylum policy to respond to these realities.

An additional two articles that could not be accommodated in this issue, but which also reflect on the theme of the first fifty years of UNHCR, will be included in the forthcoming issue of *Refuge*. In “Challenge and Change at UNHCR: A Retrospective of the Last Fifty Years,” Jennifer Hyndman presents a critical reflection on the evolution of the role of UNHCR beyond its original mandate to protect refugees. In “Sex, Gender, and Refugee Protection in Canada under Bill C-11: Are Additional Protections required in light of *In Matter of R-A-?*” Chantal Tie highlights the analytical difficulties that arise when the persecution of women must be defined in terms of “particular social group.”

Collectively, the submissions selected for this issue and the next highlight the limitations of the 1951 Convention and

the daunting challenges faced by UNHCR today, particularly in countries in the South. The authors have noted that the 1951 Convention is not and cannot be the exclusive response to contemporary displacement, and that there are serious lacunae in both international refugee law and national asylum policies, which leave displaced persons without solutions. It is increasingly evident that the Convention—a tool developed in response to very specific historical circumstances—is poorly suited to address the needs and perspectives of developing countries, which absorb the vast majority of the world's displaced persons with a fraction of the resources available in the North. Brian Gorlick, in his article on the shifting priorities of UNHCR, quotes the Indian Permanent Representative to the UN at the Forty-eighth Session of the UNHCR Executive Committee who stated, “The time has come for a fundamental reformulation of international refugee law to take into account the present-day realities . . .” This is echoed by Pia Oberoi's analysis, which reveals that even countries with significant refugee flows, such as India and Pakistan, have not found the Convention to be a helpful framework, and indeed have rejected it altogether. She also quotes the Indian Permanent Representative: “The biggest donors are in reality developing countries, who put at risk their fragile environment, economy, and society to provide refuge to millions,” not Northern resettlement countries. An acknowledgement of these limitations of the Convention is essential, as is a recognition of the geographic and economic realities of displacement.

Several authors also highlight the rise of racism and xenophobia in countries of the North, even in states traditionally considered to have a strong commitment to human rights. This racism is clearly reflected in the development of refugee policy of asylum states, as governments restrict admission in an effort to appease anxious electorates. The authors critique the preference of Northern governments for “humanitarian assistance” as a cheaper alternative to taking more decisive action such as military and political intervention, and as a tool to prevent displaced populations from seeking asylum in the North.

Fifty years after its creation, the UNHCR faces numerous challenges: to continue to respond to displaced populations in need, in the face of ever-present funding difficulties; to resist the politicization of protection and assistance, while balancing donor interests against the core mandate of providing meaningful assistance and protection to displaced persons throughout the world; and, against the backdrop of a convention limited in conceptualization and application, to continue to respond to the realities of displacement—

as faced by women, men, and children in a multitude of contexts—ensuring that the limitations of its definition do not disentitle those genuinely in need from receiving the assistance and protection they deserve. As demonstrated by authors in this volume, the organization, despite difficulties, has shown itself to be committed, creative, and responsive in addressing the many challenges with which it has been faced. The fifty years to come will require continued commitment, creativity, and responsiveness as the challenges persist, and expand.



Before concluding this introduction, I would like to highlight an issue close to my heart, which is addressed by several of the authors in this volume, and which I believe merits special attention. When discussing displacement and international responses, I believe it is crucial to look at the demographics of *who* is actually displaced, and the impact of displacement upon them. It is often mentioned that the vast majority of the world's refugees are women and children. It is therefore essential that we consider whether the existing legal and policy framework accounts for this reality and genuinely addresses their needs. There is reason to be concerned that this is not the case.

As someone who has devoted a great deal of my career to the advancement of women, both in my own country and internationally, I must observe that while women are always among the victims of war, they are rarely present as partners in peace negotiations; despite their key stakes in the outcomes, they do not lead peacebuilding operations; they are rarely invited as local experts when new peacebuilding missions are designed; and they are almost never the spokespersons for refugees in refugee camps. The absence of women from these arenas results in a silencing of their perspectives, a lack of attention to their needs, and thus the impoverishment of refugee policy more generally. The effect of this silencing is evident not only in the policies of international organizations, but in the asylum policies of individual nations, as illustrated by the articles in this volume.

Fortunately, gender inequality has finally been brought into the daylight, after a long and arduous battle. At the end of October 2000, the Security Council unanimously accepted Resolution 1325/2000, which stresses the importance of women in all levels in peace-building, locally and internationally. Step by step, international organizations, including the United Nations, and national governments have realized that peace-building efforts cannot succeed without the involvement and commitment of women.

In the context of conflict-induced displacement, increased attention to women—to their knowledge and their needs—is essential. Women are among the first to transmit the early warnings, when alarming signals of impending conflict begin to sound. They are acutely aware of changes in everyday life, discussing developments within women's groups, and within NGOs. Decision makers should therefore listen to them carefully. When situations escalate, rendering war or conflict unavoidable, women should be represented at peace negotiations. They will bring knowledge and expertise on the situation of refugees, on the possibilities for return, and on possibilities for reconciliation. Their voices must be listened to and heeded.

The recognition of women's knowledge and needs is crucial locally, nationally, and internationally. Recently, at the international level, there have been important developments. In May 2000, the "Lessons Learned" Unit of UN Department of Peacekeeping Operations arranged a conference on mainstreaming gender perspectives in peace operations, in Windhoek, Namibia. Professors, generals, politicians, women with field experience, refugee women, and several female former special representatives of the Secretary General attended the conference, convinced that the only way to achieve sustainable peace is to involve more women at all levels of peacebuilding. The result was the Windhoek Declaration—Namibia Plan of Action, which contains concrete proposals for the Secretary General, Security Council, and member governments of the UN. This declaration ultimately led to the adoption of Resolution 1325, mentioned above, which was adopted by the Security Council, on October 31, 2000.

Of course, it is clear that resolutions, reports, and plans

of action are not enough, if there is no real will to achieve change. International efforts must be complemented by efforts at the national and local level. I am confident, however, that these words will eventually be turned into action, and that women will come to be regarded as *people*, with distinct contributions to make, rather than only as victims. The pendulum is swinging, and gender equality is finally being recognized as an international priority. In the context of displacement, and the extensive work to assist refugees and the internally displaced, this means that women's needs *will* be considered, as will their knowledge and potential contributions to bringing about lasting peace. Women's time has come. Naive? Perhaps, but let us share this dream.

Elisabeth Rehn has worked with numerous organizations concerned with the plight of refugees and displaced persons, including in her role as UN Under-Secretary General, Special Representative of the Secretary General in Bosnia and Herzegovina in 1998 and 1999, and as UN Special Rapporteur for the Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, and the Former Yugoslav Republic of Macedonia, from 1995 to 1998. She has served in the European Parliament, and was Finland's Minister of Defence from 1990 to 1995—the first female minister of defence in the world. She is presently one of two Independent Experts engaged by UNIFEM to assess the situation of women in war, particularly studying means for women to become involved in peace negotiations, and to be appointed to high-ranking peace-building posts.

Note to Subscribers

You may have noticed an inconsistency in the numbering of the last two issues of *Refuge*. Volume 19.2 is dated January 2001, while 19.3 is dated December 2000. In fact, 19.2 should have been dated October 2000. This is a result of a communications lapse between two production teams during a lengthy strike at York University while both issues were being produced. Please accept our apologies for any confusion this may have caused.

Shifting Priorities, Attitudes, and Institutional Change: Reflections on UNHCR at the Crossroads

BRIAN GORLICK

Abstract

The international debate on refugee issues is in flux and has been influenced by a number of factors including post-cold war disinterest in refugees, the media, extraordinary humanitarian crises, and shifting attitudes among policy makers and the public. Over the last decade in particular, the Office of the United Nations High Commissioner for Refugees (UNHCR) has been given the task of providing protection and relief in large-scale humanitarian operations, some of which are unprecedented in size, level of conflict, and categories of persons provided assistance. In the new millennium and under new leadership, will UNHCR get back to “the basics of protection,” or will it continue to be asked to respond to humanitarian crises in the absence of other action by the international community? These are serious policy questions facing the Office.

Résumé

Le débat international sur les questions touchant aux réfugiés est en état d’effervescence. Il a été influencé par un certain nombre de facteurs dont : le manque d’intérêt général, dans la période suivant la fin de la guerre froide, pour des questions concernant les réfugiés, le rôle joué par les médias, les crises humanitaires qui ont pris des proportions extraordinaires et les attitudes qui ont changé tant chez les dirigeants politiques que parmi le grand public. Au cours de la dernière décennie en particulier, le Haut Commissariat s’est vu sollicité pour fournir aide et protection dans des opérations humanitaires de grande ampleur, certaines desquelles n’avaient pas de pareil en terme d’envergure, niveau du conflit et catégories de personnes qui ont reçu de l’aide. Au début d’un millénaire et sous une nouvelle direction, la HCR doit faire face à des d’importantes

décisions politiques : Retournera-t-elle à sa mission première qui est de fournir la protection de base aux réfugiés ou, en l’absence d’autres initiatives par la communauté internationale, continuera-t-elle à être sollicitée pour prendre en charge diverses crises humanitaires ?



In the mid-1970s, about 80 million people—roughly 1.5 per cent of the world’s population—were living outside the country of their birth. The figure is now closer to 150 million, according to the International Organisation for Migration. It seems implausibly small, but the extent of human movement across borders is hard to monitor—and the figures are a mystery for those of us who have no idea how many people move in and out of our neighbourhoods in a single day, or a year, or the course of a decade . . . Refugees are not necessarily poor, but by the time they have reached safety, the human trafficking organisations on which they depend have eaten up much of their capital. In the course of the excruciating journeys, mental and physical resources are also expended—some of them non-renewable.

—Jeremy Harding

“The Uninvited: Refugees at the Rich Man’s Gate”

The future of the international system of refugee protection is the subject of much debate. Increased numbers of asylum seekers and people on the move, largely from countries in the South, have given rise to calls from many Northern politicians and policy-makers for increased controls. In some instances, countries with strong

traditions of receiving refugees and giving shape to the international regime of refugee protection are calling for a review of the very system they helped create. Despite the continuing value of international refugee law and asylum practices, many feel the system is not working and that international refugee law in particular cannot provide states with the means necessary to control irregular migration, while helping to identify those who deserve international protection.

Echoing these sentiments, the British home secretary recently proclaimed that the 1951 Refugee Convention is “no longer working as its framers intended,” and that “the environment in which it is applied today is one that has changed almost out of all recognition from that of 1951.” In brief, he added, “numbers of asylum seekers have vastly increased.” While not offering a ready formula for fixing the international system, the home secretary did identify the need to rectify the severe imbalance between the costs of processing asylum applications in developed countries and of making conditions in the regions of origin better for refugees.¹ Such initiatives, the home secretary proposed, “will reduce the pressure on refugees to travel further afield in search of protection.” He went on to suggest that the EU set up a program “under which an agreed number of refugees—and possibly others in need of protection—would be identified in their own regions and brought to the EU for resettlement.” The advantages of an enhanced resettlement scheme would be to reduce overall expenses to states, while providing more orderly identification and reception of individuals deserving refugee protection based on agreed criteria. Last, the home secretary suggested that “an EU or internationally agreed list of safe countries or groups from which asylum applications would be ruled inadmissible or considered under a greatly accelerated process” would help reduce the phenomenon of “asylum shopping.”²

In fact, it is a refrain among some states not party to the international refugee instruments that the 1951 Refugee Convention and 1967 Protocol are outdated and Eurocentric and thus of limited relevance in dealing with refugee problems in less-developed countries. Accordingly, these countries argue, there is little value in becoming party to the international refugee instruments. Such views, which have been applauded by some, were expressed in a speech by the former Indian Permanent Representative to the UN at the Forty-eighth Session of the UNHCR Executive Committee:

International refugee law is currently in a state of flux and it is evident that many of the provisions of the [1951 Refugee] Convention, particularly those which provide for individualised status determination and social security have little rel-

evance to the circumstances of developing countries today who are mainly confronted with mass and mixed inflows. Moreover, the signing of the Convention is unlikely to improve in any practical manner the actual protection which has always been enjoyed and continues to be enjoyed by refugees in India. We therefore believe that the time has come for a fundamental reformulation of international refugee law to take into account the present day realities . . . [I]t has to be recognised that refugees and mass movements are first and foremost a ‘developing country’ problem and that the biggest ‘donors’ are in reality developing countries who put at risk their fragile environment, economy and society to provide refuge to millions. An international system which does not address these concerns adequately cannot be sustained in the long run . . .

The underlying theme in these comments is concern about increasing numbers of refugees and asylum seekers and the disproportionate burden on states. Related concerns about security, and the economic and environmental impact of involuntary movements of persons, also fuel the search for new systems and methods to deal with and contain refugees and unwanted migrants, as some would have it, beyond one’s borders.

Over the last several years, many policy-makers have called for a re-examination of the international refugee instruments. Questioning the legal instruments and, in consequence, the basic principles of international refugee protection, has arisen because of shifts in the global perspective on refugee problems, particularly in the post-cold war era. The powerful role of media attention (or lack thereof), in addition to ideological shifts in refugee discourse, have also shifted international response to refugee outflows.

Adam Roberts has written that developments in the 1980s and 1990s, “especially the increase in refugee numbers and the raising of barriers by states against inflows of immigrants,” resulted in considerable changes “in the international handling of refugee issues.” The “hardening of attitudes towards refugee influxes,” coupled with intense media focus on select refugee crises, has led to “major political and military consequences.” According to Roberts, such attention has contributed to the international communities’ compulsion to take action, to (ideally, from a Western perspective) “tackle refugee issues in or near the country of origin.”³ The post-cold war attitude that refugees have limited value as political pawns also explains the reluctance of powerful governments to provide military forces in conflicts, and in the end that reluctance exacerbates refugee movements. Gil Loescher has argued that “governments feel compelled to respond to refugee disasters, especially those covered extensively by the media, and therefore are likely

to task the UNHCR and other international agencies to provide relief aid." Loescher further suggests that "the provision of humanitarian assistance is financially and politically a relatively low risk option for governments because it satisfies the demands of both the media and public opinion for some kind of action to alleviate human suffering . . . but it is also used by governments as an excuse for refusing to take more decisive forms of political and military intervention."⁴

As part of this global shift in the North's response to refugee crises, UNHCR has been pressured to play an increasingly expanded role. With no other international organization specifically mandated to deal with humanitarian crises that result in forced movements of individuals, within countries of origin or across international borders, UNHCR is seen as the UN agency with the closest responsibility to put into operation and coordinate large-scale humanitarian response, regardless of whether the victims of such displacement would formally come under the mandate of the Office.⁵ The fact that UNHCR maintains an extensive field presence, and since the Gulf War has gained renewed prominence as the lead UN agency in coordinating large-scale humanitarian operations, has also changed the Office's perceived mandate and operational response.

During Sadako Ogata's ten-year service as High Commissioner for Refugees, the Office found itself in uncharted territory, which in some instances led to deployment of civilian staff into environments riddled with conflict, such as the former Yugoslavia or the former Zaire, or more recently West Timor. Difficulties associated with protecting Rwandan refugees in the former Zaire and UNHCR's role in the former Yugoslavia have also resulted in severe criticism from some quarters, and aspects of these operations have been considered to be a distortion of the Office's mandate and a failure of commitment to protection principles. It has even been argued that humanitarian relief activities offered in a climate of armed conflict inevitably confuse the mandates of respective UN actors in the field, and in the extreme may result in perpetuation of the conflict rather than an expedited peace.⁶ Another legacy is that these operations, despite what is no doubt their considerable success in saving lives, will always be tragic reminders of the risks humanitarian workers are exposed to in order to relieve and protect civilian victims.⁷

Some commentators may argue that the evolution of UNHCR's mandate and operational priorities were inevitable as a result, in part, of the changing nature of conflicts and the dynamics of displacement. However, the fact cannot be ignored that the Office itself was willing to meet the demands of the international community. The correspond-

ing increase in UNHCR's human and financial resources (with an annual budget almost exclusively reliant upon voluntary donations from a small number of developed states) from \$69 million in 1975 to a high of \$1.4 billion in 1996 and some \$1 billion in 1999; and the number of persons of concern to the Office jumping from 2.4 million in 1975 and some 23 million today, also blurred the categories of persons in need of international protection. Such rapid growth and unprecedented demands on the organization has not been without problems. The fact that during the height of the crises in the African Great Lakes region and the former Yugoslavia one quarter of UNHCR's annual budget went to these two operations alone is worth considering in the broader context of how limited resources are ear-marked and spent.⁸

The demands on UNHCR and other humanitarian actors in the last few years to become involved in no-win situations have been problematic and have required the Office to become engaged in debates and negotiations on international security. Although it is inevitable that UNHCR assumes this role, and although some have argued that UNHCR's work was never devoid of political implications, UNHCR and the refugee issues both have a prominence today different from when the Office was first established.⁹

Chimni argues that one consequence of increased involvement of the UN Security Council and NATO in refugee matters is that refugee protection will be "couched in the language of security." He identifies three outcomes of this development: (1) refugees' perceived threat to a host country's security may lead to reduced adherence to fundamental rights such as the principle of *non-refoulement*; (2) the use of the language of security may lead to justifying the use of force against a country of origin "even if, as was the case in Kosovo (and earlier in Iraq), the use of force actually accelerates refugee flows"; and (3) the language of security "invades the world of humanitarianism and starts to displace it."¹⁰

Chimni's critique and what has been offered by the analysis of international relations demonstrate that the development of linkages between managing refugee flows and concerns about international security have required de facto changes in UNHCR's mandate and practices. This, in turn, has resulted in the perception that new and exceptional responses to refugee problems must also be developed.

The only falsehood in such thinking, in this commentator's view, is that changes in the international communities' response to refugee crises have also been shaped in reaction to exceptional and often high-profile operations, as well as, in some instances, alarmist claims about increased numbers.¹¹ In this context, what may be considered more

traditional UNHCR operations geared towards facilitating asylum and securing basic protection and socio-economic rights for refugees, particularly in developing countries, have been largely ignored by the international media—and so, it seems, many academic commentators. Yet in the current climate, if a crisis is out of the eye of the media, funding and related difficulties commonly follow. The humanitarian funding crises for Afghan refugees is but one contemporary example. UNHCR should guard against the correlation between media attention and funding for refugee programs, and the resultant selectivity in the international response. Nonetheless, political expectations and precedents in operational responses, not to mention the development of “soft law” through the passage of countless resolutions in international forums, have gone far beyond extending the mandate of UNHCR to categories of persons whom it assists.

According to Roberts, UNHCR has been a victim of “force of circumstance” that cannot be wished away. In supporting this conclusion, Roberts cites the exceptional examples of northern Iraq, the former Yugoslavia, and Rwanda to explain UNHCR’s pressured response to “prevent huge influxes [of refugees] to other countries, to try and feed and protect threatened people in their own countries, to arrange temporary rather than permanent asylum abroad, and to get those who have fled to return.”¹² At the end of the day, UNHCR may have been a victim of its own success. Whether UNHCR can or will take steps to guard against the reshaping of its protection mandate and operational response, or as some commentators have argued, return to “the basics of protection,” are serious policy questions UNHCR will have to address.

A final issue that deserves attention when contemplating international refugee affairs is the impact of racism and xenophobia on popular culture in Western societies. Although it is difficult to establish that an increase in restrictive policies towards refugees are a direct result of purely racist attitudes, the rise of right-wing movements, which in many instances have had considerable influence on the political mainstream, is certainly cause for concern. This political dynamic is well summed up by Reg Whitaker:

Governments increasingly find themselves pressured from opposite directions. Civil libertarians and immigrant communities on the one side demand more generous policies and decry racism. Extreme right-wing xenophobic and nationalist movements on the other side demand more restrictive policies and assert the priority of the native born. Faced with this equation, most governments have opted to give more ground to the right, a decision perhaps dictated as much by the politicians’ finely tuned sense of where more votes can be

found than by burning racist convictions. The existence of racist influences on policy does not in itself demonstrate that policy is *determined* by racism. In the case of refugees, there are enough reasons to see why governments are becoming increasingly ungenerous, even obstructionist, without recourse to racism as a totalising explanation.¹³

The fact that many European countries, including ones with strong human-rights traditions such as the Nordic countries, have seen growing popularity of political parties that promote an anti-immigrant agenda, has had a negative effect on the domestic refugee debate. Sweden, for example, which can rightly pride itself alongside the other Nordics as being a strong supporter of UNHCR and global human rights issues, is grappling with its own extremist movements at home. Although Sweden’s extremist movements have thus far been shunned by the political mainstream, they have had a disturbing impact on Swedish society in other ways. In 1999 the Swedish security police reported that 940 crimes had been committed by Swedish neo-Nazi groups. Many of these incidents involved violent assaults on immigrants but included the murder of two police officers and a well-known trade-union official who was shot after exposing a colleague as a neo-Nazi infiltrator. These murders were followed by serious threats and attacks on a number of others, including journalists and other individuals working on behalf of anti-racist campaigns or with immigrants and refugees. Many of these victims are now under police protection. Groups based in Sweden are also among the most active in Europe in producing and disseminating white power music and racist propaganda via the Internet. The police have reported that the core group of neo-Nazis in Sweden consists of 1,500 people, but they have several thousand sympathizers. Tougher action against offenders has been demanded by some politicians and the public, but many are reluctant to surrender to growing demands to ban neo-Nazi groups, because such restriction would conflict with laws and policies on freedom of expression.

Countering emerging extremism, in addition to the broader imperatives of maintaining the international system of refugee protection based on the rule of law and equitable burden sharing, are all serious challenges facing the international community and the new leadership of UNHCR. To meet these challenges will now, more than ever, require sound policies and practices on the asylum front that are grounded in a strong commitment to human rights. Support in the form of financial and other economic contributions, as well as inter-state cooperation and harmonization of practices to high protection standards, will also need

to be put in place. The refugee problem is not getting any smaller or easier to deal with, nor will it go away. That the refugee problem would somehow come to an end is what states thought, or perhaps wished to think, when UNHCR was created some fifty years ago. Regrettably, they were sorely mistaken.

Notes

- Hathaway draws a telling comparison of refugee burden sharing in Northern and Southern states: "Of the 26 states hosting at least one refugee per 100 citizens, 21 were among the world's poorest (i.e., they had a per capita income of less than \$1000 per year) . . . The Refugee Convention speaks about the importance of sharing, but incorporates no mechanism to make it happen. Northern states each year spend at least \$12 billion to process the refugee claims of about 15% of the world's refugee population, yet contribute only \$1–2 billion to meet the needs of 85% of the world's refugees who are present in comparatively poor states . . ." Keynote address, New Delhi Workshop on International Refugee Law, *Indian Journal of International Law* 39, no. 1 (January–March 1999), 11.
- Speech by U.K. Home Secretary Jack Straw, to the Institute for Public Policy Research, London, February 6, 2001 (on file with the author).
- Adam Roberts, "More Refugees, Less Asylum: A Regime in Transformation," *Journal of Refugee Studies (JRS)* 11, no. 4 (December 1998), 379.
- Gil Loescher, "The UNHCR and World Politics: State Interests vs. Institutional Autonomy" (paper prepared for an international conference, "Commemorating UNHCR at 50: Past, Present and Future of Refugee Assistance," Columbia University, New York, May 15–18, 2000), forthcoming in *International Migration Review*, spring 2001.
- "Between 1991 and 1997 the Security Council made specific reference to UNHCR assuming a leading humanitarian role more than 30 times, in contrast to merely four times prior to 1991 . . . In Kosovo, UNHCR worked in partnership with an overt party to a conflict even without the cover of a UN Resolution, so that 'its claim to be a neutral actor looked increasingly threadbare.'" B. S. Chimni, "Globalization, Humanitarianism and Refugee Protection," *JRS* 13, no. 3 (September 2000), 256.
- See for example, S. Alex Cunliffe and Michael Pugh, "The Politicisation of UNHCR in the Former Yugoslavia," *JRS* 10, no. 2 (1997); Michael Barutciski, "The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina (1992–1994)," *IJRL* 8, no. 1/2 (1996); Bill Frelick, "Preventing Refugee Flows: Protection of Peril?" *World Refugee Survey 1993*, U.S. Committee for Refugees, Washington, DC. In a news article in *Le Monde* May 29, 1997, a representative of Médecins sans frontières Foundation targeted UNHCR for criticism as head of the UN's repatriation operation for Rwandese refugees from the former Zaire thus: "Instead of standing up for the right of asylum and security guarantees for refugees in Rwanda itself, [UNHCR] is undertaking this repatriation under international pressure." The MSF representative went on to criticize the international community's "understanding" of the Rwandan government whose representatives "are killing refugees by the thousands," and then posed the question, "Should UNHCR bring refugees back to the country of their oppressors in the name of humanitarianism?" Also see Edward N. Luttwak, "Give War a Chance," *Foreign Affairs* (July/August 1999), 36–44. For a counterinterview see Nicholas Morris, "Protection Dilemmas and UNHCR's Response: A Personal View from within UNHCR," *IJRL* 9, no. 3 (1997).
- A press release from the Swedish Ministry for Foreign Affairs, March 29, 2001, on support for the UN Trust Fund for Security of UN staff members notes, "The lack of security for UN personnel has been highlighted on several occasions. Two serious incidents have occurred during the past week, one in the Democratic Republic of the Congo where an employee of UNHCR was killed, and one in Mogadishu in Somalia where a number of international relief workers for Doctors without Borders and the UN were abducted and locally employed Somalis killed. Since 1992, some 200 civilian UN staff members have lost their lives in the execution of their duty, and since 1994 some 240 have been held hostage or kidnapped. In addition, UN personnel have been the victims of threats and assaults on many occasions, and humanitarian transport has been attacked."
- It is perplexing to see certain refugee groups (Afghans in South Asia, for example) being largely without direct financial or social assistance from UNHCR, as a result of budgetary retrenchment. Before cuts were made in financial assistance to urban-based Afghan refugees in India, for example, subsistence allowances were approximately US\$1 per refugee per day. However, in another part of the world, donors have provided funds to establish legal-aid resource centres for returnees who wish to get their homes back in Bosnia and Herzegovina. Resource allocation is often beyond UNHCR's control, when funds are earmarked by donor countries. Nevertheless, the result is unequal protection and assistance to certain groups of refugees. The Office has at times been the subject of strong criticism as a result of these operational imbalances.
- The Statute of the Office of the UNHCR provides that "The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall related, as a rule, to groups and categories of refugees." General Assembly Resolution 428(v) of December 14, 1950, chapter 1, "General Provisions," para 2. The Preamble of the 1951 Refugee Convention also expresses a similar sentiment: "Expressing the wish that all states, recognising 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." 189 United Nations Treaty Series 137, as updated by the 1967 Protocol relating to the Status of Refugees, January 31, 1967, 606 UNTS 267.
See Mark Cutts, "Politics and Humanitarianism," *Refugee Survey Quarterly* 17, no. 1 (1998), who suggests, "rather than attempting to universalise the ICRC approach to humanitarian action, perhaps what is needed is for a clear distinction to be drawn between the different types of humanitarian organisations. On the one hand there are independent organisations

which espouse neutrality, which seek to avoid politics, which focus on palliatives rather than solutions and mitigation rather than prevention, and which operate only on the basis of consent. On the other hand there are those organisations, including United Nations organisations such as UNHCR, which do not necessarily conform to any of these standards or philosophies. The United Nations is, after all, a political organisation, and one which has enforcement powers of its own.”

10. Chimni, “Globalization, Humanitarianism and Refugee Protection,” 252–3.
11. The perception that “vastly increased” numbers of asylum seekers and immigrants are invading Western Europe deserves further study. However, it is worth considering the following: Goodwin-Gill has suggested, “Numbers in and of themselves are not a problem. In the immediate aftermath of the First World War, Europe faced a refugee population of some 800,000 Russian refugees. They were soon joined by Assyrians, Armenians, Assyro-Chaldeans, Germans, Spaniards and others. At the end of the Spanish Civil War, France received some 400,000 refugees within a period of ten days. After the Second World War, Europe was a refuge, often temporary, to over 1.6 million refugees and displaced persons. Other regions in other times have coped with as many or more . . .” “Editorial: Refugees and Security,” *IJRL* 11, no. 1 (1999), 2.

In January 2001 the UNHCR Registration and Statistical Unit reported that provisional data provided by governments to UNHCR indicate that 452,000 asylum applications were submitted in twenty-five European countries in 2000, 4 per cent less than in 1999. In the fifteen EU countries, the number of applications rose slightly, from 387,000 in 1999 to almost 390,000 in 2000, with the U.K. receiving the largest number of asylum applications (approximately 97,900), followed by Germany (78,800), and the Netherlands (43,900). Slovenia received the largest number of asylum seekers in Europe during 2000, with 4.7 applications per 1,000 inhabitants, followed by Belgium (4.2) and Ireland (2.9). The three main nationalities of asylum seekers in Europe remained unchanged compared to 1999: citizens from the Federal Republic of Yugoslavia (FRY) submitted the largest number of applications (42,300), followed by nationals from Iraq (34,700) and from Afghanistan (28,800). The number of Iranian applications more than doubled from 12,100 in 1999 to 27,100 in 2000. Significant decreases were reported in the number of applications submitted by citizens from the FRY (-64 per cent) and Somalia (-26 per cent); *The Economist*, citing a United Nations Population Fund of 2000, noted, “In order to keep its working-age population stable between now and 2050, at current birth and death rates, Germany would need to import 487,000 migrants a year . . . France would need 109,000, and the European Union as a whole 1.6 million. To keep the ratio of workers to pensioners steady, the flow would need to swell to 3.6 million a year in Germany, 1.8 million a year in France and a staggering 13.5 million a year in the EU as a whole.” (*The Economist Mobile Edition*, October 5, 2000); Finally, for an excellent article that debunks a number of common myths about global migration, see Demetrios Papademetriou, “Migration:

Think Again,” *Foreign Policy*, winter 1997–8.

12. Roberts, “More Refugees, Less Asylum: A Regime in Transformation,” 382.
13. Reg Whitaker, “Refugees: The Security Dimension,” *Citizenship Studies* 2, no. 3 (1998), 429–30.

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The Office of the UN High Commissioner for Refugees: Continuing Challenges after a Half Century

GERALD DIRKS

Abstract

The world's refugee phenomenon attracted oscillating levels of interest from governments as early as the inter-war era. Only with the establishment of UNHCR a half-century ago, however, did governments reluctantly acknowledge that managing the refugee phenomenon required an institutional structure and a genuine, continuous, multilateral effort by the international community.

Since the founding of UNHCR, its role, operational approach, and, according to some observers, even its mandate have changed remarkably. Governments, frequently wavering in their support for these modifications, have at least begrudgingly endorsed UNHCR's efforts in order to limit the spread of political instability, which too often resulted in regional economic turmoil and widespread despair.

This paper analyzes how effectively and at what political and fiscal cost UNHCR has dealt with intensifying refugee flows in light of shifting priorities of governments, themselves the policy and budgetary masters of this UN body. To achieve this, the reasons behind UNHCR's expanded responsibilities are identified, the agency's important advocacy work is analyzed, and its expanded role and constantly altering operational approach are examined. Despite the innumerable obstacles that have confronted the agency over the past half century, the conclusions suggest that at least partial success has been achieved.

Résumé

Dès les années d'inter guerres, le phénomène des réfugiés dans le monde a commencé à susciter l'intérêt oscillant des gouvernements nationaux. Cependant, ce n'est qu'avec la mise sur pied du HCR – il y a de cela un demi-siècle – que les gouvernements ont été amenés à reconnaître, un peu malgré eux, que la tâche de s'occuper du phénomène des réfugiés nécessitait une structure institutionnelle ainsi qu'un effort multilatéral, continue et sérieux, de la part de la communauté internationale.

Depuis sa fondation, le rôle du HCR, son approche opérationnelle et, selon certains observateurs, son mandat même, ont changé de manière très nette. Les gouvernements qui sont souvent hésitants dans leur soutien à de telles modifications, ont tout de même fini par soutenir les efforts du HCR afin d'éviter que ne se répande l'instabilité politique et que ne se produisent les bouleversements économiques de régions tout entières et le désespoir humain à grande échelle qui en sont trop souvent le résultat.

Cet article examine le degré de succès qu'à eu le HCR à s'occuper des flots grandissants de réfugiés et le prix politique et fiscal qu'il a fallu payer pour y arriver, spécialement à la lumière des priorités changeantes des gouvernements qui, précisément, sont les maîtres contrôlant les affaires budgétaires et les politiques de cet organisme des Nations Unies. Pour atteindre ses objectifs, l'article identifie les raisons expliquant les responsabilités accrues du HCR, analyse son travail important d'intervention et examine son approche opérationnelle qui change constamment.

Malgré les innombrables obstacles qui ont confronté l'agence au cours des cinquante dernières années, les conclusions suggèrent qu'un succès partiel a tout de même été atteint.

The constant change and dynamic character of international political phenomena are widely accepted among students and practitioners working in all aspects of international relations. A second view, just as widely held, is that, despite the chronic tension that promoted hostility and distrust, the forty years of the cold war provided a semblance of order and relative stability within the international system. Yet, even during those years of bipolar dominance when a kind of predictability prevailed, and certainly throughout the final decade of the century, the issues demanding and receiving attention from governments and intergovernmental organizations did not remain static but rose and fell on agendas in accordance with continually altering perceptions of urgency. At the same time, what were seen as potential or actual threats to state security increased, moving from the traditional primary concern for physical danger posed by military actions, to a growing sense of unease over a host of matters, formerly thought of as “low politics,” such as competition over trade, anxiety over environmental problems, and, most significantly for this paper, massive involuntary cross-boundary population movements.

As early as the period preceding the outbreak of World War II in Europe, but even more so during the past fifty years, governments collectively show varying levels of interest in what is now routinely referred to as the refugee phenomenon. The motives behind this escalating degree of concern are complex but include the desire to limit and restrict political instability, which regularly contributes to economic turmoil and profound humanitarian despair.

In the aftermath of World War II, the international community established machinery to repatriate or integrate hundreds of thousands of persons—primarily Europeans, displaced as a result of the war—into new would-be homelands. Subsequently, governments had to reluctantly acknowledge that the “refugee problem” was not going to be eliminated but rather showed indications of intensifying. International efforts then turned to managing and, where possible, limiting the extent of this unwanted involuntary migration. After substantial debate on the creation of more than just a temporary agency to deal specifically with the international refugee situation, on December 14, 1950, the United Nations General Assembly (GA) adopted Resolution 428 and established the Office of the United Nations High Commissioner for Refugees (UNHCR), which formally

began operations in 1951.¹ This significant multilateral organization is now a half-century old and continues to confront a host of seemingly intractable humanitarian and political issues, many having their origins in the era in which the agency was still in its infancy.

At the outset, UNHCR’s mandate was quite limited. Put succinctly, the agency’s purpose was to encourage governments to provide fair and just treatment to genuine refugees. To do this, governments were encouraged to accede to the newly drafted Convention relating to the Status of Refugees. When states adhered to it, it would provide a degree of legal protection, including a series of rights such as asylum but also additional entitlements that enabled refugees to seek employment and education, and to qualify for social welfare.² UNHCR, therefore, would work not only to have governments ratify the Convention, but would also monitor state behaviour to ensure adherence to the provisions of that document. The GA resolution creating the Office also charged it with the daunting task of seeking permanent solutions to the world’s refugee problem. The approaches subsequently adopted have focused upon three options: voluntary repatriation, integration into the states where refugees had been granted asylum, and permanent resettlement in willing third countries.

During its first decade, UNHCR attained the characteristics of a permanent structure. First, the High Commissioner convinced the GA that UNHCR should be permitted to solicit voluntary financial contributions to assist refugees when no other means of support were available. Second, an advisory committee of interested governments was established to counsel the High Commissioner on how to manage and utilize these still small voluntary contributions from governments. Third, the advisory committee gradually evolved into an executive committee with an expanded membership, which accepted additional tasks associated with the overall direction of UNHCR. By the end of UNHCR’s initial ten years of existence, its concerns had become global, as Europe’s refugee situation was surpassed in size and scope by emergencies in Africa, Asia, and ultimately Latin America.³

The objective of this paper is to trace the evolution and development of UNHCR during its half-century of operation. The goals are to discuss and analyze how effectively and at what cost UNHCR has dealt with the increasing flow of involuntary migrants in the light of the shifting government priorities of over the past fifty years that have hindered the emergence and maintenance of consensus within the international community. To achieve this, I first identify and examine UNHCR’s expanded set of responsibilities

during its lifetime, both in number and scope, and analyze how that state of affairs has arisen. Next, I focus on UNHCR's advocacy efforts which, while part of the agency's original mandate, have expanded significantly. Finally, drawing upon these first two segments, the paper provides linkage between the expanded role of UNHCR and the ongoing alterations in its structure and its administrative and operational approach. As part of this analysis, the efforts UNHCR has made to become a more transparent and accountable entity will receive attention. This paper now turns to the issue of UNHCR's enlarged or "creeping" mandate.

UNHCR's Expanding Responsibilities

Since UNHCR's inception fifty years ago, its activities have expanded significantly, the result of a combination of two factors. First, the organization's goals and purposes have become more encompassing. Second, the expanded goals have required the adoption of additional strategies to achieve those ends. The resolution that created UNHCR clearly limits its tasks to providing legal protection to genuine refugees and to striving towards the eradication of the refugee phenomenon. Over time, however, the approaches adopted by the Office to achieve these objectives have become more numerous and complex. It may be that the agency's ends and the means adopted to attain those ends have expanded. The challenge is to try to explain why agency operations have grown and administrative processes have altered to the extent that they have.

Specifically, in what areas have UNHCR's mandate and administrative operations expanded over the past half-century? As pointed out above, when UNHCR was formed, it was expected to adopt a narrow and clearly delineated range of activities. One student of UNHCR's early years has written that "East-West tensions together with Western disagreements over priorities ensured that the mandate of UNHCR was subject to a highly partisan interpretation while its operational framework reflected compromise and cautious liberality."⁴ The Office was authorized to work towards eliminating the refugee phenomenon, an objective unlikely ever to be attained. The real focus, however, was on providing international legal protection to persons fitting the Convention's definition of a refugee. The agency accordingly sought to have governments accede to this Convention relating to the Status of Refugees and then attempted to ensure that its provisions were adopted and adhered to by those countries.

Very early in UNHCR's existence, the High Commissioner, his small staff, and even a few interested governments recognized that this limited mandate, if rigidly followed, was

too restrictive to meet the mounting needs of bona fide refugees. When in excess of 200,000 Hungarians fled their homeland in late 1956, following an unsuccessful uprising against the occupying forces of the Soviet Union, the United Nation's GA enlarged UNHCR's mandate by authorizing it to raise funds to assist these refugees and to generally coordinate care and maintenance efforts. By 1960, having gained permission to solicit voluntary financial contributions, another GA resolution permitted UNHCR to contract out programs to non-governmental organizations and subsequently to government agencies to provide material assistance to refugees beyond Europe, where states of asylum were unable or unwilling to meet basic refugee needs. Throughout the next three decades, UNHCR's operations expanded constantly as the number of Convention refugees rose substantially, especially in Asia, Africa, and Latin America, where developing countries could not provide life's necessities.⁵ This enormous rise in forced migration was caused in large part by the increase in generalized violence. Specifically, external aggression, intensifying internal conflicts such as civil wars and massive violation of human rights—all compelling populations to flee—could not be entirely ignored by the international community. As refugee numbers mounted, UNHCR's strenuous fundraising initially resulted in millions then tens of millions of dollars being made available by government contributions to cover costs of contracting other agencies within and outside the UN system to dispense care and maintenance assistance.⁶ In recent years, contrary to the intent of its founders, the Office itself has become an operating agency in the field, augmenting the work of the contracting organizations.

The most significant extension of the Office's mandate came during the nineties when, through still another GA resolution, it was authorized to provide protection as well as care and maintenance to persons who were not refugees in the rigid sense of the term as defined by the Convention, but who were in refugee-like situations. An indication that such an expansion in eligibility criteria was being considered came with a report prepared for the 1992 session of the Executive Committee. The background paper stated that the mounting humanitarian emergencies "underlined to some extent the need for supplementing traditional protection notions and approaches with protection activities in new areas."⁷ The report urged UNHCR to forge responses to the massive population displacement that would be innovative and practical, balancing humanitarian concerns with political realism, and states' interests with the rights and needs of refugees and persons in refugee-like circumstances.⁸

One category of persons formerly outside the mandate, but now standing to receive assistance from this broadened outlook, was internally displaced people. To elaborate, one of the criteria for being classed as a refugee according to the 1951 Convention is that such persons had to be outside their state of origin or habitual residence. This alteration in UNHCR's mandate has permitted the agency to assist "internally displaced persons." Thus, people encountering persecution and threats to their lives may receive UNHCR protection even though they have not, possibly for reasons beyond their control, fled their homelands. This condition prevailed during the nineties in a number of countries including Somalia, several states in the Great Lakes region of East Africa, and in the former Yugoslavia. Reporting to the 1992 session of the Executive Committee, UNHCR explained the extension in its operations as follows: "UNHCR's role over the past forty years has demonstrated that the mandate is resilient enough to allow or require adaptation by UNHCR to new, unprecedented challenges through new approaches."⁹ The report went on to assert that UNHCR would continue to seek specific endorsement from the UN secretary-general or the GA where "these activities involve a significant commitment of human, financial and material resources."¹⁰ The following year, as if to legitimize still further the expanding mandate, UNHCR wrote, "The GA and Executive Committee have expressed their support for UNHCR's efforts to explore new options and undertake new protection activities . . . consistent with the mandate."¹¹ Referring directly to the plight of internally displaced persons, the document stated that they would be assisted "where it has been practically and morally untenable to make distinctions as to who should receive humanitarian assistance or protection on the basis of legal mandates derived from prior status rather than current need."¹² This same document declared that the state in which persons have been internally displaced must concur in UNHCR's activities but, on a number of occasions where legitimate authority has not been present, the agency has still initiated activities, often with the support of other UN specialized agencies.

The final example of UNHCR's expanding mandate to be cited here, although others of similar importance could certainly be added, concerns monitoring the welfare of refugees who have been repatriated, possibly prematurely. More frequently now than in the past, UNHCR personnel, encouraged by some Executive Committee member governments, are endeavouring to limit expenses where possible by urging refugees to return to their homelands. While all organizations and governments associated with the refugee phe-

nomenon are eager to see an end to protracted population displacement, conditions in the states of origin are often still politically fragile, and conflict may not have entirely concluded. No doubt the tragic slaughter in Rwanda in 1994 and the subsequent general turmoil and anarchy in the Great Lakes region of East Africa accounts, to some degree, for the intensifying anxiety about the fate of newly repatriated refugees. In a document prepared for the Executive Committee in 1995, UNHCR did assert that it has had "a legitimate concern for the welfare of returnees . . . and it is given effect through monitoring their safe and effective re-integration into their country of origin."¹³ Governments' increased use of temporary rather than permanent asylum for refugees and the withdrawal of this protection, forcing repatriation when it may have been inappropriate, or at least premature, may also have caused UNHCR to try to monitor situations in the homeland—a task it had not formerly attempted. Yet, unlike the decision to provide assistance to internally displaced persons for which numerous authorizations can be found, evidence for the formal authorization of UNHCR to undertake systematic monitoring of returnees is scarce. According to one source, the monitoring has, in fact, been very selective and sporadic, at best.¹⁴ Representatives of UNHCR and non-governmental organizations (NGOs) with field staff operating in many conflict-filled regions agree that there may be a need to observe conditions in some states to which refugees have been repatriated.¹⁵

Throughout the past decade, there has been a qualitative change in the political environment in which UNHCR operates. "The agency appears to be under increasing pressure to promote repatriation as a durable solution to the problems of mass population movement."¹⁶ In addition, the states providing the sanctuary had expected this assistance to be only temporary, but to local authorities scrambling for adequate resources for the indigenous population, let alone any foreign refugees, it feels interminable. The extent of frustration when combined with undeniable humanitarian concern can be sensed in the following quotation from an UNHCR document:

Many refugees have not been able to repatriate voluntarily. Neither have they been able to integrate locally. Nor have they been resettled elsewhere. Formidable crises and emergencies have hardened into impenetrable and seemingly deadlocked dilemmas, resisting or failing to attract determined and concerted international solutions.¹⁷

As recently as the forty-ninth session of UNHCR's Executive Committee, in October 1998, reference continued

to be made to the potential and/or actual danger confronting returnees, especially women and children, who constitute almost three-quarters of most refugee movements. Similarly, at this same session, government delegates and UNHCR staff alike expressed their ongoing concern for persons internally displaced but not yet receiving any protection or assistance from any organization, governmental or non-governmental.¹⁸

These examples of a broadening and deepening UNHCR mandate are not exhaustive but illustrative only. Yet, they do provide the reader with a sample of the growing operations and indicate why alterations in administrative structures and managerial approaches have been necessary, a subject turned to in a later segment of this paper.

Linking Refugee Protection with Intensifying Advocacy

Each year, before UNHCR's Executive Committee meets, officials and member government representatives select a theme for discussion. In 1999, "strengthening partnership to ensure protection" was the focus. Truly, protection lies at the heart of UNHCR's mandate. "Protection encompasses all activities aimed at restoring the human dignity of refugees, safeguarding their rights, and seeking durable solutions to their problems."¹⁹ From its earliest years, in an effort to protect persons falling within its mandate, the agency has advocated on their behalf. That advocacy has taken a variety of forms and, throughout the past five decades, has expanded significantly. The scope and priority given to encouraging protection by governments has become enormously important, indeed. The longest standing of the advocacy objectives pursued by the agency has centred on persuading governments to accede to the two primary international refugee protection instruments: the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol. Acquiring those accessions has not been a simple task. Even as the agency passes its fiftieth birthday, the goal that UNHCR and non-governmental organizations concerned about the welfare of refugees would like to have reached—universal adherence to the international instruments—has eluded them. Not surprisingly, liberal democratic governments—frequently but not always far from refugee-producing circumstances, and in a better position to effectively regulate the entry of aliens—were the first to adhere to the instruments. In marked contrast, states in refugee-producing neighbourhoods and with unresponsive, unaccountable governments have often rejected UNHCR's efforts to have them become signatories. As recently as this past decade, UNHCR efforts to acquire accessions continued to

focus on governments in the Middle East, Asia, and Oceania.²⁰ The disappointments notwithstanding, 138 governments were parties to both instruments, as UNHCR reached its half-century mark.

Even when governments have signed on to the international instruments, this does not, in many instances, end UNHCR's advocacy work with those authorities. Too frequently, according to the agency, governments fail to abide by some of the major provisions of the Convention or its Protocol. Since the origins of UNHCR, it has acknowledged that a major portion of its protection work has been to ensure that the provisions of the Convention are incorporated into legislation in states that have adhered to this international instrument. In a document prepared for the 1990 session of the Executive Committee, UNHCR asserted that the Convention "reflected the determination of the international community to protect and assist vulnerable groups of persons within the framework of international law and on the basis of international solidarity."²¹ The document went on to explain that, despite these arrangements and understandings, "the refugee problem today is bigger and more complex than ever."²² Thus, advocacy has had to be intensified as the available resources and the political will are no longer adequate to meet refugee needs. Governments have come to see mass population shifts as unwanted immigration rather than genuine refugee movements. In a report prepared for the 1999 meeting of UNHCR's Executive Committee, the view was expressed that the agency was "not only confronted with a refugee situation of broadening scope and deepening complexity, but also with an increasing reluctance of states to grant the necessary protection within the agreed international framework."²³

UNHCR's constant awareness of its mandate to pursue solutions to the global refugee problem has caused it to intensify its advocacy programs in an effort to convince governments to adopt programs and policies that support overall assistance to refugees, as well as to persons in refugee-like situations. In its attempt to raise awareness and alter restrictive attitudes of governments and publics towards refugees, UNHCR has constantly emphasized that its objectives and programs are purely humanitarian, having no political goals whatsoever.

From time to time, UNHCR has indicated that it would favour additional international global instruments to supplement the Convention and its Protocol. Such instruments would address the limitations of the 1951 Convention and should ideally be treaties or conventions rather than mere declarations or resolutions, which are not enforceable.²⁴

At the moment, no global instruments focus on the plight of persons fleeing general violence and/or armed conflict.²⁵ It appears, however, that governments have little inclination to draft and adopt any new protection measures that specifically focus upon refugees.²⁶ In the absence of new universal instruments, UNHCR encourages governments to also adhere to such regional international protection instruments as that of the Organization of African Unity and the less effective Cartagena Declaration of the Organization of American States.²⁷ The regional instruments are intended to take into consideration historic and cultural traditions in specific parts of the world. For example, the Cartagena Declaration refers to forms of diplomatic asylum that Latin American governments have agreed upon for more than a half century.

Acquiring accessions by governments to the 1951 Convention and then striving for adherence to the principles contained in these instruments are only two of many advocacy tasks with which UNHCR is involved. Examples of the sort of policies and practices relating to refugee welfare that UNHCR strives to modify include unwarranted detention of refugee claimants in closed holding centres or prisons, refusal by governments to grant even temporary asylum to persons in flight, returning refugees to their states of origin when their lives would be endangered, and preventing persons from seeking gainful employment or their children from attending school. It also endeavours to prevent physical and sexual abuse and intimidation, particularly of women and girls. Discouraging the use of refugee children as soldiers has also become a part of UNHCR's advocacy approach. Addressing these and other equally serious concerns has been frustrating, time-consuming, and frequently unsuccessful. UNHCR's advocacy pursuits are sometimes complicated by a desire to press these matters with governments without alienating or annoying them to the extent that their annual financial contributions, needed so much, will be decreased or even cancelled.²⁸

Arbitrary detention and *refoulement*—the act of forcibly returning refugees to their homelands—are especially worrying to agency officials and head the list of ills upon which advocacy is focused. When seeking to liberalize detention policies that governments have implemented, UNHCR has asserted that physical confinement should be used only in exceptional instances and not as the norm. According to the agency, governments should avoid closed, prison-like camps surrounded by barbed wire and patrolled by armed troops and guard dogs.²⁹ Imprisonment and/or *refoulement* have become increasingly prevalent as more

and more governments interpret the mass shifts in population as little more than attempted immigration through the back door. While UNHCR acknowledges that, given the principles of classical sovereignty, states have the undeniable right to control their borders and determine eligibility for entry, governments are inclined to be inflexible and illiberal, erecting obstacles in the paths of persons seeking sanctuary. As the century concluded, UNHCR felt compelled to step up its advocacy initiatives as, in its view, states demonstrated an increasingly “narrow interpretation of their international obligations and humanitarian responsibilities.”³⁰

Another dimension of UNHCR's advocacy work revolves around encouraging governments to establish fair and equitable processes for determining refugee status. UNHCR representatives have, therefore, endeavoured to see that governments put more humane status-determination procedures into binding legislation and have offered their services to instruct government officials unfamiliar with the issues that relate to determining valid refugee claims. In many countries, including Canada for several years, the agency's representative, a quasi-diplomatic official, is part of the determination process, who has access to the refugee claimant files and, on occasion, even sits with the status-determination panels.

During recent years, the High Commissioner, with UNHCR officials, has urged governments to work with UNHCR to establish mechanisms that provide early warning of potential mass refugee emergencies. Undoubtedly, the tragic events during 1994 in Rwanda and subsequently throughout the Great Lakes region of East Africa with their enormous costs in human lives account, at least partially, for this undertaking.

Many additional examples of advocacy on behalf of refugees could be discussed. Suffice it here to emphasize that, in virtually every statement by the High Commissioner and in almost all documents relating to international refugee protection, a fervent plea is made to the community of states to do more to alleviate the intolerable conditions facing millions of persecuted, dislocated people. Burden-sharing is a frequent theme in these appeals. Although the speeches and agency publications adhere to the conventional sanitized form of the UN system, the profound feeling for the plight of refugees is still detectable. All this advocacy has taxed the capacity of UNHCR and has contributed to modifications in the operation of the organization and a still greater need to attract financial contributions for all programs, as UNHCR enters its second half-century.

Pressures for Budgetary and Managerial Modifications

Administrative, managerial, and other operational modifications have been made at UNHCR as a result of the conditions and circumstances discussed previously. Even if fewer demands had been made on UNHCR during the past half-century, some alterations in its operations would still have likely occurred. To illustrate, the changing international political environment, when combined with increasingly shrill, intransigent attitudes and policy preferences of many governments, has actually intensified the need for UNHCR to adapt. The politicization of policy and decision-making approaches, particularly the budgetary process, at the Geneva headquarters has undoubtedly contributed to the difficulties high commissioners have faced in trying to implement programs.

Muddling through and ad hoc measures have characterized a large proportion of UNHCR's operations for much of the agency's existence. Refugee emergencies, budgetary shortfalls, and ambiguous signals from member governments and senior UN personnel provided an explanation and justification for many informal administrative practices affecting policy and program implementation. Whatever operational approaches or administrative plans were utilized, UNHCR officials defended them as necessary for fulfilling the ever-expanding mandate and humanitarian requirements of the situation.

While many factors have had an impact on the structure and operations of UNHCR, budgetary considerations, controversial at the best of times, certainly head the list. For all intents and purposes, UNHCR's funds come from voluntary contributions by governments. The annual budget for most of the agency's existence has allocated these monies into general programs (those dealing with ongoing refugee care and maintenance), or special programs (the unexpected emergencies that appear to be always with UNHCR). Steps are now being taken to unify this budget process. The agency's annual budget during the nineties became large by any measure and appears to be maintaining that level in this new century. Between 1990 and 1992, the annual budget took an enormous leap, almost doubling from US\$544 million to US\$1.07 billion. This absolutely unexpected growth resulted from a succession of huge population displacements caused by wars and near wars in Iraq, Somalia, the Caucasus, Croatia, and Bosnia. Following the colossal human disaster in Rwanda, UNHCR's budget in 1995 reached an amazing US\$1.3 billion.³¹ In the business world, this rapid growth would be reason for celebration. In the world of humanitarian agencies, it was a reflection of the

chaos and anarchy that has tragically occurred since the end of the cold war.

Such an increase in the annual budget had UNHCR entering a totally new league. Not surprisingly, as the budget has grown, monitoring by the approximately fifty governments, now members of the agency's Executive Committee, has substantially increased. These governments have demanded a greater degree of accountability and transparency from all departments within UNHCR. Uncertainty about meeting the annual financial goal has mounted as the sums requested by UNHCR have become larger. The unstable, unpredictable funding introduced a previously unknown level of anxiety among the major donor states and was a significant factor contributing to the resignation of two high commissioners within eighteen months in the early 1990s.

The fiscal crises with the inevitably escalating calls for controls by member governments resulted in a special working group being struck in 1991 composed of a few of the major donor states from the Executive Committee. One major recommendation brought forward by this group, and accepted by the Executive Committee, required UNHCR's budget to be developed on the basis of available voluntary funds rather than on projected refugee needs.³² While this recommendation brought a greater degree of fiscal responsibility to the budgetary process, it has not by any means put an end to the ongoing search for funds, or efforts to streamline the agency's administrative operations at headquarters in Geneva or in the field where programs for refugees are delivered. UNHCR has had to try to balance humanitarian concerns with the cold and harsh truths arising from political and fiscal reality.

Despite an intentional decrease in staff positions at headquarters and in the field, as well as other efforts adopted to limit expenditures, financial issues had become especially acute by early 1998. The director of UNHCR's Operational Support Division expressed concern over the considerable expected shortfall in government financial contributions to the general program budget. In 1997, the Executive Committee had approved a budget for the general program of US\$452 million, but only US\$385 million was available.³³ The total funds contributed to UNHCR had reached almost US\$970 million, but the amount received in 1997 had fallen to US\$805 million.³⁴ At the close of April 1998, UNHCR had acquired US\$100 million less than on the same date the previous year.³⁵

As fiscal problems intensified in the 1990s, the High Commissioner and her officials sought out initiatives that could bring significant savings without seriously damaging

program delivery. Staff positions at headquarters and in the field were reduced. In July 1998, the number of headquarters posts stood at 731, down from 815 a year earlier. In the field, positions fell from 4423 in July 1997, to 4038 a year later.³⁶ Even with zealous efforts to limit expenditures for all sectors of UNHCR program operations, the proposed budget for the fiscal year 2000 still stood at nearly US\$950 million. The 2000 budget was first reduced to US\$870 million but had to be reduced further to US\$824 million, demonstrating the inability to raise adequate revenues to meet the still acute program needs so clearly identified by UNHCR personnel.

As this new century opens, financial anxiety persists and is reflected in a plethora of decisions that have affected how UNHCR accomplishes its mandate. Before identifying some of them, this paper will briefly discuss the effect that the High Commissioner who directed the Office in the past decade has had on agency operations.

Sadako Ogata became High Commissioner in January 1991, after her appointment by the UN Secretary General was confirmed by the GA. During the autumn 1998 session of the GA, she was reappointed for a two-year term, at her request, and fulfilled her mandate at the end of the year 2000. Her years of service have provided much-needed continuity in leadership and direction, following the events in 1989 and 1990, which resulted in the resignations of her two immediate predecessors. Throughout her years as High Commissioner, Mrs. Ogata strove to make UNHCR more administratively efficient, managerially streamlined, and fiscally responsible and accountable. According to one senior official, her style or approach was to push particular proposals or schemes initially on a trial basis so that she could gauge the response of the major donor governments. If she met no significant resistance, she would persist with her plans, but if opposition arose and intensified, rather than entering a protracted struggle, she would make a strategic retreat.³⁷

Prior to the appointment of the present UN secretary general, Kofi Annan, some observers speculated that Sadako Ogata was under some consideration for this highest post. One source has speculated that, being aware of this possibility, she worked more diligently than ever to reform the operations of UNHCR as a sort of illustration of what she might be in a position to do if she were given the opportunity to address the internal problems of the UN system itself. During her decade as High Commissioner, Mrs. Ogata recognized the fiscal and political importance of the major donor governments, especially that of the United States, and did all in her power to meet their preferences in policy

and program choices. What then has been the impact of the financial problems and Mrs. Ogata's approach upon the structural, administrative, and organizational operations of UNHCR?

Major donor governments have routinely criticized many UN agencies for their unprofessional management, rampant use of ad hoc administrative practices, and even financial waste. UNHCR has not been exempted from this censure. As financial shortfalls have become more acute for UNHCR, the High Commissioner and her officials, ever sensitive to the humanitarian nature of its mandate and the deepening concerns expressed by governments about their administrative inefficiencies, renewed their efforts to streamline operations in virtually all areas of agency operations. In April 1993, Mrs. Ogata established a working group to focus upon internal program management and operational capacity. This group has subsequently been absorbed by UNHCR's Office of the Comptroller and Management Services but continues to monitor the operations of the agency, constantly on the lookout for inefficiencies and waste. On another front, to save time for Secretariat officials to undertake other tasks, and to free up government representatives from redundant meetings, UNHCR's Standing Committees on International Protection and Administration and Finance were merged into one general standing committee, which now meets three to four times a year and operates as an advisory body between the annual sessions of the Executive Committee.³⁸ This new system began functioning in 1996.

At the same time that the one standing committee was formed, the Executive Committee took steps, at the suggestion of the High Commissioner, to strengthen UNHCR's internal comprehensive audit processes. The primary objective was to make management and administrative systems more accountable, transparent, and responsive. These and other efforts for openness and efficiency were to some degree triggered by the UN's own Board of Auditors and Advisory Committee on Administrative and Budgetary Questions, which together had indicated that there had been little progress in rectifying several recurrent administrative issues.³⁹

The UN's Board of Auditors had also expressed concern over the lack of coordination and controls between UNHCR and its "implementing partners"—a term that describes the scores of non-governmental organizations with which UNHCR has negotiated contractual arrangements to care for and maintain the millions of persons defined to be within the agency's mandate. Anxious to avoid fiscal inefficiencies, the auditors and UNHCR's Executive Committee

have urged that the activities of contracting partners be audited as well.⁴⁰

During the last three or four years, numerous reports from UNHCR recount the intensifying work to reduce expenses without losing sight of the agency's objectives. UNHCR's own Inspection and Evaluation Service has adopted practices to strengthen oversight in an attempt to pacify the UN's auditors and its own Executive Committee.⁴¹ As an illustration of cost-cutting efforts, UNHCR has re-examined the contractual relationships it had with suppliers of a wide range of goods, to ensure the best possible prices for materials used to assist refugees.

In 1995, UNHCR embarked upon its most extensive initiative to overhaul management and administrative practices and procedures. This ambitious exercise was intended to streamline management, reduce staff positions at headquarters and in the field, introduce powerful information systems, and above all, cut costs. In-house committees and task forces, watched closely by member government representatives, formulated and evaluated numerous schemes to meet the goals of Project Delphi.

Operating on a parallel track, and at the urging of UN auditors and the Executive Committee, UNHCR has used memoranda of understanding to formalize and place on a more business-like footing its relations with UN agencies contracted to assist refugees.

Simultaneously, work also continued between UNHCR and its non-governmental implementing partners to regularize and formalize their cooperative operations. At the same time, uncertainty mounted among UNHCR officials about whether the non-governmental organizations, in fact, could do all that was being asked of them. By the mid-nineties, these agencies were operating as much as 70 per cent of the UNHCR's field projects.⁴²

As international voluntary agencies became a vital component of UNHCR service delivery, having already acquired observer status at annual meetings of the Executive Committee in many instances, they began to ask for more visibility, and possibly even influence, in UNHCR governance. Succinctly put, these agencies sought the opportunity to submit written presentations, and to intervene orally in Executive Committee deliberations, at least occasionally.⁴³ Moreover, these UNHCR partners strove to extend their observer status to the three or four meetings held annually by the Standing Committee. While recognizing that the role of non-UN bodies was most significant in helping to fulfill the mandate of UNHCR, government representatives on the Executive Committee preferred to keep governance issues in their hands, for the most part. Nevertheless, observer

status for voluntary organizations at Standing Committee meetings has been attained.

It is clear that the challenges facing the agency have been enormous, and the search for adequate financial resources and political support for programs has been a persistent goal.

Concern for the physical safety and security of humanitarian personnel employed by UNHCR and other UN and non-governmental agencies has mounted recently. Officials in the field have been held hostage by bandits and terrorist groups, and in a few deplorable instances, personnel have lost their lives, as in Guinea, East Timor, and Chechnya. This rise in violence has profoundly troubled the senior managers at UNHCR as well as the member governments that sit on the Executive Committee. Whenever possible, field personnel are pulled out of regions known to be particularly dangerous. But if refugees and other persons in need are to be assisted, the international humanitarian organizations must continue to take chances in order to fulfill their humanitarian mandates. The problem continues and is not easily resolved.

Conclusion

One should not be left entirely with an impression of despair and pessimism. Without doubt, UNHCR has had, and continues to have, financial, administrative, and political impediments to conquer. Moreover, the forces and factors that cause refugee movements are still all too apparent. UNHCR and many humanitarian voluntary organizations are being confronted by a seemingly endless series of forced population movements, whether in the Balkans, sub-Saharan Africa, or Asia. Political instability, which can cause refugee outflows, persists in many parts of the world and can generate refugee flows surprisingly quickly, given the appropriate catalysts. Bleak as this picture may be, UNHCR, its mandate, and its objectives continue to have broad support from the vast majority of governments today, despite imperfections. Moreover, the agency stands as a useful illustration of how the concept of multilateralism can be operationalized.

The multilateral character of the efforts to meaningfully address the global refugee phenomenon are a half-century old now and are firmly in place. No government today questions the need for collective action where refugees need assistance and protection. The establishment of UNHCR fifty years ago, together with its expanding mandate over time, has its basis in the premises of functionalist multilateralism.⁴⁴ The approach has been applied to the refugee phenomenon because it requires cooperation from virtually all governments, if durable solutions are to be achieved.

As a multilateral vehicle, UNHCR constitutes the centrepiece of an international “regime” or the formal intergovernmental apparatus intended to formulate and accomplish humanitarian programs necessitated by widespread violence and turmoil.

This recognition on the part of governments that UNHCR fulfills a necessary function does not, of course, alleviate the anxiety on several fronts that continues to be experienced by these same governments, as well as by the High Commissioner and other humanitarian voluntary organizations.

Despite all its problems, UNHCR operations continue to expand, to address the chronic and the newer challenges posed by the global refugee phenomenon. Like complex bureaucratic organizations everywhere, UNHCR in its second half-century will continue to undergo managerial and administrative modifications in an effort to more adequately fulfill its mandate. The degree to which it meets the objectives set for it by governments or in-house planners will depend upon available finances, the political will of member governments, and the scope of the world’s refugee situation.

Notes

1. For elaboration on the origins of UNHCR and the global refugee situation in the postwar era, see Gerald Dirks, *Canada’s Refugee Policy: Indifference or Opportunism?* (Kingston and Montreal: McGill-Queen’s University Press, 1977), 176–85, and Jacques Vernant, *The Refugee in the Postwar World* (New York: Random House, 1953).
2. The Convention defined a refugee as “any person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership in 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 . . .”
3. For a discussion of UNHCR’s formative period, see Vernant, *The Refugee in the Postwar World*, and G. Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993).
4. A. Cunliffe, “The Refugee Crises: A Study of the Office of the United Nations High Commission for Refugees,” *Political Studies* 48 (1995), 280.
5. The number of refugees eligible for UNHCR protection rose in increments following the forcible expulsion of Ugandan Asians by President Amin in 1972; the violent military coup in Chile in 1973; the Soviet invasion of Afghanistan in 1979; political and social turmoil in Iran during the early 1980s; and civil wars in Angola and Mozambique in Africa, and in El Salvador, Nicaragua, and Guatemala in the Western Hemisphere in that same decade.
6. UNHCR budgets rose constantly. In U.S. dollars, its budget was \$2.3 million in 1960; \$2.5 million in 1965; \$5.2 million in 1970; \$8.1 million in 1975; \$195.3 million in 1980; \$322.9 million in 1985; and \$544.2 million in 1990. Department of Public Information, *Yearbooks of the United Nations* for appropriate years (New York: Department of Public Information).
7. Executive Committee of the High Commissioner’s Program (ECHCP) Forty-third Session, “Note on International Protection,” August 25, 1992, para. 10.
8. *Ibid.*, para. 11.
9. *Ibid.*, para. 14.
10. *Ibid.*, para. 15.
11. ECHCP, Forty-fourth Session, “Note on International Protection,” August 31, 1993, para. 39.
12. *Ibid.*, para. 45.
13. ECHCP, Forty-sixth Session, “Note on International Protection,” September 1, 1995, para. 25.
14. Interview with an official of UNHCR, Toronto, Ontario, December 10, 1998.
15. ECHCP, Forty-sixth Session, “Note on International Protection,” September 1, 1995, para. 23.
16. Cunliffe, “The Refugee Crises,” 280.
17. ECHCP, Forty-seventh Session, “Note on International Protection,” July 25, 1996, para. 1.
18. ECHCP, Forty-ninth Session, October 12, 1998, *Report of the 49th Session of the Executive Committee of the High Commissioner’s Program*.
19. ECHCP, Fiftieth Session, “Strengthening Partnerships to Ensure Protection,” September 14, 1999, para. 2.
20. ECHCP, Forty-second Session, “Note on International Protection,” September 9, 1991, para. 17.
21. ECHCP Forty-first Session, “Note on International Protection,” August 27, 1990, para. 1.
22. *Ibid.*
23. ECHCP, Fiftieth Session, “Note on International Protection,” July 7, 1999, para. 1.
24. ECHCP Forty-fifth Session, “Note on International Protection,” September 6, 1994, para. 19.
25. *Ibid.*, para. 19–24.
26. *Ibid.*, para. 48–51.
27. *Ibid.*, para. 32.
28. Interviews with Canadian officials at the departments of Citizenship and Immigration, Foreign Affairs and International Trade, and the Canadian International Development Agency, January 4, 1999.
29. ECHCP, Forty-first Session, “Note on International Protection,” August 27, 1990, para. 10.
30. *Ibid.*, para. 18.
31. Department of Public Information, *Yearbooks of the United Nations, 1990–96* (New York: Department of Public Information, 1990–6).
32. Cunliffe, “The Refugee Crises,” 285–6.
33. “Report of the Tenth Meeting of the Standing Committee to the High Commissioner’s Program,” February 2–3, 1998.
34. *Ibid.*
35. “Report of the Eleventh Meeting of the Standing Committee to the High Commissioner’s Program,” April 28–9, 1998.
36. ECHCP, Forty-ninth Session, “Overview of UNHCR Activities, 1997–99,” September 28, 1998.

37. Interview with an official of UNHCR, Toronto, Ontario, December 10, 1998.
38. ECHCP, "Report of the Extraordinary Meeting of the Executive Committee to the High Commissioner's Program," June 25, 1995.
39. ECHCP, Forty-sixth Session, "Report of the Standing Committee on Administration and Finance," October 12, 1995.
40. ECHCP, Forty-sixth Session, "Report of the Executive Committee of the High Commissioner's Program," October 17–20, 1995.
41. ECHCP, Forty-seventh Session, "Report of the 3rd Meeting of the Standing Committee," June 1, 1996.
42. ECHCP Forty-eighth Session, "Overview of UNHCR Activities, 1996–98,"
43. ECHCP, Forty-eighth Session, "Report of the 8th Meeting of the Standing Committee," May 30, 1997.
44. J. Caporaso, "International Relations Theory and Multilateralism: The Search for Foundations," *International Organization* 46, no. 3 (summer 1992): 599–632.

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Women and the 1951 Refugee Convention: Fifty Years of Seeking Visibility

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Abstract

The refugee regime, built on the 1951 Convention relating to the Status of Refugees, has long excluded women from the international right to protection from persecution. The gender-blind parameters of the Convention have been exacerbated by the same qualities in the international legal system of which it is a part; state practices toward asylum-seekers; and the dichotomous construction of the refugee regime as a whole, which has produced and reproduced victimizing identities of refugee women. Advances today, such as the adoption of gender guidelines in a number of states, have been more symbolic in effect than transforming. New policy paths need to be evaluated to ensure that the next half-century of refugee protection does not duplicate the inequalities of the past.

Résumé

Le régime juridique encadrant la protection des réfugiés, bâti sur la Convention des Nations Unies de 1951 relative au statut des réfugiés, a longtemps servi à priver les femmes du droit international de protection contre la persécution. Les paramètres de la Convention, qui sont indifférents aux sexes, ont été intensifiés par les mêmes qualités se trouvant dans le régime juridique international dont elle fait d'ailleurs partie, par le traitement réservé aux demandeurs d'asile par les états et par la structure dichotomique du régime de la protection des réfugiés en général qui a produit et reproduit pour les femmes demandeurs d'asile des identités de victimes. Les progrès que l'on peut voir aujourd'hui, tel que l'adoption par un certain nombre de pays de programmes de sensibilisation aux spécificités sexuelles, sont plutôt symboliques et n'apportent pas de transformations réelles. Conséquemment, pour l'avenir, il

importe d'examiner de nouvelles initiatives en matière de politiques à suivre afin de s'assurer que le prochain demi-siècle de la protection des réfugiés ne perpétue pas les inégalités du passé.



Sex-specific violence and discrimination has never been treated with the same seriousness as other human rights abuses . . . If a person is murdered because of his or her politics, the world justifiably responds with outrage. But if a person is beaten or allowed to die because she is female, the world dismisses it as cultural tradition.

—Lori Heise
Crimes of Gender

Until very recently, if one spoke of domestic violence within mainstream refugee scholarship, it could safely be assumed that the reference was to the internal security concerns of a state—perhaps fears of domestic clashes in the wake of large flows of migration. One of the last actions of outgoing U.S. Attorney General Janet Reno was to overturn a 1999 Board of Immigration Appeals decision to deny political asylum to a Guatemalan woman who had been persecuted relentlessly at the hands of an abusive husband. The decision did not grant asylum, but rather ensured that the case was held over until new regulations, currently before the Department of Justice, can be decided upon.¹ If approved, the new regulations will facilitate the case of women fleeing gender-specific or gender-based persecution, including that of domestic violence.²

The last decade has seen a number of such advances in the policies of industrialized states, as increasing awareness

has taken root that women seeking asylum in the North have been marginalized. Advances in engendering the arena of international law in general, and the creation of minimum norms to circumvent arguments of cultural relativism, have begun to have a positive impact on the way in which asylum protection is constructed. However, change has been slow and has faced considerable opposition. For all the increased discourse on the issue, progress has been largely symbolic when measured against the practical impact it has had on the lives of refugee women.

It has recently been repeatedly observed in refugee studies that, in the international consciousness, the face of the universal refugee is overwhelmingly that of a woman, while paradoxically, the face of an asylum seeker in an industrialized country is that of a single male. The refugee regime, built on the 1951 Convention³ and shaped through state and international practice, has long excluded women, procedurally and substantively, from the international right to protection from persecution. This paper explores the essential principles of the Convention, and the way they have been formulated and interpreted in a manner that excludes women from protection. Although gender-blind in its conception, the Convention was sufficiently ambiguous in its definitions that protection could have been extended to women if the political will existed. The fact that it has been extended does not lie solely with the Convention, but rather with the nature of the international legal system; state practices toward asylum-seekers; and the dichotomous construction of the refugee regime as a whole, which has produced and reproduced infantilizing identities of refugee women.

In 1993 a UN Human Development report noted that “no country treats its women as well as it treats its men.”⁴ In the year 2000, the same UN report estimated that, worldwide, one in three women has experienced violence in an intimate relationship. This figure did not include those who have suffered from random sexual violence, in the context of war, or gender-specific violence such as female genital mutilation, dowry burnings, acid attacks, female infanticide, forced prostitution, and countless other such practices.

The treatment of women the world over through denial of economic and political rights, implicit acceptance of physical and sexual violence, and the enforcement of systemic violence such as the global feminization of poverty has been well documented. In spite of their numbers, or more accurately because of them, women’s experiences of persecution have been somehow viewed as “natural,” falling therefore outside the purview of international protection. Indeed, until recently, a woman’s ability to seek pro-

tection from her own state was tenuous. One writer has characterized the use of violence against women in underdeveloped states today as a “global holocaust,” a situation tantamount to “the systematic genocide of Third World women.”⁵ In the so-called developed world, rape in marriage has been recognized in English law only since the 1990s, and in the United States, where studies show that 10–14 per cent of women have suffered rape or attempted rape by their intimate partner, only half of the states recognize this as a crime.

With regards to women’s experiences as refugees, UNHCR and other aid organizations agree that 80 per cent of refugees and displaced persons are women and children,⁶ many of whom have experienced rape and sexual violence in their countries of origin before fleeing. These women are also in danger of experiencing such violence again while fleeing, in refugee camps, during resettlement, and during repatriation. In spite of such high levels of abuse, persecution, and vulnerability of the refugees seeking asylum in countries such as Canada, upwards of 75 per cent are men.⁷

The Inception and Evolution of the 1951 Convention

Prior to WWII, international agreements on refugees were limited to specific refugee groups, such as the Russians or Armenians, and dealt almost solely with the issue of identity documents.⁸ The 1951 Convention was the first attempt to provide a universal definition of refugees, and to extend to them international legal protection. Historically situated, the Convention inevitably reflected the concerns of Europeans at the time, and, more important, the specific concerns of its writers—white, educated, Western males. The persecutory groups covered in article 1 were those that reflected the experiences of the Second World War.

There has been some debate on the intentions of the fifth category of refugee—that of “a particular social group.” Many advocates for a more inclusive asylum regime argue that the final category was included as a means of ensuring that the instrument remained flexible to the needs of possible persecutory groups in the future. Deborah Anker notes, “A study of the *travaux préparatoires* of the 1951 Convention, where the term ‘particular social group’ first was injected into the definition of ‘refugee’, shows that the category was meant to protect groups and individuals that did not fall within the categories of race, religion, and political opinion. *Social group classification was meant to have flexible boundaries that would enable it to perform this function.*”⁹ Similarly, in a ruling in the United Kingdom, a judge noted, “In choosing to use the general term *particular social group* rather than an enumeration of specific social

groups, the framers of the Convention were in my opinion intending to include whatever groups might be regarded as coming within the anti-discriminatory objectives of the Convention.”¹⁰

The Convention’s flexibility could have enabled it to be a truly comprehensive instrument, but its ability to be inclusive in its protection was hampered from the start by a number of factors. The fact that the writers themselves were entirely male, Western, and educated hampered their ability to address the persecution fears of those from other experiential standpoints. More important, the rights protected by the Convention are chronicled in broader humanitarian law, thus making its interpretations contingent on evolving interpretations of human rights in general. These reflected international documents, however, and indeed the entire construction of international law, is itself premised on gendered foundations—thus entrenching this dysfunction into the Convention and its interpretation.

International human rights law at its outset took androcentric concerns and universalized them as “human” rights, thus shrouding them in an unquestionable aura of legitimacy. MacKinnon¹¹ argues that the liberal tradition out of which notions of international human rights was born is fundamentally gender blind. There is an assumption that it is not only universal, but that it is neutral because it has “scientific validity.” She critiques this tradition for presuming that law is “potentially principled, meaning predisposed to no substantive outcome, or manipulable to any ends, thus available as a tool that is not fatally twisted.” This kind of blanket faith in the inherent justice of law to determine neutral outcomes has been the largest obstacle to the acknowledgement of its exclusionary effect on women.

Who Has the Right to Define Refugee?

The definition of a refugee as spelled out in article 1 of the Convention has had a number of gendered implications. The persecution experienced by the individual must be causally connected to one of the five enumerated grounds¹² in order to invoke international rights and obligations.

As feminist critiques have noted, like much of Western thought, this definition is built on some important hierarchical categories of inclusion and exclusion. First, there is a duality created between a political (legitimate) asylum seeker and an economic (illegitimate) migrant that necessarily dictates who is excluded.¹³ The delineation is patently false when one observes, in the context of its relevance for women, the manner in which the political is filtered through economic persecution—such as the disproportional effects structural adjustment policies have on women.

Additionally, the relationship between economic oppression and other forms of persecution resists attempts to separate these categories. Women’s enforced economic vulnerability (they are disproportionately represented among the poorest in all countries) makes them vulnerable in other locations: in the job market, more women are coerced into the growing sex trade, or find exploitative jobs in export processing zones; in relationships, abuse is tolerated for lack of means to survive on one’s own; and women’s position denies them the power to be heard in society, or to be involved in the “public” sphere. The binary distinction between political rights and economic rights creates a hierarchy of persecutory practices.

The second important binary implicit in the Convention is the divide between the political and the private spheres. In enumerating political opinion as a nexus of persecution, Western interpretation has imposed its paradigm of the public/private split, in defining what constitutes the “political” realm. Western jurisprudence has read political opinion to mean actions and expressions of opinion that take place in the traditional “public” sphere—the sphere of the military, politics, and the market—dominated by men. Excluded is the woman-dominated private sphere—that space in which women experience the greatest threats to their personal security. This interpretation has further implications in that it denies women validity for the political views and actions that they express in the private sphere. As Jill Steans has pointed out, “Women are not without power in their non-political roles, nor are they non-political beings.”¹⁴ Although in some states, women’s relegation to the domestic sphere has prevented their formal involvement in political activities, they have continued to contribute or express their political beliefs through supportive actions, such as providing food and shelter for resistance members, and passing messages.¹⁵ Even when these actions are so threatening that they attract persecutory retaliation, some countries that provide asylum have recognized them as political opinion only.

At the time of the writing of the Convention, there was no single international instrument that dealt specifically with women’s rights. Any provisions in existing treaties that even alluded to the existence of women did so by invoking the sanctity of family “honour,” denigrating the violence to a besmirching of family pride.¹⁶ There were, therefore, few international instruments for the drafters of the Convention to draw upon in recognizing women’s experiences.

As a result of this vacuum, the Convention has been interpreted as an instrument that protects citizens from abuse by their state. As this is the arena of most concern to men—

citizenship being a historically male construct—it has ignored the location of women’s persecutory experiences, which take place overwhelmingly at the hands of non-state actors. The need to prove direct state responsibility or complicity fails to recognize the dual nature of a state’s obligations to its citizens. States have both a negative obligation not to violate a citizen’s rights, and a concomitant positive obligation to respect and protect such rights. Systematic patterns of abuse against one sector of society indicate a lack of political will to protect that group, and are tantamount to abrogation of international obligations. With this burden of responsibility evaded by the state, women have no other recourse but to seek international protection. Even today, when there is a growing understanding of the ways in which most states have failed to protect their women, thus perpetuating abuses, claims to refugee status that emanate from non-state actors will be denied in France, Germany, Italy, and Switzerland.¹⁷

State Practices

If the Convention and thus international law has omitted the experiences of women, state practice in the North has enshrined the exclusion of women from asylum determination. The rules for how one applies for asylum, the procedures for assessing claims, and the protection standards granted androcentricism have produced policies that appear to be gender-neutral, but the result is that the overwhelming proportion of asylees in the North are men.

Although no international instruments obligate a country to grant asylum, legal principles of *non-refoulement*, as well as the humanitarian intentions enshrined in the Convention, should ensure that those who flee truly fearsome situations are given a *fair opportunity* to be granted asylum. In practice, however, states tend to favour refugees who would be “easily assimilated” into their community. The result is that states in the North have taken steps to “stem the flow” of Southern refugees, even though this is the origin of 80 per cent of today’s refugees. Because of the double hurdle of race and gender, “migration of women from Third World countries [to Europe] has practically ceased.”¹⁸

Assimilation principles have also meant that refugees have been subjected to the same immigration criteria (for example, language and skills levels) as ordinary migrants. This has meant that, in many countries, patterns of receiving refugees are almost a mirror of regular migration categories. This emphasis on the “utility” of the refugees for the country that accepts them means that skill levels and labour demand strongly inform states’ receiving levels.¹⁹

Because opportunities for women to work outside the home, or indeed to get an education, are limited by social and economic factors in most parts of the world, this sidelining of humanitarian principles to fulfill labour demands subverts the intentions of providing protection, and places women at an unfair disadvantage.²⁰ As a result, the majority of women who enter countries such as Canada must enter as spouses of a primary applicant, destroying avenues for single women and relegating women to their accepted role as dependents.

This dependency role is further exacerbated by the absence in the Convention of any rights pertaining to the family. The closest the Convention comes to the domestic life of a refugee is in article 12, in which states are requested to acknowledge the personal legal status of a refugee. The omission of any clarification on the rights of a spouse has led most states to practise what is termed derivative status. In essence, a man is granted the category of asylum, and his wife is then given asylum status (or in many countries, a lower protection category such as residency), which is derived solely from her position as the wife. Setting aside the problematic identity issues here, the practice leaves women at the complete mercy of their partners. The impact that resettlement and forced migration have on increasing levels of domestic violence has been well documented.²¹ Derivative status compounds the vulnerability of women to isolation caused by the sudden dislocation, barriers of language, and adjustment to a new culture. Their ability to remain in the country of refuge is now entirely dependent on their maintaining their relationship, thus severely upsetting balances of power within the domestic domain.

The assumption that a male claimant is the principal claimant also leads to a *de facto* dismissal of a woman’s right to seek asylum at the point of procedural determination. Barbara Harrell-Bond²² notes that, in the U.K., it is only the husband’s credibility that is assessed for the purposes of determination, even by the couple’s own legal advisors. This is true even when both individuals are involved in the causes of flight. In these cases, the wife may have been better able to demonstrate the case, or may have been the primary target of the persecution. The case is often lost because of the pre-emptive assumptions made by those handling the case, thus putting the protection of both parties at risk.

Derivative status is facilitated and linked to automatic joinder—the practice of joining spouses’ claims into one case. This practice appears to occur in almost all receiving states, not by regulation but by default. The consequence is

that women are rarely given the opportunity to present an individual claim. The UNHCR has criticized the procedural default and argued, "If a female refugee is registered in the name of her male partner, and if only the husband's situation is considered during a family's request for asylum, then the specific needs, interests and opinions of the women will almost inevitably be ignored."²³ While a request may be lodged for a separate claim, evidence in support of the request is generally required. This means that a woman who seeks to make a claim in private, on grounds of sexual persecution, must make that application while her husband is present, and disclose what she does not want to reveal to him.²⁴ A woman who has been sexually persecuted in a country where sexual topics are taboo, may not have even informed her husband of the situation, or may be forbidden from discussing it by a cultural norm such as a perceived way of protecting family honour. These incidences are not isolated, and one need only note that three-quarters of refugees worldwide are fleeing Islamist societies²⁵—a culture in which sexual taboos are particularly stringent—to realize the implications of violating a woman's right to privacy in the determination process.

Application of the Convention in state practice has also been subverted in the pursuit of foreign policy objectives. For the first few decades of its existence, the Convention was defined in large part by the bipolar nature of the world political arena during the cold war. Since the document was used primarily to delegitimize the Soviet bloc by protecting Communist dissidents, the focus in categories of persecution was necessarily on religion, political opinion, and ethnicity.²⁶ The largest refugee-receiving country in the North—the United States—took until 1980 to revise its refugee policies beyond their parameters of protection for Eastern bloc asylees.

Foreign policy and political ends continue to dominate receiving rates. There is a notion that the acceptance of an ally's citizens will undermine the legitimacy of the ally's government, and hence the interstate relationship. In the United States, country of origin is the most important predictor of outcome in asylum applications, and one-third of all applications for asylum are approved if the applicant originates from a country hostile to the U.S., compared to only 4 per cent of applicants from "non-hostile" states. Another recent example of foreign policy primacy is in Germany where the relationship with oil-producing Iran has recently been given increased importance. The number of persons fleeing Iran has increased globally in the past two years—and here the number of women has been significant owing to their use as the first victims of political

Islam. Yet the number of Iranian refugees accepted by Germany has actually fallen to one in five. This compares with an almost 90 per cent acceptance rate in the United States and 100 per cent in New Zealand.²⁷

State-centric concerns and foreign policy goals play themselves out further in the use of Safe Country of Origin (SCO) lists, which have had a detrimental impact on the asylum claims of women. SCO lists chronicle the states unlikely to produce refugees, and claimants from such countries are fast-tracked through their determination process, because it has already been determined that the likelihood of their being granted asylum is minimal. Although utilizing lists of SCOs violates article 3 of the Convention which provides for individual determination *regardless of country of origin*, more and more states are adopting the practice, officially or unofficially. When the U.K. began the procedure in 1996, it joined nine other EU countries already doing so,²⁸ and it is likely that with the harmonization of policies in this region the practice will become even more widespread.

The criteria used to identify "safe countries" are in keeping with traditional male-specific notions of security in that they evaluate political stability almost exclusively in the public arena. In the U.K., criteria include the stability of the country, the existence of an independent judiciary, democratic institutions, and the acceptance rates of previous refugees from the country.²⁹ While lip service is paid to the state's role in "respecting human rights" in general, when read in the context of the other criteria, it is doubtful if these criteria were intended to cover rights such as those expounded in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Criteria require only that a country be safe for the *majority* of its citizens. Pakistan and India were both on the United Kingdom's initial white list³⁰ of safe countries,³¹ in spite of their having some of the most egregious and widespread examples of gender-based persecution, including dowry burnings, forced child marriages, female infanticide, and honour killings. Ethiopia likewise made the safe list—a country where the majority of girls are subjected to infibulation, the most severe form of female genital mutilation (FGM), which causes lifelong reproductive and overall health problems, chronic pain, psychological trauma, and in a third of cases, death.

Human rights advocates are frustrated by the fact that the SCO list is, in effect, a self-fulfilling prophecy with little room for external influence. As decisions on countries are made largely on past acceptance levels of asylum seekers, there is a tendency to reject asylum-seekers from states already on

the “white list” in order not to force a review or an amendment of the list by changing the proportion of “recognized” refugees from so-called safe countries.³²

When past levels of refugees are weighted, it is highly unlikely that even states that systematically oppress and persecute their women will be considered refugee-producing countries. Persecuted women generally cannot leave their homes in the same way that, for example, a persecuted religious group may leave. Their economic, cultural, and social subordination, familial obligations such as dependent children, and in some cases inability to gain even a passport without male accompaniment, prevent women from leaving their countries. So while a country that persecutes its farmers who are able to flee would probably be recognized as a refugee-producing country, one that systematically abuses half its population would be considered a safe country.

This is not to say that those originating in a safe country are automatically denied asylum, but rather that “the most common effect of sco procedures is that asylum seekers are automatically treated as ‘without foundation’ and go through a truncated asylum determination process.”³³ In countries such as France, originating from an sco severely restricts one’s access to legal aid or representation,³⁴ making it even more difficult for women with lower levels of education and financial resources, who are dependent upon such assistance. For women who must fight a renewed battle with each case merely to be recognized under refugee law, the subtle prejudices of sco practices shift the scales of justice further away from their reach.

Once a claim has been lodged, it must then be assessed through the determination system of the receiving state. Procedural processes in most industrialized asylum countries are modelled on the Western legal arena—an arena that many women fleeing Southern states have never experienced. The quasi-judicial nature of determination processes can be a difficult, if not impossible, system for some women to manoeuvre. Illiteracy rates among women in states that traditionally produce refugees are high, and a violation of the right to education or participation in public life may have been one element of their persecution. If sexual violence forms part of the claim, even the most assertive of claimants may feel uncomfortable discussing the case with a male officer. In countries where such topics are taboo across gender lines, this critical element may be left out, condemning the case as a whole. Likewise, sexual violence is by nature difficult to prove, compromising women’s evidentiary assessments.

In general, the differential relationship that men and women have to the determination process is vast. One prac-

itioner detailed for a UN hearing how torture can affect men and women differently, even through to their asylum claim:

The first and foremost preoccupation [of victims of torture] is with their asylum claim. There is a noticeable difference between men and women in the manifestation of this anxiety, with exceptions of course. Men are often much more vocal and active in their anxiety, they change solicitors, seek letters, reports, ask to be brought forward in the queue. They cannot settle. Most women I have seen [over nine years of therapeutic work with survivors of torture] have just melted into the background after their arrival, especially if they have no children, or have left their children behind. They are frequently “befriended” by a lawyer who does nothing, and they stay in the room allocated to them for weeks, months on end, just putting time and distance between themselves and their shame.³⁵

In addition to the male and Western-oriented nature of determination procedures, the relative newness of gender cases means that women are fighting a new battle with each case, attempting to prove not only that they have been persecuted, but that the intentions of the 1951 Refugee Convention and state legislation recognize them as deserving protection. Consequently they are fighting harder battles than “traditional” determination cases, on a battleground that is not level.

The section above touches upon only a number of state practices that have adversely affected women. With increasing moves to the political Right in many Northern countries, calls for immigration reform have led to more and more initiatives to stem the flow of refugees who are viewed increasingly as bogus or economic migrants.

Jurisprudence has been inconsistent and arbitrary in response to appeals launched against denial of asylum based on gender. In some circumstances, the judgments could be described as farcical, if they didn’t have such tragic consequences. One example is the case of a Malian woman who fled her home out of fear that she was to be subjected to genital mutilation. She was denied asylum by a French court in 1992 on the grounds that she had not yet been mutilated.³⁶ It is doubtful that a claimant about to be hanged for his political activities would have had his asylum claim dismissed owing to his problematic state of continued aliveness!

Women and children: The Production and Reproduction of Infantilizing Identities in the Refugee Regime

The most common statistic encountered when researching refugee issues is that “80 per cent of refugees are women

and children.” Yet try to find a statistic disaggregated for women alone, and one is bound to run into speculation and ambiguities. The use of poorly constructed statistics has done little to inform the international community and aid agencies on the needs of women, and has done much to reinforce a view of women as infants, equal in agency capability to their children—hence the ability to collapse similar categories into a single conceptual category.

Enloe notes that the categorization of women eternally under the cliché *womenandchildren*³⁷ serves several purposes. It identifies man as the norm, against which all others may be grouped into a single leftover and dependent category. Second, it reiterates the notion that women are family members rather than independent actors—that any reference to them must also refer to their domestic role. Last, it allows for the paternalistic role of saviour to be played out, in that “states exist . . . to protect women and children.”³⁸ This is evident in the U.K., where Crawley³⁹ reveals that women who are granted protection are more likely than men to have been granted “Exceptional Leave to Remain” in the country on humanitarian or compassionate grounds. The status allows fewer privileges and protections than does Convention refugee status, and seems to connote a paternalistic relationship of protection for a “victim” rather than the Convention status granted to a recognized refugee who is assumed to have demonstrated agency.

The same institutions that have denied women asylum in the North, have consequently left them disproportionately in the South—dependent on foreign aid and denied the same opportunities as men to start over and become self-sufficient. This relegation has reinforced identities of refugee women and “sexist notions of women’s attachment to motherhood, the family and the home and men’s identity as breadwinner or worker, detached from the household, free to sell his labour in the open market; in other words, men leave home, and women don’t.”⁴⁰ Inherent in the term *refugee* has been an association with passivity and victimhood. As Indra observes, “Western . . . social problem-generated images of refugees as powerless victims of forces beyond their control are well entrenched.”⁴¹ The perpetuation of the “passive victim” element inherent in the term *refugee* is only reinforced and fortified by the same “passivity” assumed in the category of *womenandchildren*. The feminization of refugees in the South and their dependency on aid, add to traditional views that women must be provided for. This is exemplified succinctly in the term *burden-sharing*, which has become common parlance among the academic and policy circles of the North.⁴²

Hence refugees in the South, who are overwhelmingly women with their dependents, are a burden that must be evenly distributed among richer states.⁴³

The dichotomy between the North and South has itself been a gendered binary construct par excellence—the North having been constructed in discourse to be associated with the masculine through industrial development, as well as economic and military power. The South, on the other hand, is underdeveloped and thus more connected to nature—the prototypical symbol of the feminine.⁴⁴ When this bifurcated world vision is superimposed on an already gendered refugee regime, the result is the increasing feminization of refugees of the South, and the cyclical reinforcement of both a “refugee” as well as a “woman’s” traditional identities.

Constructed identities of helplessness have facilitated the tendency to make decisions on behalf of women in refugee camps, silencing women from expressing needs, and placing them in an even more vulnerable position. While women constitute the majority of camp dwellers, the use of health facilities, food distribution centres and other means of vital assistance is predominated by men. In 1984 a study in a refugee camp in eastern Sudan where three-quarters of the population were “women and children,” found that of the patients in the camp hospital, all were men.⁴⁵ Walker posits that the reasons that women cannot take advantage of facilities, even though they are often the ones most desperate for such care, may be due to a host of factors, which include inconvenient hours during which women are often needed to fetch water and firewood, the lack of female health-care workers, language difficulties, and culturally inappropriate care.⁴⁶ One could surely add to this that, as Elmadmad noted, the majority of today’s refugees are Muslim women,⁴⁷ and without provision made to work within the confines of their practices of seclusion, many of these women simply go untreated.

Equally important is how infantilization wastes the contribution that women could make to decision-making and their physical involvement in development of the camps.

The Evolving Refugee Regime: Increasing Gender-Awareness, but Where Are the Beneficiaries?

The growing acceptance of gender critiques in areas that range from law to development, has favourably affected refugee scholarship and application in recent years. There has been a proliferation of “gender guidelines” by states that seek to guide decision makers on asylum cases. As well, the way in which aid is provided in refugee camps in zones of mass migration has been revisited. It is important that

the issue of gender has become increasingly mainstream, but more important are the concrete differences that these policies have made.

The move to integrate women's protection needs into the refugee regime has been a late and slow starter. The first international recognition of the historic marginalization of women's asylum claims came with a 1985 UNHCR statement, which concluded that states "are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group' within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention."⁴⁸ In 1993, Canada adopted the first set of state guidelines on gender asylum cases (those that are either gender-specific or gender-based persecution). Other countries in the North slowly followed suit, and in theory the foundation for an international norm that recognizes gender as a nexus to persecution is being established.⁴⁹ Conceptual changes in how we define asylum protection have been an important first step, but it has been limited in scope as well as nature. Today gender-specific persecution is recognized in soft law in a handful of states,⁵⁰ and in binding legislation in only two.⁵¹ Soft law in itself is problematic because it relegates women to a standard of protection lower than that dealt with directly under the Convention. In countries such as the U.S., guidelines were poorly distributed and poorly utilized even five years after their conception, leading to their inconsistent application. In all countries with similar guidelines, adjudicators and judges have been careful to create very specific social groups (e.g., women married to Salvadoran generals who abuse them) in order to ensure that they do not create a precedent that would lead to a flood of gender claims.

While they are important when reconceptualizing asylum, gender guidelines have had nominal impact beyond the symbolic expansion of the definition of *refugee*. Limited application as well as limited awareness of the new policies have crippled any real redress for women. In Canada, the first country to implement such measures, the highest number of claims sought under the guidelines was 315 in 1995, and the number has steadily *decreased* thereafter.⁵² In the U.S., only 2.5 per cent of claims received in 1999 were from women who sought protection in part or wholly because of persecution on account of "particular social group."⁵³

Moreover, guidelines apply only to claims made at the port of entry to an asylum state, and do not apply to visa officers abroad. Owing to social, economic, and familial

constraints, women are the least likely to make it to the industrial countries of the North in order to claim asylum, therefore the number of cases in which the guidelines are invoked is minimal. This has been one of the key criticisms of the Canadian guidelines in particular: Macklin⁵⁴ notes that over three-quarters of refugees accepted each year to Canada are selected from overseas, thus placing them outside the jurisdiction of the recommendations.

The UNHCR's Women at Risk program (WAR), which Canada and Australia have adopted as a measure to address this flaw, seeks to facilitate the entry of vulnerable women directly from their own region. It is an important acknowledgement that in the world of refugees "it is unaccompanied women and lone female heads of household [who] are at the greatest risk of being subjected to sexual violence."⁵⁵ However, in practical terms, the WAR program has failed to make any real difference. Poor administration,⁵⁶ coupled with limited application, meant that between 1988 and 1991, 391 people were granted entry to Canada under this program. That is approximately 0.3 per cent of the total number of refugees admitted during this time.⁵⁷

Most ironic in the evolution of the refugee regime has been that women's cries for inclusion are being heard only as the number of asylum-seekers accepted into the North is being curtailed. In Canada, where refugee flows used to make up 15 per cent of immigration to Canada, in the past five to ten years they have comprised less than 10 per cent. In Europe, the UNHCR has noted with concern the trend to adopt increasingly restrictive interpretations of *refugee*, which, among other factors, has led to a decreasing proportion of applicants recognized as refugees under the Convention.⁵⁸ So while women may be making inroads in being recognized as potential asylum-seekers, their chances of actually being granted asylum, along with that of asylum-seekers in general, has concomitantly diminished.

Conclusion

A Board of Immigration and Appeals judge, giving his dissenting opinion in a decision that denied asylum to a severely abused Guatemalan housewife, asserted, "In *Kasinga* [an earlier case in which a Togolese woman was granted asylum from the practice of FGM], we determined that FGM exists as a means of controlling women's sexuality. So too does domestic violence exist as a means by which men systematically destroy the power of women, a form of violence rooted in economic, social and cultural subordination of women."⁵⁹

It has taken fifty years for the courts to begin to acknowledge the varying ways in which women experience perse-

cution differently from Convention interpretations. In all aspects of life—economically, socially, and politically—women have been relegated to a secondary status that increases their vulnerability to persecution and decreases their ability to seek state protection from such abuses. Because of the Refugee Convention’s historical groundings, as well as the Western male orientation of the international legal regime it reflects, women have been “interpreted out” of the institutions of refuge. State practice has confounded this further, erecting barriers that may appear gender-neutral, but in application have had devastating effects on women’s ability to seek adequate protection. For the majority of women who must make do with the refugee camps in their region, manifest gendered assumptions about issues of victimhood, agency, and a woman’s place in foreign cultures has reproduced limiting and infantilizing identities of refugee women.

Moves to engender the Convention itself through the use of gender guidelines and reinterpretations, as well as specific programs, have been limited and minimal in their impact, leading to the impression that they have at best tinkered with a screw in the machine, rather than reassessing the overall function of the machine itself.

If the refugee regime is to see its way into the new millennium in the spirit in which it was intended—the spirit of protection for those facing fear of persecution—it must recreate itself to reflect the experiences of the persecuted and to redress the imbalances it has allowed itself to entrench and naturalize over the fifty years of its existence.

Notes

1. Immigration and Naturalization Service, “Proposed Rules: Asylum and Withholding Definitions,” in *INS No. 2092-00; AG Order No. 2339-2000* (Washington, DC: Immigration and Naturalization, 2000).
2. Susan Sachs, “Reno Voids Denial of Asylum for Guatemalan Battered Wife,” *New York Times*, January 21, 2001.
3. The 1951 Convention on the Status of Refugees and the 1967 Protocol that amended it will be referred to hereinafter as the “Convention” or the “Refugee Convention.”
4. Audrey Macklin, “Opening the Door to Women Refugees: A First Crack,” *Development and Diaspora: Gender and the Refugee Experience*, ed. Helene Moussa, Wenona Giles, Penny van Esterik (Toronto: artemis enterprises, 1996).
5. Sima Wali, “Human Rights for Refugee and Displaced Women,” *Women’s Rights, Human Rights: International Feminist Perspectives*, ed. Julie Peters and Andrea Wolper (New York: Routledge, 1995).
6. Although the author has difficulty with the term *women and children*, as will be discussed in greater detail, most studies are disaggregated in this manner, making it difficult to give an empirical picture without using problematic categories.
7. Figures are for 1992. See Alison Marie Young, “Refugee Women and the International Refugee Regime: The Dynamics of Transition” (M.A. thesis, Acadia University, 1994), 2.
8. Maryellen Fullerton, “A Comparative Look at Refugee Status Based on Persecution Due to Membership in a Particular Social Group,” *Cornell International Law Journal* 26 (1993): 507.
9. N. Kelly, “Gender-Related Persecution: Assessing the Asylum Claims of Women,” *Cornell International Law Journal* 26 (1993): 648.
10. Immigration Appellate Authority, *Asylum Gender Guidelines*, ed. Nathalia Berkowitz and Catriona Jarvis (London: Crown Copyright, 2000).
It is also true, however, that in its application, decision makers have been reluctant to utilize *particular social group*. As one U.S. court noted, “The legislative history behind the term is uninformative, and judicial and agency interpretations are vague and sometimes divergent. As a result, courts have applied the term reluctantly and inconsistently.” Immigration and Naturalization Service, *INS Website: Q&A*, online: Immigration and Naturalization Homepage <<http://www.ins.usdoj.gov/graphics/publicaffairs/questsans/RARule.htm>>.
11. Quoted in Christine Sylvester, “Homeless in International Relations,” *Feminism and Politics*, ed. Anne Phillips (Oxford: Oxford University Press, 1998), 57.
12. These are political opinion, race, religion, nationality, or membership in a particular social group.
13. Wenona Giles, Helene Moussa, and Penny van Esterik, “Introduction,” *Development and Diaspora: Gender and the Refugee Experience*, ed. Wenona Giles, Helene Moussa, and Penny van Esterik (Toronto: artemis enterprises, 1996), 25.
14. Jill Steans, *Gender and International Relations* (New Brunswick, NJ: Rutgers University Press, 1998).
15. Immigration and Refugee Board, “Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution,” (Ottawa: Government of Canada, 1993).
16. The Hague Convention respecting the Laws and Customs of War of 1907 mentions the need to respect “family honour and rights.” The Nuremberg Charter drafted after WWII did not mention rape or sexual violence as a crime, and of the four Geneva Conventions of 1949, only one referred to sexual violence. The reference is in the fourth Convention, which prohibits “attacks against women’s honour,” citing in particular rape, enforced prostitution, or any other indecent assault. Barbara C. Bedont, *Gender-Specific Provisions in the Statute of the ICC*, online: Women’s Caucus for Gender Justice <<http://www.iccwomen.org/resources/articleslinks.htm>> (date accessed: January 22, 2001).
17. United Nations High Commission for Refugees, “The State of the World’s Refugees, 2000” (Oxford University Press: UNHCR, 2000).
There is a risk that, with the harmonization of immigration policies in the new EU community, policies will be harmonized at the “lowest common denominator,” thus setting back any gains that have been made in some European countries for granting asylum on the basis of gender.
18. Wenona Giles, “Aid Recipients or Citizens?” *Development and Diaspora: Gender and the Refugee Experience*, ed. Helene Moussa

- Wenona Giles, Penny van Esterik (Toronto: artemis enterprises, 1996), 49.
19. *Ibid.*, 45.
 20. *Ibid.*, 46.
 21. Incidences of domestic violence have been found to increase in flight as well as in resettlement, as power balances shift within the family. This may also be caused by frustration or a need to reestablish patriarchal control in a new and threatening cultural context. See, for example, Susan Forbes Martin, *Refugee Women, Women and World Development Series* (London: Zed Books Ltd., 1991).
 22. Doreen Indra, ed., *Engendering Forced Migration: Theory and Practice*, vol. 5 of *Refugee and Forced Migration Studies* (New York: Berghahn Books, 1999), 58.
 23. Valerie L. Oosterveld, "The Canadian Guidelines on Gender-Related Persecution: An Evaluation," *International Journal of Refugee Law* 8, no. 4 (1996): 586.
 24. For a discussion of *automatic joinder* in a Canadian context, see David Matas, "Gender and Refugee Law" (paper presented at the Gender Issues and Refugees: Development Implications, York University, 1993).
 25. Khadija Elmammad, "The Human Rights of Refugees with Special Reference to Muslim Refugee Women," *Engendering Forced Migration: Theory and Practice*, ed. Doreen Indra (New York: Berghahn Books, 1999).
 26. Young, "Refugee Women and the International Refugee Regime," 33.
 27. Maryam Namazie, *Hambastegi* 89 (89) online: International Federation of Iranian Refugees <<http://www.hambastegi.org>>
 28. Henry Martenson and John McCarthy, "In General, No Serious Risk of Persecution: Safe Country of Origin Practices in Nine European States," *Journal of Refugee Studies* 11, no. 3 (1998).
 29. *Ibid.*, 307.
 30. A white list is the conventional term for an sco list.
 31. *Ibid.*, 308.
 32. *Ibid.*, 317.
 33. *Ibid.*, 314
- Although automatic denial of applications is not standard practice at present, U.K. Home Secretary Jack Straw announced in February a proposal for a three-tier system of sco's comprising "safe," "intermediate," and "repressive" states. Those from safe states would automatically be denied asylum, while those from intermediate states would carry the "presumption of safety," thus rendering the likelihood of protection minimal. Straw also called upon the EU as a whole to adopt a radical shift in its thinking about the Refugee Convention.
34. *Ibid.*
 35. G. Hinchelwood, "Medical Foundation for the Care of Victims of Torture." Cited in Immigration Appellate Authority, *Asylum Gender Guidelines*.
Immigration Appellate Authority, *Asylum Gender Guidelines*, ed. Nathalia Berkowitz and Catriona Jarvis (London: Crown Copyright, 2000).
 36. Joan Fitzpatrick, "International Norms and Violence against Women," *Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994).
 37. The use of this term is pulled from the work of Cynthia Enloe on the treatment of women by the media during the Gulf War. Cynthia Enloe, "The Gendered Gulf," *Collateral Damage: The "New World Order" at Home and Abroad*, ed. Cynthia Peters (Boston: South End Press, 1992).
 38. *Ibid.*, 96.
 39. Heaven Crawley, "Women and Refugee Status: Beyond the Public/Private Dichotomy in UK Asylum Policy," *Engendering Forced Migration: Theory and Practice*, ed. Doreen Indra (New York: Berghahn Books, 1999), 322.
 40. Giles, "Aid Recipients or Citizens?" 44.
 41. Indra, *Engendering Forced Migration*, xiv.
 42. Giles, "Aid Recipients or Citizens?" 54.
 43. The term *burden sharing* is contentious for a number of reasons, aside from the implications that it has on reinforcing the role of victim for women. The term is also politically disingenuous because it seeks to distance the Northern sphere from the "problems" of the South, without acknowledging its large share of responsibility for the environmental, economic, and political destabilization of poorer states.
 44. Steans, *Gender and International Relations*, 14.
 45. Bridget Walker, "The Question of Gender," *Forced Migration Review* 20 (1995).
 46. *Ibid.*
 47. Elmammad, "The Human Rights of Refugees."
 48. United Nations High Commission for Refugees, "Executive Committee Conclusion No. 39 Refugee Women and International Protection," (Geneva: UNHCR, 1985).
 49. Although headway is being made in adopting guidelines and promoting gender sensitivity, many officials—even at the highest levels—are deeply critical of what they view as a move away from the political intentions of the Convention and "over-liberal" interpretations. For example, only two months before adoption of the gender guidelines in the U.K., Home Secretary Jack Straw, commenting on the granting of asylum to two Pakistani women fleeing abuse, observed that there was "no way it can be realistically argued that that was in contemplation when the 1951 Convention was put in place."
Alan Travis, "Asylum Rules Eased for Women," *Guardian*, December 5, 2000.
 50. To date, the U.K., Canada, United States, Australia, New Zealand, and a number of European countries have guidelines or policy on gender persecution. Most recently the European Council on Refugees and Exiles (ECRE), issued its policy recommendation for harmonizing European immigration and asylum procedures, making favourable recommendations for gendered policy. In particular, it noted that "states do have duties in international law to prevent harm by non-state agents and that in situations where there is a violation of human rights then there is persecution. A family member can be considered just as much an agent of persecution as an armed opposition group." (See Canadian Council for Refugees, "Position on Interpretation of Article 1 of the Refugee Convention," online: <<http://www.web.net/~ccr/gendpers.html>> [last modified: September 2000]).

51. Sweden and South Africa. Both of these examples of binding policy are problematic, however. Sweden has chosen to recognize persecution because of “sex,” as opposed to the internationally recommended “gender.” This is problematic because legislation continues to treat the persecution of women solely as a characteristic of their essential biological difference, as opposed to a consequence also of their prescribed gender roles, as culturally defined. It also relegates this category to a standard of protection that is secondary to that given to Convention refugees. K. Folkelius and G. Noll, “Affirmative Exclusion? Sex, Gender, Persecution and the Reformed Swedish Aliens Act,” *International Journal of Refugee Law* 10, no. 4 (1998). In South Africa the Refugee Act came into effect only in 2000. Although it recognizes gender as a social group, and the country has drafted a set of guidelines for determination officers, there has yet to be one case heard on these grounds, and it is unlikely that the guidelines have ever been distributed to determination officers.
52. Immigration and Naturalization Service, *INS Website—Q&A*.
53. *Ibid.*
54. Audrey Macklin, “A Comparative Analysis of the Canadian, US and Australian Directives on Gender Persecution and Refugee Status,” *Engendering Forced Migration: Theory and Practice*, ed. Doreen Indra, *Refugee and Forced Migration Studies* (New York: Berghahn Books, 1999).
55. United Nations High Commission for Refugees, “UNHCR Sexual Violence against Refugees: Guidelines on Prevention and Responses (Extracts),” *International Journal of Refugee Law* (1995).
56. Young, “Refugee Women and the International Refugee Regime.”
57. Monica Boyd, *Canada’s Refugee Flows: Gender Inequality*, online: University of California, Hastings College of Law <<http://www.uchastings.edu/cgrs/law/articles.html>> (date accessed: January 25, 2001).
58. United Nations High Commission for Refugees, “The State of the World’s Refugees,” 2000.
59. U.S. Committee for Refugees, *BIA Sends Mixed Message on Gender Persecution Cases*, online: U.S. Committee for Refugees <http://www.refugees.org/world/articles/bia_rroo_8.htm> (last modified: 2000).

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South Asia and the Creation of the International Refugee Regime

PIA OBEROI

Abstract

This paper traces the initial interaction of the states of South Asia with the formalized international refugee regime, as embodied within the Office of the UNHCR. It explores the debates surrounding the creation of the Office and the 1951 Refugee Convention, and attempts to analyze the disillusionment felt by India and Pakistan with the outcome of these deliberations. Both these states arrived at the United Nations in this period with the burden of hosting up to 14 million Partition refugees weighing heavily on their inexperienced shoulders. Expecting that any international regime created for the relief of refugees would take into account this vast refugee crisis, India and Pakistan were disappointed to realize that cold war politics largely dictated the eventual outcome of the content of the Convention and the mandate of the UNHCR. Fifty years later, neither state has acceded to the 1951 Refugee Convention, preferring to interact with UNHCR on a strictly ad hoc basis. This paper argues that many reasons for the hesitancy with which these states approach UNHCR can be traced to their initial understanding of the mandate of the Office.

Résumé

Cet article retrace l'interaction initiale des états de l'Asie du sud avec un régime international de droits des réfugiés formalisé, comme incorporé dans le Haut Commissariat. Il explore les débats qui ont entouré la création de cette institution ainsi que la Convention de 1951 relative au statut des réfugiés, et tente d'analyser les désenchantements de l'Inde et du Pakistan avec les résultats de ces délibérations. Ces deux états sont arrivés aux Nations Unies pendant cette période là, portant sur leurs épaules sans expérience le lourd fardeau de l'hébergement de près de 14 millions de réfugiés de la Partition. S'attendant à ce qu'un régime international créé tout spécialement pour s'occuper du bien-être des réfugiés prendrait tout naturellement en

compte cette immense crise de réfugiés, l'Inde et le Pakistan furent déçus de réaliser que ce furent les impératifs politiques de la guerre froide qui déterminèrent les résultats finals pour ce qui est du contenu de la Convention et aussi bien que du mandat du HCR. Cinquante ans plus tard, ces deux états n'ont toujours pas accédé à la Convention de 1951 relative au statut des réfugiés, préférant interagir avec le HCR au cas par cas. L'article soutient que beaucoup des raisons expliquant les hésitations de ces deux états envers le HCR peuvent être retracées à leur compréhension initiale du mandat du Haut Commissariat.

The states of South Asia¹ have long had an ambivalent relationship with the United Nations High Commissioner for Refugees (UNHCR). At times, this has resulted in a remarkable partnership, as was the case in 1971 when India and UNHCR jointly provided relief to one of the largest and most traumatic refugee movements in contemporary history. At other times, however, the relationship has been fractious and hostile. This was the case when UNHCR threatened to withdraw from Bangladesh in 1992 over the issue of forced repatriation, or when it did in fact close its branch office in New Delhi for a period from June 1975, much to the displeasure of the Indian government. The South Asian region has witnessed some of the largest flows of forced migrants in recent history, and continues to host over 10 per cent of the world's refugees. Currently, UNHCR plays a not inconsiderable role in the management of situations of forced displacement in South Asia. It has assumed responsibility for "urban refugees" in India, the largest caseload of such refugees recognized by the Office. In addition, it is providing varying levels of relief to the Afghan refugees in Pakistan, Rohingya Muslim refugees in Bangladesh, and Tamil IDPs in Sri Lanka.

This article seeks to explore the origins of the relationship between UNHCR and the states of South Asia. None of

these states has acceded to the 1951 Convention relating to the Status of Refugees, despite several attempts by UNHCR over the years to promote accession. Yet, as will be seen below, India and Pakistan were initially enthusiastic about the creation of a formalized international refugee regime as embodied in the Office of the UNHCR.² Both countries were in the midst of a vast refugee crisis while the issue was being debated within the United Nations. By 1951, an estimated 14 million people had traversed the newly created international border between the two states in search of refuge from persecution, as religious particularism engulfed the subcontinent. In such a situation, India and Pakistan expected that this debate would address issues of immediate relevance to them. Yet by the time the debate reached its final stages, both states had, in effect, withdrawn from the deliberations. This article will trace the process whereby India and Pakistan came to the conclusion that the formalized international refugee regime was largely inimical to their interests. Given that sources for this facet of Indian and Pakistani history are relatively limited, much of the material included here is taken from the *travaux préparatoires* of the United Nations debates. In order to analyze the policy attitude of South Asian states towards this issue, however, it is first necessary to locate these states within an emergent United Nations.

India

On August 15, 1947, India became an independent member of the international community, although its interaction with international organizations preceded this date. It had been a participant in the Versailles Conference of 1919, and had been represented in the League of Nations. Under the first prime minister, Jawaharlal Nehru, India looked to set itself up as a major player on the international stage. In the early years of independence, India's policy of non-alignment was well served within the United Nations, of which it was a founding member. Despite its relative poverty and consequent lack of international stature as determined by material and positional power, the General Assembly gave it a forum in which to articulate a robust, if idealistic, defence of Third World solidarity and detachment from cold-war power politics. It is, therefore, not surprising to find that India was initially well represented in the debate on the creation of a new international refugee regime. As the first state to shed its colonial status in the aftermath of the Second World War, India was in a position of leadership among a group of countries that would eventually be known as the Third World coalition. It was the first to raise the question of racial discrimination in South Africa at the

United Nations and under Nehru was an early advocate of nuclear non-proliferation. As the world debated issues of human rights, as they pertained to the question of forced migrants as well as other categories of persons, India was drawing up its first constitution. This document was inspired to a great extent by the United Nations Charter, and thus included provisions on respect for the human rights of persons within the territory of India, and the promotion of fundamental freedoms.³ On September 25, 1948, Mrs. Vijayalakshmi Pandit, India's permanent representative to the United Nations, who was the first woman to be elected president of the General Assembly in 1953, stated, "India has shown, in the shaping of its Constitution [that the words of the UN Charter] were no empty phrases, but a living inspiration."⁴

Pakistan

Following the partition of British India, Pakistan emerged on August 14, 1947, as the new homeland for the Muslims of the Indian subcontinent. Shortly after Pakistan was admitted to the United Nations, on September 30, 1947, the first prime minister of Pakistan, Mohammed Ali Jinnah, declared, "Pakistan will never be found wanting in extending its moral and material support to the oppressed . . . and [in] upholding the principles of the United Nations Charter."⁵ As was the case with its giant neighbour, in the early years of its independent existence Pakistan was enthusiastic about the potential of the United Nations. As a relatively weak state, it looked to harness the moral power of that organization to renegotiate traditional power politics. Along with championing the cause of anti-colonialism, Pakistan played a leading role in the debate on the Palestine issue and on the treatment of South African citizens of Indian origin. During this period, the vexing issue of relations with India, especially over the disputed territory of Kashmir, brought Pakistan to the debating chambers and dispute-settlement mechanisms of the United Nations more than once. In the immediate period following India's referral of the Kashmir question to the Security Council on January 1, 1948, Pakistan argued vociferously for a plebiscite in the territory. A subsequent Security Council resolution calling for a ceasefire and plebiscite was accordingly considered a "vindication of [the Pakistan] stand by the United Nations."⁶ As will be seen, and consequent to its early positive view of the United Nations, Pakistan also played an active role in the discussions and committees set up to debate the international refugee regime.

So, in the aftermath of the Second World War, India and Pakistan were among the first Afro-Asian colonial territories

to win their independence. This enabled them to seize a privileged position of leadership in the new and relatively egalitarian General Assembly. As one author states, “many of the issues which came up for consideration at the time related to the right of self-determination and independence of peoples who were still struggling to be free, and India and Pakistan, having been the most prominent sufferers from imperialism, were regarded as the natural spokesmen.”⁷ Gradually, however, considerations of national interest tempered the unqualified enthusiasm with which these states approached the United Nations within this period. In the case of the Kashmir dispute in particular, India and Pakistan came to have widely divergent views on the proper role of the United Nations within that conflict. However, on the question of refugee relief and rehabilitation, both countries displayed a remarkable convergence of views. In a debate within the General Assembly’s Ad Hoc Political Committee in December 1950, accordingly, the Pakistani representative declared,

after a series of conferences in connection with refugees, millions of Hindus had returned to Pakistan and millions of Muslims had gone back to India, despite the fact that the two countries had been waging an undeclared war for several months. The Governments of Pakistan and India had never thought it proper to link the question of settlement of the refugee problem or their repatriation with any other issue outstanding between them.⁸

Partition Refugees

India and Pakistan came to these preliminary debates as the Partition refugee crisis was reaching a breaking point. By end of 1947, over 9 million refugees had crossed the India–West Pakistan border, in both directions, occasioning the need for colossal relief and rehabilitation efforts.⁹ Apart from relatively minor contributions from foreign charitable organizations, the two newly independent states shouldered the entire responsibility for the refugees, which ranged from provision of emergency transit camps, transport, and supplies, to the construction of permanent housing colonies. An early indication of the extent of the international community’s interest in the refugee problem of the subcontinent is provided by V. K. Krishna Menon, defence minister under Nehru, who visited several countries of Europe in 1946 as a personal representative of the Indian Ministry for External Affairs. By August 1946, following a call for “direct action” by the Muslim League, riots had broken out in several districts of British India, leading to a near collapse of the civil administration, and the mass displacement of several thousands. It was in the context of

this situation of near anarchy and the beginnings of an unprecedented movement of peoples, that Menon stated, “the outstanding and overall impression left on my mind . . . are . . . the very limited reference to our internal problems and difficulties.”¹⁰ The Indian subcontinent was thus given early indication of the marginal impact its refugee crisis was to have on the world community. However, both states would continue to take active part in the United Nations debate on the international refugee regime, in keeping with their early enthusiasm for the goals of that organization.¹¹

Refugees and the Post-War International Community

The issue of refugee protection was, by the end of the Second World War, of some concern to the international community. This concern was mainly focused on European refugees, the majority of whom had been created by war hostilities, but increasingly included persons fleeing Communist bloc states. In the immediate aftermath of the war, the lead refugee agency was the International Refugee Organization (IRO). This organization had come into existence in place of the Intergovernmental Committee for Refugees and the United Nations Relief and Rehabilitation Administration (UNRRA) in July 1947. Mandated to operate for a limited period of time, the IRO nevertheless “treated the refugee problem in totality.”¹² In other words, it was responsible for issues of legal protection and relief, and of resettlement of refugees not just in Europe, but those who had fled to countries such as India and to the Middle East. By the late 1940s, however, it became apparent that the question of refugees, even just that of European refugees, was no closer to a permanent solution. On July 7, 1947, the IRO General Council adopted Resolution 39, which provided for termination of the organization’s activities. Consequently, it gradually reduced its operations, and was finally wound up in early 1952.¹³

So, by 1947, the question of refugees and stateless persons was being debated within the United Nations. During these discussions, the issue was divided into the following: provisions for the functioning of a High Commissioner’s Office for Refugees; definition of the term *refugee*; problems of assistance to refugees and institution of a draft Convention relating to the Status of Refugees. At the fourth session of the General Assembly, on December 3, 1949, a decision was made to accept in principle the establishment of a United Nations High Commissioner for Refugees on January 1, 1951, the date that the IRO was expected to dissolve. This was followed by a request to the Economic and Social Council (ECOSOC) to establish the details of a statute

for the new agency. In 1951 the General Assembly decided to convene a Conference of Plenipotentiaries in Geneva, which was intended to complete the drafting and signing the Refugee Convention.

The Role of India and Pakistan

As has been noted, India and Pakistan were active players in the initial discussions on blueprints for a new international refugee regime. In November 1947, at the seventy-ninth meeting of the Third Committee, India submitted a draft resolution “with a view to conciliating the various points of view expressed in the previous Resolutions,” in which it stated its position that “the main task concerning displaced persons is to encourage and assist in every possible way their early return to their countries of origin.”¹⁴ At a subsequent meeting, the committee set up a drafting subcommittee of thirteen members, which included a representative of India, and which took as the basis for discussions a new draft resolution prepared by India. Both India and Pakistan at the outset declared their sympathy with the aims of this new refugee regime. Consequently, on August 6, 1949, the Indian representative at the Economic and Social Council declared that India was “fully prepared to co-operate in the drafting of Conventions for the legal protection of refugees, provided they were consistent with its own national citizenship laws, which were at the moment in the process of being framed.”¹⁵

United Nations Debate: The Refugee Definition

As the discussion on the future form and scope of a new refugee organization gathered momentum in the United Nations, one major point of debate was the definition of a refugee to be applied within the new regime. The discussion was essentially divided between states that favoured a broader definition than that contained within the IRO constitution (spearheaded by the United Kingdom, and supported by India and Pakistan), and others who were opposed to extending the IRO definition (led by the United States delegation).¹⁶ Broadly speaking, the majority of representatives of the emerging “Third World” contested the application of temporal and spatial limitations. These states made it clear that they considered it the duty of the United Nations, if the claims that it was a truly egalitarian organization were to be justified, to substantially extend its understanding of “a refugee.”

Yet, the United States, wary of asking the United Nations to “sign a blank cheque,” argued for a refugee definition that was consonant with the IRO constitution. This would mean in effect that the jurisdiction of the High Com-

missioner’s Office would extend only as far as persons in Europe who had become refugees as a result of the Second World War. These refugees, according to some delegations, were the reason that the issue of forced migrants had been placed on the agenda of the General Assembly in the first place. To extend the scope of these discussions beyond such defined limits would leave the United Nations liable to “assume responsibilities too readily.”¹⁷ As Eleanor Roosevelt stated, “The Pakistan representative had in fact suggested that the General Assembly accept responsibility for all categories of refugees existing in any part of the world, and also for such other categories as might develop in the future.”¹⁸ Opposition to this view was led by the delegation of the United Kingdom, which argued, in common with the states of the subcontinent, that a regime centred on the United Nations should provide minimum guarantees for all refugees, irrespective of their origins.¹⁹

While the debate sought to define the status of persons who might need protection in the future, India and Pakistan attempted to call attention to the millions of refugees on their territory at that time. As mentioned previously, the two new states were struggling with the burden of caring for a vast refugee population. This was complicated by the exigencies of nation building faced by the relatively impoverished states. Both delegations accordingly attempted repeatedly to assert that the Partition refugees deserved protection within the new international refugee regime. The Pakistani representative thus claimed that

after the end of [the Second World War] . . . other events had taken place in other parts of the world. If the United Nations was to be entrusted with the problem [of refugees], it should consider it on a worldwide basis. For example, a year and a half earlier, Pakistan had been compelled to receive from 6 to 7 million refugees coming from various part of India.²⁰

In addition, the Indian delegate argued,

it had to cope with its own refugee problem—indeed there were 6 million Indian refugees who had to be looked after and resettled. He hoped the United Nations would acknowledge that India was performing an international as well as a national duty by helping those people . . .²¹

Other delegations claimed, however, that the situation facing the Indian subcontinent was that of internal refugee flight, since in both cases the refugee groups did not lack the protection of a government. Consequently, in their opinion, since there was no need for the legal protection of these refugees, this was not a matter with which these deliberations were concerned.²² Yet in addition to India and Pakistan, other delegations argued for the inclusion within

the new regime of groups of refugees that would be excluded if the proposed limitations of time and space were applied. Thus, several Middle Eastern countries argued for the inclusion in the regime of the Palestinian refugees,²³ and the Greek delegate urged consideration of the approximately 700,000 Greeks who had been forced to seek refuge as a result of the civil war.

United Nations Debate: Legal protection vs. Material Assistance

Another major debate within these discussions, and related to the plea of the Indian and Pakistani delegates to include consideration of those displaced at Partition, was on the proposed need to distinguish between international legal protection and material assistance for refugees.²⁴ Contending that the greatest need of refugees bereft of the protection of a state was the legal assistance of the international community, some states challenged the notion that the proposed Office of the High Commissioner should be responsible for the provision of material aid to refugees. While India and Pakistan agreed that the legal protection of refugees was in many ways the cornerstone of the international refugee regime, they argued from their perspective that the guarantee of legal rights without concomitant material assistance was a hollow concept. The Indian representative, Mrs. Kripalani, consequently asserted that "it was true that [the Partition] refugees were not stateless; the State ensured their protection. But statelessness was often a lesser hardship than lack of food, clothing, shelter and work."²⁵ The Pakistani representative added in agreement that "although statelessness was a great privation, it was after all the least of the misfortunes to deal with which the IRO had been set up."²⁶

However, the strategic marginality of the Indian subcontinent and the scale of the problem with which it was confronted, made it difficult to gain a sympathetic ear among powerful states. In a private conversation, Phillip Burnett, a member of the American UN delegation, explained to Mr. Bokhari, spokesperson of the Pakistani delegation, that the extension of material aid to the Partition refugees under the mandate of the High Commissioner's Office "would not be regarded favourably by the U.S. since the problem was so enormous."²⁷ Yet India and Pakistan, making their debut on the world stage as independent states, looked to the United Nations to represent the post-war international community in its entirety. The recently adopted Universal Declaration for Human Rights appeared to them to make this a pressing duty. In addition, the massive burden of the Partition refugees made them loath to

accept a partial regime, in which their own concerns were sidelined, if not neglected.²⁸

The financial implications of providing emergency relief to millions of Partition refugees meant that, by 1947, India and Pakistan were no longer able to continue material contributions to the IRO. As discussion in the United Nations centred on the future of the IRO, the issue of expenses was one that both states, along with other non-European developing countries, viewed with some justified alarm. Indian and Pakistani representatives argued against having to shoulder the burden of IRO refugees, considering instead that this organization was well able to complete its task before being dissolved. Several commentators have noted that one of the pressing reasons for the reformulation of the post-war international refugee regime was the need to create secure conditions in order that Europe might share the burden of its refugees with other parts of the world.²⁹ Some European states, such as France, believed that it was time for all members of the United Nations to contribute to the resettlement of the remaining war refugees, as well as the growing influx of refugees from the Eastern bloc. Yet, in the context of their own refugee and economic problems, India and Pakistan considered unfair the notion that they should be expected to support European refugees,³⁰ especially when they were not expected to gain any reciprocal benefit for the refugees on their own territory.

By November 17, 1949, the joint draft resolution on the establishment of the Office of the United Nations High Commissioner for Refugees was ready to be put to a vote in the Third Committee. Following strong statements in opposition to the proposed Office,³¹ India and Pakistan voted against the resolution. On December 3, 1949, India abstained from and Pakistan voted against General Assembly Resolution 319 (IV), which established the Office of UNHCR, and which was eventually passed by thirty-five votes to seven, with thirteen abstentions.³²

Debate on the Refugee Definition Continues

By 1950, debate in the United Nations was centred on defining the scope and nature of a Convention relating to the Status of Refugees as well as a statute for the High Commissioner's Office. Pakistan continued to oppose the limitations being placed on the refugee definition. In the eleventh session of ECOSOC, the Pakistani delegate stated that "his Government could not accept the definition of the term 'refugee' as given in the draft Convention. That definition covered European refugees only, and completely ignored refugees from other parts of the world."³³ In the Third Committee of the General Assembly, Belgium, Canada, Turkey,

and the United Kingdom presented a joint amendment to the draft statute, which attempted to broaden the definition of persons falling under the competence of the High Commissioner's Office. In removing the limitations in time and space, this amendment and others submitted by such states as Egypt, Lebanon, and Saudi Arabia recognized, in the words of the Chilean delegate, that "it was the duty of the United Nations to extend international protection to every person who, for reasons beyond his control, could no longer live in the country of his birth."³⁴

However, this was opposed by the United States and France, which continued to favour a more limited "definition by categories" that would specify the particular groups to be covered. They argued that the limited definition they were promoting included all refugee groups "who were in need of international protection," and also that it was inappropriate at this stage to make decisions concerning future groups of refugees.³⁵ By this stage, India appears to have decided that the proposed regime was in many ways a creature of the Western world, and was therefore attempting to ensure a minimal obligatory engagement with the regime. In August 1950, accordingly, the Indian delegate noted, "the Indian delegation had opposed the broad definition of the term 'refugee' . . . because the broad definition would make a satisfactory solution of certain problems connected with refugees less probable inasmuch as it would not be possible to determine in advance exactly what categories of refugees would be covered by it."³⁶ Shortly thereafter, in a comment on the report of the Ad Hoc Committee on Statelessness and Related Problems, India, in the light of its "most difficult problem of rehabilitating a very large number of refugees from Pakistan," declared its inability to host any European refugees. It asserted that the treatment of any "European refugees" would therefore continue to be governed by the same laws as were applicable to foreigners in general.

India and Pakistan Disillusioned

Following their disappointment at the debate in the Third Committee the previous year, both India and Pakistan had largely abstained from the above discussions. However, the Indian delegate spoke briefly at the Third Committee debate in December 1950, in order to clarify the position of her country, and it is worth quoting at some length from that statement in order to get a sense of the attitude of India (which was largely shared by Pakistan) towards the ongoing debate. She stated,

the United Nations should try to help not only special sections of the world's population, but all afflicted people every-

where. Suffering knew no racial or political boundaries; it was the same for all. As international tension increased, vast masses of humanity might be uprooted and displaced. For the United Nations to attempt a partial remedy involving discrimination, whether accidental or deliberate, would be contrary to the great principles of the Charter . . . The Indian delegation had [previously] been in favour of a limited definition [of the term *refugee*] because it was fully and painfully conscious of the limitations of the whole project that was being considered. Rather than become a party to such an unreal attempt, the Indian delegation had preferred to abstain from voting.³⁷

At the 332nd meeting of the Third Committee, delegates voted on a revised joint compromise text on the refugee definition to be applied within the statute of the High Commissioner's Office and in the draft Convention. Following a suggestion of the U.K. delegate, two draft definitions were agreed upon. Although still too restrictive for many delegations, including the U.K. and the states of the Indian subcontinent, these definitions were considered a triumph of the "universal definition." Yet, as Hathaway notes, "the eurocentric goal . . . was achieved by limiting the scope of mandatory international protection under the Convention to refugees whose flight was prompted by a pre-1951 event within Europe."³⁸

Another suggestion of the United Kingdom delegation was that a Conference of Plenipotentiaries from interested states should be convened in Geneva in 1951 in order to devise a final draft of the Convention. It was accordingly decided that a special conference should be held, which would operate outside the parameters of the United Nations; this would enable non-members of that organization, which had a special interest in the issue of refugees, to participate. Consequently, states such as West Germany, Italy, and Austria, which had substantial refugee populations on their territory, and Switzerland and the Vatican, who had historically been concerned with the problem of refugee flight, were invited to the conference. On June 11, 1951, Pakistan provided a brief comment to the conference on article 26 of the draft Convention, which dealt with the freedom of movement of refugees. Nevertheless, neither India nor Pakistan played any substantial part, nor was either officially represented, in the conference. During a subsequent vote of appreciation, proposed by the United States in August 1951, for the work of the IRO, both India and Pakistan mentioned again their particular experience of refugee movement. However, it is impossible to know if this was a deliberate attempt to remind the international community of the traumatic events with which they had recently dealt, on their own.³⁹

Conclusions

As noted above, nearly fifty years later, neither India nor Pakistan, nor indeed any other state in the Indian subcontinent, has signed the 1951 Refugee Convention. This refusal to accede to the Convention originated in the opinion that the United Nations High Commissioner for Refugees was an instrument of the cold war, and consequently not relevant to the situation of the Indian subcontinent within the international system. Such an opinion is not entirely misplaced. Gordenker claims that “the United Nations Convention for Refugees emerged from the American-led policy process of the United Nations.”⁴⁰ The growing ideological divide between the East and the West convinced the United States that the reconstruction of Europe was its most pressing priority. Consequently, despite the fact that it had earlier been the main financial contributor to the IRO and UNRRA, it was not willing to commit funds to an organization that dealt with the refugee problems of states largely marginal to its strategic aims. Inevitably, therefore, the United States “more or less ignored” the massive movement of Partition refugees because of the negligible political impact of the subcontinent on a bipolar world. However, on the other hand, it *was* politically expedient to maximize the international visibility of the migration of political refugees from the Soviet bloc. Hence the American support for a “temporary refugee agency with a narrow authority and limited function . . . and a restricted definition of refugees within the Convention.”⁴¹ The clear pro-Western orientation of the emerging refugee regime ensured that Yugoslavia, a state beginning to chart its own independent course in world politics, was the only Communist country represented in the Conference of Plenipotentiaries.

India and Pakistan came away from the negotiations surrounding the birth of the post-war international refugee regime with mixed feelings. Although they agreed with the need to set up a legal framework of refugee protection, they were acutely disappointed that this regime was not prepared to recognize the tremendous refugee burden under which they laboured, and to recognize that non-European refugee movements must also be of concern to the international community. In the early 1950s India publicly took the view that, since it had no direct concern with the refugee issue as it was defined within the United Nations Convention, India did not wish to compromise its neutral status by getting involved. In 1953, the permanent representative of India to the UN discussed India’s attitude towards the international refugee regime with the High Commissioner for Refugees, and promised to direct the

Ministry of External Affairs to re-examine the issue. Mr. Aamir Ali, UNHCR representative for the Far East, visited India later that year to discuss the question of the UNHCR with the government of India. In a meeting with the foreign secretary, Mr. R. K. Nehru, he was told that “you [the UNHCR] help refugees from the so-called non-free world into the free world. We do not recognise such a division of the world.”⁴² Similarly, in meetings with the Pakistani deputy secretary for UN Affairs in the Ministry of Foreign Affairs, in April 1953, Ali was informed of Pakistan’s desire to propose an amendment to the UNHCR statute. However, as Ali noted, the deputy secretary “was very resentful of UNHCR. He said that the Pakistani delegation had been encouraged by various UNHCR officials to broach the question of an amendment, but when the delegation had discussed such a move with other delegations it had run into a brick wall of opposition.”⁴³ The disillusionment of the two South Asian states with the *realpolitik* of an ostensibly non-political refugee regime is evident.

Even in the aftermath of the 1967 Protocol, which removed the temporal and spatial limitations of the 1951 Convention, both states have preferred to conduct ad hoc agreements with the UNHCR rather than accede to the Convention. UNHCR has periodically urged the states of South Asia to reconsider their decision on accession. However, these states continue to view the Convention and Protocol as irrelevant to the refugee experience of South Asia. Officially, South Asian governments maintain that their reluctance to accede to the Convention stems from the fact that it does not cater to situations of mass influx or to mixed flows of migrants, both of which characterize forced population flows in this region. In addition, they claim that the Convention represents an imbalance between the rights and obligations of source and receiving countries, and that the principle of international burden sharing is inadequately institutionalized within the regime. It is important, however, that some commentators further locate this hesitation in the desire of the states of the Indian subcontinent to retain a significant degree of autonomy in their refugee policies. Few institutional mechanisms have been created for the protection of refugees by governments in this region in the last fifty years—a fact that has led to criticism of South Asian refugee policy as ad hoc, arbitrary, and even biased towards particular refugee groups. Yet, the states of South Asia maintain, with some measure of credibility, that they have respected the “spirit if not the letter” of the 1951 Convention and 1967 Protocol. Noting recent attempts by some Western governments to modify, or even negate, *both* the spirit and the letter of these instruments,⁴⁴ states such

as India and Pakistan have lately re-emphasised their opposition to accession.⁴⁵ This policy stance can be seen, in many ways, as a legacy of the frustrating deliberations that took place in the United Nations between 1947 and 1951.

Notes

1. Defined for the purposes of this article as India, Pakistan, and Sri Lanka. Bangladesh, formerly East Pakistan, gained its independence from West Pakistan in 1971.
2. Ceylon (renamed Sri Lanka in 1972) gained its independence from Britain on February 4, 1948, but became a member of the United Nations only on December 14, 1955. Consequently, it did not take part in the debate on the creation of the UNHCR, or the 1951 Refugee Convention. Ceylon's membership application was blocked by a Soviet Union veto on three occasions, on the grounds that Ceylon was not a fully sovereign state. Under agreements conducted with the United Kingdom at independence, Ceylon allowed the presence of British air and naval bases and armed forces on the island. However, a more compelling reason for the Soviet veto was the British and American veto on the entry of a number of Communist-bloc states at around the same time.
3. Sir Bengal Narsinga Rau, India's representative on the third session of a joint meeting of the Second and Third Committees remarked that "his country's draft constitution, which would soon be considered by the Constituent Assembly, embodied most of the rights set forth in the draft declaration [of human rights]." UN, Third Session, First Part, Joint Second and Third Committees, Ninety-first Meeting, October 2, 1948, Official Records.
4. UN, Third Session, First Part, Plenary Meeting, September 25, 1948, paragraph 143. India's view of the UN can be gauged from the following speech made by Mrs. Pandit who, in 1947, declared, somewhat optimistically, "Our organisation, the United Nations, has no 'isms' of its own; it embraces all 'isms' and ideologies, it embraces all civilisations of the West and of the East, its principles cannot be said to derive exclusively from either or any of the contending doctrines." Quoted in M. C. Setalvad, "India and the United Nations," *India Quarterly* 6, no. 1 (January–March 1949): 112.
5. Speech in the United States, February 1948, quoted in K. Sarwar Hasan, *Pakistan and the United Nations* (New York: Manhattan, 1960), 301.
6. Talat A. Wizarat, "Pakistan and the United Nations," *Pakistan Horizon Quarterly* 40, no. 1 (1987).
7. S. M. Burke and L. Ziring, *Pakistan's Foreign Policy: An Historical Analysis*, 2nd edition (Karachi: Oxford University Press, 1990), 136.
8. UN, Fifth Session, Ad Hoc Political Committee, December 4, 1950, Official Records, paragraph 26.
9. William Henderson, "The Refugees in India and Pakistan," *Journal of International Affairs* 7, no. 1 (1953): 57–65.
10. Government of India, External Affairs Department, *Report by V. K. Krishna Menon on Visits to Various European Capitals* (New Delhi: Government of India Press, 1946), 41. In addition is the

following exchange that took place in the Legislative Assembly, March 11, 1947, on Government of India association with the UN Rehabilitation and Reconstruction Association:

Mr. Manu Subedar: "Will the Hon. Member tell this House that if three crores contribution was made by India, in a year of distress, for the relief of others, whether this country received anything from any part of the world?"

Hon. I. I. Chundrigar (Commerce Member): "There has been little assistance from other countries . . ."

Subedar: "In view of this experience of India that in our distress nobody comes to our aid, GOI should lessen international aid?"

Government of India, *Legislative Assembly Debates* 3, no. 1, New Delhi, March 1947.

11. The issue of the Partition refugees was not, however, the Indian subcontinent's first experience with issues of forced migration, or indeed of hosting refugees albeit on a greatly different scale, in the contemporary period. In a census conducted by the Commonwealth Relations Department in November/December 1943, it was revealed that nearly 400,000 evacuees who were Asiatic British subjects, and 11,368 European and foreign evacuees had arrived in India in search of refuge from the hostilities of the Second World War after September 8, 1941. Also, both states indicated in October 1949 to the International Refugee Organisation (IRO) that "they considered themselves bound by the signature of the former Government of India" on the London Travel Agreement of October 15, 1946, and would therefore continue to issue IRO travel documents to persons recognized within the IRO mandate. See *Reply to Starred Question No. 202, 1945*. MEA File No. 1/5/45 – Public (e), National Archives of India.
12. J. G. Stoessinger, *The Refugee and the World Community* (Minneapolis: University of Minnesota Press, 1956), 99.
13. For an account of the working and history of the IRO see M. J. Proudfoot, *European Refugees: A Study in Forced Population Movement 1939–1952* (London: Faber and Faber, 1957).
14. The draft resolution also sought to recognize "the principle that where population movements are likely to impair friendly relations between nations, such movements should take place only with the consent of the States directly concerned." This somewhat unrealistic proposition should be seen in the context of the population flows between Pakistan and India that had just started to reach crippling proportions. Also, the very fact that India sought at this time to stress the principle of voluntary repatriation of refugees to their country of origin indicates that the Partition refugee flows were *not* merely seen as straightforward population exchanges, as has been suggested by some commentators. UN, Second Session, Third Committee, Seventy-ninth Meeting, Annex 12d, November 6, 1947, Official Records.
15. UN, Ninth Session, ECOSOC, 326th Meeting, August 6, 1949, Official Records, 628.
16. In the initial stages of the discussion, however, the United States asked merely that the question be referred to an ad hoc committee for consideration. Consequently, Eleanor Roosevelt asserted on November 8, 1949, that "in the circumstances, it would seem that the ad hoc committee [established by ECOSOC] would be qualified to recommend to the General Assembly those cat-

- egories of refugees which, in addition to those provided for in the IRO Constitution, should become the concern of the High Commissioner for Refugees." UN, Fourth Session, Third Committee, 257th Meeting, November 8, 1949, Official Records, paragraph 76.
17. UN, Fourth Session, Third Committee, 261st Meeting, November 12, 1949, Official Records, paragraph 38.
 18. UN, Fourth Session, Third Committee, 260th Meeting, November 11, 1949, Official Records, paragraph 5. This view stemmed essentially from the idea, expressed by Eleanor Roosevelt, that there was a need "to preserve the essentially deliberative character of the United Nations, because there was an increasing tendency to drive the United Nations into the field of international relief." UN, Fourth Session, Third Committee, 262nd Meeting, November 14, 1949, Official Records, paragraph 7. In light of the current direction in which UNHCR activity is increasingly headed, this opinion seems especially ironic.
 19. Mr. Fearnley, the U.K. delegate, accordingly stated that "any other than a broad definition would seriously impede the High Commissioner's freedom to advise on general refugee problems." *Ibid.*, paragraph 39.
 20. UN, Fourth Session, Third Committee, 256th Meeting, November 9, 1949, Official Records, paragraph 18.
 21. UN, Fourth Session, Third Committee, 258th Meeting, November 11, 1949, Official Records, paragraph 22.
 22. Eleanor Roosevelt noted that "these problems should not be concerned with the problem before the General Assembly, namely the provision of protection for those outside their own countries, who lacked the protection of a Government and who required asylum and status in order that they might rebuild lives of self-dependence and dignity." UN, Fourth Session, Joint Third and Fifth Committees, 264th Plenary Meeting, December 2, 1949, Official Records, paragraph 73. The fact that there was little international aid forthcoming for the Partition refugees, who also needed to rebuild their lives, was largely ignored in these discussions.
 23. The representative from Lebanon accordingly asserted that "it seemed to him that the United Nations should be equally, if not more, concerned with the problem of the Arab refugees from Palestine, whose situation was a direct result of one of its own decisions." UN, Third Session, Second Part, Third Committee, 228th Meeting, May 12, 1949, Official Records, paragraph 457.
 24. As would be expected, states argued according to their perceived "national interest." Consequently, the creation of a regime with the ability to disburse material aid to refugees was opposed by the U.S. and U.K. for widely divergent reasons. While the U.K. was not, for geographical reasons, likely to need funds for the mass resettlement of refugees on its territory, the U.S. Congress had, by 1950, begun to veto the grant of funds to international organizations that included states of the Soviet bloc. On the other hand, France was broadly in favour of funds for refugee aid because of its land borders with Germany and consequent fears that it might one day have to host large numbers of refugees from that country. For more on this point, see Kim Salomon, *Refugees in the Cold War: Towards a New International Refugee Regime in the Early Post-war Era* (Lund, Sweden: Lund University Press, 1991), 228–30.
 25. UN, Fourth Session, Third Committee, 263d Meeting, November 15, 1949, Official Records, paragraph 60.
 26. UN, Fourth Session, Third Committee, 260th Meeting, November 11, 1949, Official Records, paragraph 37.
 27. Salomon, *Refugees in the Cold War*, 231.
 28. Also, it is difficult to envisage a truly global refugee regime that was prepared to ignore, to all intents and purposes, the greatest forced movement of persons in contemporary history. There is a sense in these deliberations that what was being created, despite the rhetoric of universality, was a tailor-made solution to a specific problem. It is this sense of exclusion, on the grounds of political expediency, that India and Pakistan took with them when they left the United Nations deliberations.
 29. See James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworth, 1991), and G. Loescher and L. Monahan, *Refugees in International Relations* (New York: Oxford University Press, 1989).
 30. In November 1949 India accordingly argued that "poor countries, such as India, realised that [the estimate of \$750,000 for the functioning of the High Commissioner's Office] was a considerable sum. It would be difficult for India to contribute to a budget to be used only for the legal protection of certain refugees when there were millions of refugees in dire need on its own territory." UN, Fourth Session, Third Committee, 26th Meeting, November 15, 1949, Official Records, paragraph 59. Pakistan further asserted that "if the proposal before the Committee was adopted, Pakistan would have to share in financing the legal protection of an undefined number of refugees in Europe, while obtaining no benefits for the millions of refugees in its own country." UN, Fourth Session, Third Committee, 260th Meeting, November 11, 1949, Official Records, paragraph 37.
 31. India's representative stated "in spite of its own difficulties, it would have voted for the establishment of a High Commissioner's Office if it had been convinced that the need for it was imperative. It did not think, however—and the discussion had confirmed that opinion—that there was any great need to set up an elaborate international organisation whose sole responsibility would be to give refugees legal protection. At a time when its own refugees were dying of starvation, it would be obliged to vote against all the Resolutions submitted." UN, Fourth Session, Third Committee, 263rd Meeting, November 15, 1949, Official Records, paragraph 62.
 32. The statute of UNHCR was eventually approved by the General

- Assembly in Resolution 428 (v) of December 14, 1950.
33. UN, Eleventh Session, ECOSOC, 399th Meeting, Minutes, August 2, 1950, Official Records.
 34. UN, Fifth Session, Third Committee, 325th Meeting, November 24, 1950, Official Records, paragraph 36.
 35. See Louise Holborn, *Refugees: A Problem of Our Time* (Metuchen, NJ: Scarecrow Press, 1975), 81.
 36. UN, Eleventh Session, ECOSOC, 399th Meeting, Minutes, August 2, 1950, Official Records.
 37. UN, Fifth Session, Third Committee, 332nd Meeting, December 1, 1950, Official Records, paragraphs 26–7. The Pakistani delegate had earlier declared in the Third Committee that “he had gathered the unfortunate impression that some delegations entertained serious doubts as to the purely humanitarian aspect of the problem, and also that politics had perhaps made an unwelcome intrusion into the question . . . He deplored a situation in which refugees might find themselves mere pawns on the international chess board.” UN, Fourth Session, Third Committee, 264th Meeting, November 15, 1949, Official Records, paragraph 5.
 38. Hathaway, *The Law of Refugee Status*, 84.
 39. So, while the Indian delegate “said that his country fully appreciated the difficulties involved in the resettlement of refugees, and considered that the IRO had done an excellent job,” the delegate from Pakistan “expressed his delegation’s wholehearted support for the US draft Resolution, since the experience of his own country in dealing with six million displaced persons from India at the time when Pakistan had been establishing itself as an independent state, had made him fully aware of the tremendous work which the IRO had accomplished.” UN, Thirteenth Session, ECOSOC, 526th Meeting, August 29, 1951, Official Records, paragraphs 71–87.
 40. Leon Gordenker, *Refugees in International Politics* (New York: Columbia University Press, 1987), 87.
 41. Salomon, *Refugees in the Cold War*, 232.
 42. Archives of the United Nations High Commissioner for Refugees, *Progress Report No. 3, 15 December 1953, 6/1/INDIA Protection—General—India*, Series 1, Fonds 11.
 43. Archives of the United Nations High Commissioner for Refugees, *Report of Aamir Ali’s Mission to Pakistan, March/April 1953, 6/1/PAK Protection—General—Pakistan*, Series 1, Fonds 11.
 44. On the changing nature of the asylum regime, see Adam Roberts, “More Refugees, Less Asylum: A Regime in Transformation,” *Journal of Refugee Studies* 11, no. 4 (1998): 375–95.
 45. Accordingly, the Joint Secretary (UN Division) in the Indian Ministry of External Affairs noted recently that “even Western states are now whittling down the conception of asylum, which points to flaws in the 1951 Convention and makes us very reluctant to accede to it.” Interview conducted by the author, New Delhi, May 1, 2000.

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Réfugiés et sécurité régionale en Afrique : un défi pour le HCR

JACK M. MANGALA

Résumé

Les réfugiés sont devenus intimement liés aux préoccupations de sécurité intérieure et extérieure des États africains. Fruit de l'instrumentalisation politique des réfugiés, ce rapprochement pose un énorme défi en termes de protection et de recherche de solutions. L'étude porte d'abord sur les mécanismes à travers lesquels s'opère ce rapprochement et sur les enjeux que représentent les réfugiés sur le plan de la sécurité. Elle traite ensuite de la réponse du HCR et de la communauté internationale à ce défi et démontre comment l'organisation humanitaire a su trouver, à travers cette délicate question, les voies d'une expansion opérationnelle empreinte d'innovation afin de concrétiser les prescrits du droit international des réfugiés dans le domaine de la sécurité.

Abstract

For African states, refugees have become closely linked to internal and external security concerns. This linkage is a result of the political "instrumentalization" of refugees and represents a huge challenge in terms of the protection of refugees and the search for solutions. This study begins by analyzing the mechanics through which this linkage operates and the security stakes that refugees represent. It then proceeds to examine the response of the UNHCR and of the international community to this challenge and shows how—through its handling of this sensitive issue—the humanitarian organization has been able to devise imaginative ways to expand its operations in order to give shape to the rights of refugees in matters of security as prescribed by international refugee law.

Introduction

Depuis le début du mois de décembre 2000, la Guinée est l'objet d'attaques armées dans ses frontières sud, qui abritent la plus grande concentration de réfugiés ayant fui les guerres civiles de la Sierra Leone et du Liberia. La question est si préoccupante que le haut-commissaire aux réfugiés nouvellement désigné a consacré à la Guinée son premier voyage africain. La situation guinéenne rappelle, à maints égards, celle qu'a connue l'est de la République démocratique du Congo après le génocide rwandais en 1994. La communauté internationale s'était alors engagée à en tirer les leçons, notamment quant à la sécurité et au mode d'installation des réfugiés. Quatre ans après, l'évolution de la situation en Guinée, qui risque d'embraser toute la sous-région, semble indiquer que cet exercice n'a pas été mené à bien. Si la question de la sécurité a toujours accompagné le débat sur les réfugiés en Afrique, elle a cependant pris, ces dernières années, une plus grande ampleur à la suite de conflits déstructurés qui y ont éclaté après la guerre froide¹. « Accueillir des réfugiés [...] est devenu une charge trop lourde à supporter. La protection et l'aide aux réfugiés font encourir de nouveaux risques à la sécurité nationale, exacerbent les tensions entre les États et causent de graves dommages à l'environnement². » Venant d'un responsable tanzanien, un des rares pays africains dont la politique à l'égard des réfugiés a souvent été citée en exemple, cette déclaration montre qu'il y a péril en la demeure et qu'un renouvellement de la réflexion sur la protection des réfugiés et la sécurité régionale en Afrique s'impose.

L'installation des masses importantes de réfugiés aux frontières des pays en guerre, socio-économiquement ou politiquement fragilisés, s'accompagne généralement d'une

augmentation de la violence, d'une plus grande compétition pour les ressources et de conflits avec les populations locales. Ce sont là autant de ficelles que s'empressent de tirer différents acteurs, tant du pays d'origine que du pays d'asile, pour qui cette masse humaine compactée dans des camps représente un véritable enjeu de pouvoir. Dans le cas de la Guinée, 350 000 réfugiés, arrivés par vagues successives du Liberia et de la Sierra Leone, sont installés dans 54 camps le long de la frontière avec ces deux pays depuis près de dix ans. La rente humanitaire a permis, pendant des années, d'amortir cette charge. Mais, depuis 1999, la zone d'installation des réfugiés, point de départ ou d'arrivée des incursions armées lancées depuis la Sierra Leone et le Liberia en Guinée et de la Guinée au Liberia, est devenue l'épicentre du tourbillon de la recomposition politique en cours dans cette région. Victimes d'une stratégie qui les dépasse, les réfugiés en paient le prix fort : « traîtres » d'un côté de la frontière, « rebelles » de l'autre. La présente note examine les implications normatives et stratégiques de cette situation qui pose un défi majeur au HCR dans l'exercice de sa mission de protection internationale et de recherche de solutions permanentes au problème des réfugiés. Contraire au droit international (III), l'instrumentalisation politique des réfugiés les place au cœur des problèmes vitaux pour la sécurité intérieure (II) et extérieure des États (I).

I. Réfugiés et sécurité extérieure

Sur le plan de la sécurité extérieure, les réfugiés représentent un instrument politique aux yeux des mouvements armés qui rêvent de (re)conquérir le pouvoir dans le pays d'origine³. Pour ces mouvements, les camps des réfugiés offrent un triple avantage en termes de recrutement, de sanctuaire et de logistique. Soumis aux conditions pénibles de l'exil, les réfugiés entassés dans un camp constituent un « vivier de combattants », recrutés de manière volontaire ou forcée⁴. Il semble ainsi que les dernières attaques du RUF (Revolutionary United Front) sur les camps de réfugiés en Guinée aient visé notamment à procéder à du « recrutement actif ». Plusieurs réfugiés auraient été pris en otage et ramenés du côté sierra-léonais de la frontière⁵. Par leur situation géographique, leur composition humaine, leur densité démographique et la relative protection dont ils bénéficient en droit international, les camps de réfugiés représentent une base d'appui idéale pour les mouvements armés, une fois leurs objectifs militaires atteints de l'autre côté de la frontière⁶. Il est en effet relativement facile pour les combattants de se dissimuler parmi les populations civiles des camps, surtout lorsque celles-ci parlent la même langue qu'eux ou partagent leur cause politique. En der-

nier lieu, l'aide humanitaire déversée dans les camps de réfugiés leur confère une importance logistique considérable. Par différents mécanismes de prélèvement plus ou moins violents, une bonne partie de cette aide peut être recyclée pour soutenir l'effort de guerre⁷. D'où le dilemme des humanitaires : faut-il continuer à apporter l'aide aux populations civiles en dépit des détournements dont elle est l'objet et qui nourrissent la guerre⁸ ?

La situation des réfugiés rwandais dans l'est de la République démocratique du Congo (RDC) en 1994-1996 se révèle une illustration intéressante de l'instrumentalisation des réfugiés à des fins de reconquête du pouvoir dans le pays d'origine. Après le génocide rwandais de 1994, la RDC a vu déferler sur son territoire près de 1 500 000 réfugiés, sitôt installés dans des camps à l'orée de la frontière entre les deux pays. Dans le cadre d'une stratégie de reconquête rapide du pouvoir perdu à Kigali au profit de la minorité tutsi, les anciennes autorités hutus ont compris, dès le début, l'intérêt qu'il y avait à assurer un contrôle systématique des camps de réfugiés. *Primo*, elles pouvaient ainsi disposer, à portée de mains, d'un réservoir inépuisable de combattants. *Secundo*, en raison d'un coût de un dollar par personne et par jour, la masse de réfugiés représentait un gisement dont l'exploitation ne manquait pas d'intérêt. Le détournement d'une partie de l'aide humanitaire dispensée dans les camps servait à soutenir la lutte armée contre le nouveau régime de Kigali. *Tertio*, les « blindés » arrimés sur la lave volcanique des camps offraient à sa composante militaire un espace de replis aux couleurs de l'humanitaire⁹. Le développement des activités de mouvements armés dans les camps de réfugiés, avec la complicité plus ou moins active des autorités du pays d'asile ne peut qu'entraîner, au mieux, une fermeture des frontières, au pire, des opérations armées transfrontalières conduites, à titre préventif, par le pays d'origine. Il s'agit là d'une constante des relations internationales africaines de ces 30 dernières années¹⁰. Les nouvelles autorités rwandaises, pour qui la menace des camps représentait un vrai cauchemar, choisirent de les démanteler *manu militari* en octobre 1996, libérant une onde de choc qui allait traverser toute l'Afrique centrale, et dont les effets se font encore ressentir à ce jour.

II. Réfugiés et sécurité intérieure

Sur le plan de la sécurité intérieure, les avantages qu'offrent les camps de réfugiés en termes de recrutement, de logistique et de sanctuaire en font également un enjeu de pouvoir pour les mouvements armés qui combattent les autorités du pays d'asile. Pour rester dans la région des grands lacs africains, la Résistance nationale armée de

Yoweri Museveni s'était ainsi appuyée, pour une large part, sur les réfugiés tutsi rwandais en Ouganda pour renverser le régime de Kampala. Une fois au pouvoir, Museveni aidera à son tour les anciens réfugiés tutsi, structurés autour du Front patriotique rwandais (FPR), à engager l'assaut final contre le régime de Kigali¹¹. Pour Museveni, cette opération présentait un avantage politique majeur : elle lui permettait de se débarrasser d'un groupe important de réfugiés, désormais aguerris au combat, et sur qui d'autres auraient pu être tentés de s'appuyer un jour. C'est sans doute instruites par leur propre expérience et l'histoire de la reconquête du pouvoir par le FPR que les nouvelles autorités rwandaises ont choisi d'éradiquer, cette fois à l'intérieur des frontières nationales, les camps de personnes déplacées, estimant qu'ils représentaient « un foyer d'hostilité et une menace pour la sécurité intérieure ». C'est au cours de l'une de ces opérations de démantèlement qu'a eu lieu, le 23 avril 1995, le massacre de Kibeho, le plus grand camp de l'ancienne zone humanitaire sûre constituée sous l'opération turquoise, qui avait frustré les nouveaux maîtres de Kigali d'une victoire totale sur les ex-FAR (Forces armées rwandaises) et les Interahamwes (Milices hutus), désormais seigneurs des camps. La même stratégie d'instrumentalisation de réfugiés est présente dans le contexte politique actuel en Guinée, où tout semble indiquer que le mystérieux mouvement d'opposition (Rassemblement des forces démocratiques de Guinée : RFDG), qui a revendiqué les attaques menées aux frontières au mois de décembre dernier, chercherait à prendre avantage des camps de réfugiés qui y sont installés dans son objectif de renversement du régime de Lansana Conté. Dans une remarquable opération de survie politique et de ralliement des masses, ce dernier a, à l'occasion d'un discours prononcé au Palais du peuple le 9 septembre dernier, fustigé « les étrangers qui se sont installés à demeure chez nous et qui nous remercient en apportant la guerre ». Aux yeux de la population guinéenne, une équation simpliste et dangereuse, pouvant ouvrir la voie à tous les abus, court désormais : réfugiés = rebelles.

Il va sans dire qu'une perception aussi négative des réfugiés, qui se généralise en Afrique, ne peut qu'entraîner vers le bas le niveau de protection offerte par les États d'asile. La légendaire « hospitalité africaine » à l'égard des réfugiés tend à s'émousser, et il apparaît de plus en plus évident que l'instrumentalisation politique des réfugiés fait perdre à cette question de son « caractère humanitaire » et risque de remettre en cause tout l'acquis international dans ce domaine. Comme le relève l'ancien haut-commissaire aux réfugiés Sadako Ogata : « Alors que les Africains ont tou-

jours été généreux, prompts à accueillir les réfugiés, ils sont en train de changer d'attitude. Aujourd'hui, les arrivants font peur [...] » Il est regrettable qu'après avoir fui son pays d'origine parce que « craignant avec raison » d'être persécuté, pour reprendre les termes de la Convention de Genève, le réfugié inspire à son tour un sentiment de peur à sa communauté d'accueil, plutôt que de la compassion. La peur de l'autre, de la différence, étant à l'origine des comportements les plus extrêmes, il y a lieu de redouter qu'à la crainte de persécution dans le pays d'origine ne puisse alors se substituer la persécution dans le pays d'accueil. Comment enrayer cette évolution dont les conséquences touchent au cœur même du mandat du HCR? Quelles sont les solutions déjà appliquées ou suggérées par le HCR et la communauté internationale dans le domaine de la sécurité? Pour répondre à cette double interrogation, il importe au préalable de dresser l'état du droit international des réfugiés.

III. État du droit international et solutions

Sur le plan universel, la Convention de Genève relative au statut des réfugiés de 1951 ne consacre pas de disposition particulière à la question de la sécurité. Elle se limite à exprimer « le vœu que tous les États, reconnaissant le caractère social et humanitaire du problème des réfugiés, fassent tout ce qui est en leur pouvoir pour éviter que ce problème ne devienne une cause de tension entre États¹² », et à réaffirmer l'obligation générale selon laquelle « tout réfugié a, à l'égard du pays où il se trouve, des devoirs qui comportent notamment l'obligation de se conformer aux lois et règlements ainsi qu'aux mesures prises pour le maintien de l'ordre public¹³ ».

C'est sur le plan régional africain que cette question prend un relief particulier. Les problèmes de sécurité liés à l'accueil des grandes masses de réfugiés ont toujours représenté une préoccupation constante des dirigeants africains, même s'il faut constater que les nombreuses résolutions et conférences consacrées à cette question n'ont généralement pas été suivies d'effet. Il suffit, pour s'en convaincre, de considérer la Convention de l'OUA régissant les aspects propres aux problèmes des réfugiés en Afrique du 10 septembre 1969, dans laquelle les chefs d'État et de gouvernement se déclarent, dès l'ouverture « conscients de ce que les problèmes des réfugiés constituent une source de friction entre de nombreux États membres, et désireux d'enrayer à la source de telles discordes; désireux d'établir une distinction entre un réfugié qui cherche à se faire une vie normale et paisible, et une personne qui fuit son pays à seule fin d'y fomenter la subversion à partir de l'extérieur; décidés de faire en sorte que les activités de tels éléments

subversifs soient découragées, conformément à la déclaration sur le problème de la subversion et à la résolution sur le problème des réfugiés, adoptées à Accra en 1965¹⁴ ». Même si la terminologie employée rappelle un âge aujourd'hui révolu, celui de la subversion révolutionnaire, il reste que cette déclaration situe clairement la dimension sécuritaire au cœur de l'instrument régional africain sur les réfugiés qui énonce, par la suite, des obligations fondamentales dans le chef des réfugiés et des États d'accueil, non sans rappeler au préalable le principe selon lequel « l'octroi du droit d'asile aux réfugiés constitue un acte pacifique et humanitaire, et ne peut être considéré par aucun État comme un acte de nature inamicale¹⁵ ». D'une part, tout réfugié doit « s'abstenir de tous agissements subversifs dirigés contre un État membre de l'OUA¹⁶ ». De l'autre, « pour des raisons de sécurité, les États d'asile devront, dans toute la mesure du possible, installer les réfugiés à une distance raisonnable de la frontière de leur pays d'origine¹⁷ » et « s'engagent à interdire aux réfugiés établis sur leur territoire respectif d'attaquer un quelconque État membre de l'OUA par toutes activités qui soient de nature à faire naître une tension entre les États membres, notamment par les armes [...] »¹⁸ ». Ces dispositions ont-elles été respectées? On peut en douter au vu de l'évolution de la situation des réfugiés en Afrique. Par calculs stratégiques, complaisance ou incapacité des États, les réfugiés sont devenus des otages de jeux politiques peu soucieux de la personne humaine. Qu'il s'agisse de la République démocratique du Congo, du Kenya, de l'Ouganda ou encore de la Guinée, pour ne citer que ces pays, le respect de ces principes eut suffi, à lui seul, à épargner aux États de nombreux problèmes de sécurité attribués, à tort ou à raison, aux réfugiés.

À la faveur de la crise des Grands Lacs en 1992-1996, une vaste réflexion internationale avait été lancée sur la dynamique entre réfugiés et sécurité régionale¹⁹. Le HCR a pris une part active à cette réflexion et s'est résolument engagée dans la recherche de solutions novatrices au problème de sécurité. Son action aura bénéficié, dans ce domaine, d'un « mandat suffisamment flexible pour permettre le développement d'un véritable espace d'initiative, à l'intérieur duquel l'institution se réinvente constamment²⁰ ». Parmi les lignes de force de cette réflexion, qui voudrait donner corps à l'esprit de la Convention de l'OUA de 1969 et dans laquelle s'inscrit l'action du HCR, il y a lieu de relever les axes ci-après.

1. Le désarmement de réfugiés armés

Les conflits armés étant la cause majeure des réfugiés en Afrique, il arrive souvent que ceux qui sollicitent l'asile fran-

chissent la frontière avec armes et munitions. Pour garantir le caractère humanitaire de l'asile, le désarmement de ces groupes demeure une condition primordiale. Cette exigence fait l'objet d'un constant rappel par le HCR, pour qui l'enjeu consiste, sur ce point, à mettre les instances politiques nationales et internationales devant leurs responsabilités en insistant sur le fait que faillir à cette obligation ne peut que déboucher, par la suite, sur des problèmes de sécurité intérieure et extérieure.

2. La séparation de civils d'avec les combattants

Le maintien du caractère civil des camps impose de séparer les civils d'avec les combattants. Il s'agit, d'une part, de garantir aux premiers une certaine liberté en empêchant qu'ils ne deviennent les otages des seconds et, d'autre part, d'éviter que les camps ne soient perçus comme une cible militaire²¹. Cette première séparation de type physique devrait être complétée par une autre séparation de type légal, conformément aux clauses d'exclusion des Conventions de Genève et de l'OUA, qui écartent du bénéfice de la protection internationale toute personne dont on aurait « des raisons sérieuses de penser » qu'elle a commis un crime contre la paix, un crime de guerre, un crime contre l'humanité, un crime grave de droit commun, ou qu'elle s'est rendue coupable d'agissements contraires aux buts et aux principes des Nations Unies et de l'OUA²². Même en contexte d'afflux massif, le recours à la reconnaissance collective du statut de réfugié, qui caractérise la pratique africaine, ne saurait exempter les États d'une application, au moins partielle, des clauses d'exclusion, dont la *ratio legis* vise à préserver à l'asile sa vraie nature. N'ayant ni mandat ni capacité opérationnelle propre pour entreprendre une séparation physique des réfugiés, le HCR aura centré son action, dans ce domaine, sur deux fronts. D'une part, il s'est investi dans l'apostolat de la parole, en réitérant inlassablement la nécessité d'une telle séparation auprès de ceux qui ont le pouvoir et les moyens de la mettre en œuvre. Même si cette parole n'a pas toujours été entendue, comme dans le cas des réfugiés rwandais à l'est de la République démocratique du Congo, il faut néanmoins reconnaître au HCR le mérite d'avoir su indiquer, à temps et à contretemps, ce qu'il convenait de faire. Le HCR s'est souvent trouvé associé, dans ce rôle, aux responsables de l'OUA. De l'autre, il a prêté son concours aux autorités nationales déterminées à entreprendre une telle séparation. Ainsi, par exemple, au titre de ses objectifs principaux en Tanzanie pour l'année 2000, le HCR relève qu'il « continuera d'assister les autorités tanzaniennes par une série de mesures. Il soutiendra notamment le déploiement et la formation de contingents

de polices spéciaux et la mise en place d'installation permettant de séparer les combattants de la population réfugiée, afin de préserver le caractère civil et humanitaire des camps de réfugiés²³ ».

3. L'installation des camps loin de la frontière avec le pays d'origine

La localisation des camps loin de la frontière avec le pays d'origine offre un double avantage en termes de sécurité. Elle les rend moins vulnérables aux attaques d'éléments venus du pays d'origine et permet, par la zone tampon ainsi créée, de mieux contrôler les flux d'activités transfrontières en direction et au départ des camps. À ce propos, le Comité exécutif du programme du HCR rappelle que « le lieu de séjour des personnes en quête d'asile doit être déterminé en fonction de leur sécurité et de leur bien-être ainsi que des exigences de sécurité de l'État d'accueil²⁴ ». Pour des raisons géopolitiques ou socio-économiques, la mise en œuvre de ce prescrit n'a pas toujours rencontré l'assentiment des autorités nationales. Le HCR a néanmoins entrepris, dans les pays où la coopération des autorités nationales lui était acquise, des programmes de transfert des réfugiés plus à l'intérieur du pays. Près de 15 000 réfugiés sierra-léonais de Guinée ont ainsi été transférés en 1999, et il était prévu d'en faire de même pour 65 000 autres²⁵. Certains chercheurs commencent toutefois à se demander si l'on ne gagnerait pas, tant sur le plan de la sécurité que sur le plan humanitaire, à laisser les réfugiés s'installer librement parmi les populations locales, plutôt qu'à les confiner dans des camps²⁶. Lorsque cela est possible, le libre choix du lieu de résidence demeure un mode d'installation préférable. Quand les circonstances ne s'y prêtent pas, il faudrait néanmoins veiller à ce que les camps gardent une dimension humaine, susceptible d'en faciliter l'administration autant que la sécurisation.

4. La sécurisation des camps

La question de la sécurisation des camps comporte une double dimension. Il s'agit, d'une part, d'éviter que les camps ne soient l'objet d'attaques armées et, d'autre part, de veiller à ce qu'ils ne se transforment en zones de non-droit, livrées à la violence et aux intimidations. Pendant longtemps, la communauté internationale ne s'est préoccupée que de la dimension externe de la sécurité des camps, à laquelle l'EXCOM a consacré de nombreuses conclusions qui, sur un mode répétitif, se limitent pour l'essentiel à condamner les attaques armées contre les camps²⁷. La proposition formulée par l'ancien haut-commissaire aux réfugiés, Poul Hartling, de voir les gouvernements s'accor-

der pour inclure expressément les camps de réfugiés parmi les catégories juridiquement protégées par les Conventions sur le droit de la guerre n'aura suscité que peu d'intérêt²⁸. C'est la crise des réfugiés dans la région des Grands Lacs qui a permis de porter l'attention sur la dimension interne du problème. Il convient à ce sujet de rappeler que la sécurité dans et aux alentours des camps repose d'abord sur la responsabilité de l'État d'asile, que c'est à lui qu'il revient de faire éventuellement appel à la communauté internationale pour l'aider à assumer cette tâche. Dans son *Rapport sur les causes des conflits et la promotion d'une paix et d'un développement durable en Afrique*, le secrétaire général de l'ONA consacre une importante section au problème de la sécurisation des camps et des aires de refuge. Après avoir rappelé que « la protection des réfugiés et l'aide aux États d'asile requièrent parfois un pouvoir d'intervention que ne possèdent pas les dispensateurs de secours, touchant souvent à des questions de paix et de sécurité internationales qui sont essentiellement du ressort du Conseil de sécurité », le secrétaire général « souhaite vivement que l'on crée un dispositif international qui permette d'aider les pays d'asile à maintenir la sécurité et la neutralité dans les camps ou les zones de regroupement des réfugiés²⁹ ». Bien qu'aucune piste n'ait été avancée par le responsable onusien quant à la faisabilité de sa proposition, l'idée mérite approfondissement.

C'est dans le domaine de la sécurisation des camps que le HCR a développé, ces dernières années, une gamme d'initiatives nouvelles et intéressantes, en collaboration avec les pays d'asile et ses partenaires opérationnels. Ainsi, pour maintenir la sécurité dans les camps du Zaïre (République démocratique du Congo), le HCR et ce pays ont adopté, le 27 janvier 1995, un « aide-mémoire » prévoyant le recours à un contingent zaïrois encadré par des experts internationaux³⁰. Aux termes de cet accord, le Contingent zaïrois pour la sécurité (CZSC) avait, entre autres missions, à assurer le respect de la loi et de l'ordre public dans et autour des camps, et de prévenir les intimidations et la violence contre les candidats au retour au Rwanda³¹. Des accords similaires de sécurisation de camps ont également été conclus avec la Tanzanie et le Kenya³². Dans ce dernier pays, les efforts du HCR visaient à résorber l'insécurité dans les zones d'installation de réfugiés de Kakuma et de Dadaab au nord-ouest. Parmi les dispositions prises à cette fin, l'on retiendra principalement : le soutien aux forces de police locale, par le renforcement de leur capacité et de leur efficacité; l'introduction des arrangements de sécurité dans les camps, à travers notamment le recrutement des anciens officiers de l'armée kenyane comme coordonnateurs de sécurité, et

la création d'une force de 120 gardes locaux comprenant réfugiés et populations locales; la réorganisation de la vie communautaire dans les camps afin d'impliquer davantage les réfugiés aux questions de sécurité; certaines actions particulières visant les groupes vulnérables tels que les femmes réfugiées³³.

5. La coopération régionale

Les implications des problèmes de réfugiés sur le plan de la sécurité plaident en faveur d'une approche régionale renouvelée dans la recherche de solutions. Comme l'a reconnu la Conférence régionale sur les questions de réfugiés dans la région des Grands Lacs, « *the countries of the Great Lakes have common interests and common destiny* ». Ce qui est vrai pour cette région du continent africain, l'est également pour d'autres. Quand survient un problème de réfugiés, il est important que tous les pays intéressés, au premier rang l'État d'origine et l'État d'asile, établissent des mécanismes réguliers de consultation et de coopération, et s'accordent sur un ensemble de mesures destinées à inspirer confiance à toutes les parties. Parmi ces mesures, l'institution de commissions de sécurité impliquant également les représentants des réfugiés, le HCR et d'autres agences humanitaires pourrait se révéler un rouage institutionnel particulièrement utile.

6. L'assistance internationale

L'application des prescrits minimaux énumérés dépasse souvent les capacités des États d'asile africains, déjà englués dans des problèmes socio-économiques et politiques inextricables. De ce fait, l'impératif de sécurité représente une invitation à une solidarité internationale plus agissante dans l'esprit du préambule de la Convention de Genève de 1951 relative au statut des réfugiés, qui énonce « qu'il peut résulter de l'octroi du droit d'asile des charges exceptionnellement lourdes pour certains pays et que la solution satisfaisante des problèmes dont l'organisation des Nations Unies a reconnu la portée et le caractère internationaux ne saurait, dans cette hypothèse, être obtenue sans une solidarité internationale ». C'est à la même solidarité internationale que le HCR et l'OUA en ont également appelé dans le document d'Addis Abeba sur les réfugiés et les déplacements forcés de population en Afrique³⁴.

Considérations finales

Le droit international des réfugiés repose sur une double préoccupation : protéger les droits des réfugiés et garantir les intérêts légitimes des États. Parmi ces intérêts, la Convention de Genève, dans une moindre mesure, et la Con-

vention de l'OUA, de manière plus soutenue, mettent en avant la sécurité. Ces dernières années, l'instrumentalisation politique des réfugiés a accru les problèmes de sécurité aussi bien à l'intérieur des États d'asile que dans les relations interétatiques. Cette situation, qui risque de remettre en cause tout l'acquis international dans le domaine de la protection des réfugiés, représente un important défi pour le HCR. Ce dernier essaie, dans les limites de son mandat et les contraintes pesant sur ses capacités opérationnelles, d'y répondre par une série d'initiatives qui donnent la mesure d'une remarquable capacité d'innovation. Au-delà de l'action ponctuelle du HCR, dont l'impact ne saurait être en la matière que limité, il importe que les acteurs engagés dans des luttes de pouvoir redécouvrent les vertus de l'esprit humanitaire de l'asile et s'engagent enfin au respect du droit. *Quod non*, la montée des préoccupations sécuritaires risque de sonner le glas de l'institution de l'asile et de la protection des réfugiés en Afrique³⁵.

Notes

1. Les conflits déstructurés se caractérisent par l'atomisation de l'autorité et la méconnaissance des normes élémentaires de droit humanitaire de la part de belligérants. Ils entraînent de ce fait un grand nombre de réfugiés et de personnes déplacées.
2. E. Mwanbulukutu, vice-ministre tanzanien de l'intérieur, cité dans Augustine Mahiga, « Changement de cap en Tanzanie » (1997), hiver *Refugiés*, 15.
3. Voir : Christophe Comblin, *Les réfugiés, instrument politique dans le tiers-monde* (Bruxelles : GRIP, 1995).
4. Au temps de l'apartheid, les réfugiés namibiens d'Angola représentaient un réservoir important de combattants pour la SWAPO. De même, l'ANC recrutait massivement dans les camps du Botswana, du Mozambique et du Zimbabwe. Voir : Philippe Champleau, « Les réfugiés dans les conflits d'Afrique australe » (1987), 44 *Études polémologiques*, 93. Le statut particulier de ces mouvements de libération, qui bénéficiaient du soutien des membres de l'OUA, mérite d'être relevé. Dans la corne de l'Afrique, les différents mouvements armés ont eu recours, pendant des années, aux camps de réfugiés pour renouveler leurs troupes. Voir : René Otayek, « Du bon usage du réfugié dans la corne de l'Afrique : quelques remarques » (1987), 44 *Études polémologiques*, 77-86.
5. *Le Monde*, 26 décembre 2000.
6. Voir : Jean-Christophe Rufin, *Le piège humanitaire* (Paris : Hachette, coll. Pluriel, 1993), 125-128.
7. À titre indicatif, à l'occasion de la reprise des combats au Liberia en avril 1996, les équipes humanitaires présentes dans ce pays ont perdu en quelques semaines pour plus de 20 millions de dollars d'équipement, dont près de 500 véhicules. Voir : Fabrice Weissman, « Le Liberia, otage des seigneurs de la guerre », dans Médecins Sans Frontières, *Populations en danger* (Paris : La Découverte, 1996), 95-110.
8. En 1994 par exemple, le retrait de Médecins Sans Frontières des

- camps de réfugiés du Kivu fut motivé par le refus de participer, indirectement, à la reconstruction des forces responsables du génocide. Cette décision ne fut pas partagée par les autres ONG qui continuèrent leurs activités humanitaires dans les camps.
9. Dans les camps du Kivu, le terme « blindé » désignait l'habitat de toile plastique bleue, blanche ou verte des réfugiés.
 10. Du temps de l'apartheid, les pays de la ligne de front ont ainsi payé un lourd tribut à leur soutien aux mouvements de libération. Les camps de réfugiés ont constamment été l'objet d'attaques des forces spéciales sud-africaines.
 11. Voir : Roland Pourtier, « La guerre au Kivu : un conflit multidimensionnel » (1996), 4 *Afrique Contemporaine*, 33 et 37.
 12. Préambule, troisième considérant.
 13. Article 2.
 14. S. 3, 4 et 5 du préambule.
 15. Article II, s. 2.
 16. Article III, s. 1.
 17. Article 11, s. 6. Qu'entend-on par « distance raisonnable »? Il y a très peu d'indications à ce sujet. Le directeur des opérations du HCR pour l'Afrique occidentale, orientale et centrale l'évalue à 50 km. Voir Interview dans *Jeune Afrique*, 4 février 1997, 24. Cette mesure d'installation est recommandée « for obvious security reasons, as much for the sake of the refugees themselves as for countries of origin and of refuge », conférence Legal, Economic and Social Aspects of African Refugee Problems (9-18 octobre 1967), rapport final, doc. AFR/REF/CONF.1967, p. 26.
 18. Article III, s. 2. Il sied, à cet égard, de rappeler le statut particulier dont bénéficiaient les mouvements de libération combattant les régimes minoritaires et racistes, non-membres de l'OUA. Dans sa *Déclaration sur le problème de la subversion*, doc. AHG/Res. 27 (II), 25 octobre 1965, la Conférence des chefs d'État et de gouvernement s'était engagée « à continuer à garantir la sécurité des réfugiés politiques (des territoires africains non indépendants) et à leur accorder soutien dans la lutte pour la libération de leur pays ».
 19. Voir notamment : « Refugee protection and security in the great lakes region », rapport du Regional Meeting on Refugee Issues in the Great Lakes (Kampala, Ouganda, 8 et 9 mai 1998), *Refugee Survey Quarterly*, vol. 17, n° 2, 1998, 1-45.
 20. Jean-Francois Durieux, « Le rôle du Haut-commissariat des Nations Unies pour les réfugiés », Société française pour le droit international (Éd.), *Droit d'asile et des réfugiés*, colloque de Caen (Paris : Pedone, 1997), 192.
 21. Voir : HCR, *The Impact of Military Personnel and the Militia Presence in Rwandese Refugee Camps and Settlements*, doc. 1995/Buj, conf. 3, 1995. « In situations where the national authorities lack the capacity to take such action [separating refugees from other exiles], alternative approaches might be considered including the deployment of regional or international police and military forces », Refugee Protection and Security in the Great Lakes Region, rapport du Regional Meeting on Refugee Issues in the Great Lakes (Kampala, Ouganda, 8 et 9 mai 1998), *op. cit.*, 6. Dans le cas de la République démocratique du Congo, il y a eu une proposition de l'ancien ministre belge des affaires étrangères, Leo Tindemans, de casernement des ex-FAR au camp militaire de Kamina dans la région du Shaba. Ce projet n'a pas obtenu l'adhésion des autorités congolaises qui n'ont pas voulu assumer les risques liés à la présence d'une importante force combattante à l'intérieur du territoire.
 22. Articles 1 F de la Convention de Genève et 1 s. 5 de la Convention de l'OUA. En droit international des réfugiés, l'application des clauses d'exclusion repose sur une simple présomption. Il suffit que les autorités du pays d'asile aient « des raisons sérieuses de penser que [...] » Voir le supplément que l'*International Journal of Refugee Law*, vol. 12, hiver 2000, consacré aux clauses d'exclusion. Pour un examen de la pratique africaine, voir spécialement William O'Neill, Bonaventure Rutinwa and Guglielmo Verdirame, « The Great Lakes : A Survey of the Application of the Exclusion Clauses in the Central Africa Republic, Kenya and Tanzania », 135-170; William O'Neill, « Conflict in West Africa : Dealing with Exclusion and Separation », 171-194.
 23. HCR, *Appel global 2000* (Genève : HCR, 1999), 55.
 24. Conclusion n° 22 (XXXII).
 25. *Ibid.*, 93. Quoique significatives, ces opérations de déplacement sont cependant restées insuffisantes.
 26. Voir : Jeff Crisp and Karen Jacobsen, « Refugees camps reconsidered » (1998), 3 *Forced Migration Review*, 27-30; Collette Braeckman, « Les camps? Pas toujours la meilleure solution », *Le soir*, 21 août 1995.
 27. Voir les Conclusions n° 27 (XXXIII), n° 32 (XXXIV), n° 45 (XXXVII) et n° 48 (XXXVIII) ainsi que la *Note sur les attaques armées contre les camps et zones d'installation de réfugiés*, doc. EC/SCP/47, 10 août 1987.
 28. Même si les camps ne bénéficient pas, en tant que tels, d'une consécration expresse comme catégorie juridiquement protégée, il y a lieu de relever cependant que la présence de combattants au sein de groupes de réfugiés strictement civils ne prive pas ces derniers de toute protection. D'une part, les attaques indiscriminées qui frapperaient aussi et *a fortiori* surtout les civils restent interdites par les articles 51 et 57 du Protocole I aux Conventions de Genève. D'autre part, en vertu de l'article 50 s. 1 du même Protocole, la présence au sein d'une population civile, et par extension d'une population de réfugiés, de combattants isolés ne prive pas cette population de sa qualité.
 29. Doc. NUS/1998/318, 16 avril 1998, s. 55. L'ancien secrétaire général de l'ONU Boutros Ghali avait, dans son deuxième *Rapport sur la sécurité des camps de réfugiés rwandais*, doc. S/1995/65, 25 janvier 1995, proposé la mise sur pied d'une opération de maintien de la paix ou, à défaut de celle-ci, l'adoption de l'une des trois solutions de rechange suivantes : la mise sur pied d'un groupe de policiers/observateurs internationaux, la conclusion d'arrangements contractuels avec des organismes privés de sécurité ou l'adoption des mesures de sécurité par l'intermédiaire du HCR. C'est la dernière option qui fut finalement retenue.
 30. Texte disponible au Centre de documentation et de recherche du HCR, Genève.
 31. Voir : Mutoy Mubiala, « Les Nations Unies et la crise des réfugiés rwandais » (1996), 2 *Revue belge de droit international*, 493-515.
 32. Textes disponibles au Centre de documentation et de recherche du HCR, Genève.
 33. Voir : Jeff Crisp, « A state of insecurity : The political economy

- of violence in refugee-populated areas in Kenya » (1999), en ligne : <<http://www.unhcr.ch>> (date d'accès : 28 février 2001).
34. Voir la Recommandation n° 8, qui relève notamment que l'assistance internationale devrait « permettre aux gouvernements de faire face efficacement aux situations pouvant contribuer à une dégradation de la sécurité, du droit et de l'ordre public dans les zones accueillant les réfugiés ».
35. Voir Bonaventure Rutinwa, « The end of the asylum? The changing nature of refugee policies in Africa » (1999), en ligne : <<http://www.unhcr.ch>> (date d'accès : 28 février 2001).

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UNHCR in Turkey

ELIF OZMENEK

Abstract

This paper uses an in-depth case study of Turkey to examine the complex and contemporary challenges facing the UNHCR. The work of the UNHCR Turkey Program presents a unique example of the problematic relationship between a nation-state and an international refugee regime. The Turkish government ratified the 1951 Convention relating to the Status of Refugees in March 1962, but maintains the geographical limitation restricting its asylum commitment to applicants from European countries. Turkey, one of only two countries among the signatories of the Convention that keeps the geographical limitation, relies mostly on the UNHCR's eligibility assessment of non-European asylum-seekers. Although the focus of the paper is a country-specific example, its goal is to establish a model that can be used in evaluating any UNHCR regional or country program.

Résumé

Cet article tente d'examiner les défis complexes contemporains confrontant le HCR par le biais d'une étude en profondeur de la Turquie. Le programme du HCR pour la Turquie est un exemple unique de la relation problématique pouvant exister entre un état-nation et un régime international sur le droit d'asile. Le gouvernement de la Turquie a ratifié en mars 1962 la Convention des Nations Unies de 1951 relative au statut des réfugiés, mais continue à maintenir les restrictions géographiques, limitant ses engagements envers seulement les demandeurs provenant de pays européens. La Turquie est l'un des deux seuls pays parmi les signataires de la convention à maintenir une restriction géographique. Pour ce faire, il s'appuie principalement sur la notion de test d'admissibilité de demandeurs d'asile non-européens. Quoique que l'article porte sur l'exemple d'un pays spécifique, son but ultime est d'établir un modèle pouvant servir à l'évaluation de n'importe quel programme du HCR dévoué à une région ou à un pays.

Introduction

The establishment of the United Nations High Commissioner for Refugees (UNHCR) in 1951 created a new stage for a more institutionalized and international refugee regime. Until that time, it was presumed that individuals must belong to a state to ensure their protection and give that state responsibility for (or control over) them. Refugees, on the other hand, were stateless people, so they were a predicament, for they denied and challenged the protection and accountability of their own countries.¹

With the 1951 Convention and the 1967 Protocol, the UNHCR created an international norm and law establishing the right for an accepted "refugee" to have international protection. As the main international institution dealing with refugees, the UNHCR began to implement several solutions: voluntary repatriation, integration into the country of first asylum, and the resettlement into a third country of asylum to ease the refugee burden. However, within a complex system for dealing with refugee plight, where refugees are outcomes of a political decision taken by a nation-state, but solutions to their well-being expand beyond that nation-state, the UNHCR continues to face new challenges and complications.

In the last two decades of the twentieth century, the globalization of capitalist economy has deepened the economic gap between the wealthy North and the poor South. The rapid increase in the number of the states with diverse regimes and global communication and transportation systems, ongoing ethnic wars, the dissolution of the Soviet Union, and the institutional growth of the European Union further complicated the refugee issue. "Overforeignization"² of Europe has created greater discrimination, racism, xenophobia, and the resurgence of cultural-specificity claims and restrictive cultural identities. The growth of Islam as a European religion and the increased migration of foreigners disturb many Europeans who see

their own culture threatened. Today Europe maintains more rigid limitations along its borders. As a result, 80 per cent of the world's refugees flee one poor country for another.

As former UN High Commissioner Sadako Ogata observes, “[I]t was in Europe that institution of refugee protection was born, it is in Europe today the adequacy of the system is being tested.”³ Within such an era the UNHCR Turkey branch presents a unique example of the contemporary problematic relationship between a nation-state and an international refugee regime.

This paper evaluates the work of the UNHCR through the country-specific example of Turkey. The Turkish government ratified the 1951 Convention relating to the Status of Refugees in March 1962, but maintains the geographical limitation restricting its asylum commitment to applicants from European countries. Turkey, one of only two countries among the signatories of the Convention that keeps the geographical limitation, relies mostly on the UNHCR's eligibility assessment of non-European asylum-seekers. Non-European refugees are granted temporary asylum in Turkey following a status-determination procedure in which the UNHCR Branch Office—opened in Ankara in 1960—plays a key role. Nearly all these refugees need to be resettled through the UNHCR.

This paper, however, uses a country-specific example to examine the complex and contemporary challenges facing the UNHCR today, and performs a three-level analysis that can form the basis for an evaluation model for any regional/country program. This analytical approach categorizes the challenges of the UNHCR in three broad areas: external, internal, and collaborative challenges.

UNHCR and Its Contemporary Challenges in a Country Program

Since this paper concerns itself with a country-specific examination of the organization, the focus will be on these challenges through the lens of the Turkey Country Program. As a consequence of Turkey's application for geographical limitation, the UNHCR's biggest responsibility in Turkey is the assessment of eligibility of non-European asylum-seekers. This responsibility comes with other considerations, including protection of non-European refugees and asylum-seekers by ensuring access to fair and efficient refugee-status determination procedures, and by providing assistance pending resettlement or lasting solutions. However, the main challenges should be evaluated within a broader perspective. To analytically examine these challenges, the study is categorized into external, internal, and collaborative challenges.

External Challenges

In the UN system, which is founded in the idea of nation-states, the concept of refugee is still closely tied to the understanding of state sovereignty, national security, and membership, making the topic of refugees complex. As Arthur Helton argues, the contemporary refugee dilemma is, as the UN or regional organizations extend treaty protection and strengthen enforcement mechanisms, that governments can still reduce the protection.⁴ The impact of donor politics on UNHCR practices, the political and economic importance of the country within the UN system, and the human rights record of the country in which the UNHCR operates, create a real challenge.

In international relations literature there are four broad areas that affect a country's refugee policies: bureaucratic choices, international affairs, the national security considerations of the host country, and the absorption capacity of the local host community.⁵ In this study, these areas are accepted as external challenges to the UNHCR's activities.

The nation-state uses its own authority in deciding which bureaucratic mechanism to use when dealing with refugee issues. In cases where states allocate responsibility to a civilian state agency, such as the Ministry of the Interior or a social welfare agency, it is usually an indication that refugee policies are determined by the high politics of the country.⁶ Most of the time, in states that handle refugee issues as a part of their high politics, the military becomes involved in decision making. Military involvement in refugee issues demonstrates clear concern for national security, in which case the national authorities see the refugee cause as an extra burden and are reluctant to consider the welfare of refugees. However, if a refugee agency is in charge of refugee issues, as is the case in most Western countries, then refugee policies are a part of low politics of the country. In this case, the refugee policies of states tend to be more liberal and open.

The international affairs of the country are crucial to the determination of its bureaucratic choices. International assistance, a negative international reputation, and publicity may influence a state's bureaucratic choice on refugee policies. However, a host community's perceptions of international organizations can also play an important part in decision making. The level of politics at which refugee issues are decided may affect local attitudes towards international assistance and cooperation. Nation-states are very sensitive to issues directly related to their national sovereignty. As Jacobsen observes, “[by] demonstrating that borders cannot be controlled, a mass influx challenges and undermines the government's sovereign right to determine

who enters its territory.⁷ Government dependency on international assistance during a mass influx may lead to the idea that with this assistance other entities may find a right to intervene in the state's domestic affairs and that idea may cause resentment toward the international community.

Local absorption capacity relies primarily on economic self-sufficiency and social receptivity. Social receptivity is largely determined by the cultural meaning of *refugees*, which is influenced by cultural, historical, and religious factors.⁸ When refugees are thought to cause social problems, public sympathy dies.

Threat to security is another external challenge. The conventional understanding of national security is based on the concept of external or internal military threat. The revisionist view departs from the militaristic conception of its inclusion in wide-ranging issues like the environment and economic factors. The third conception of security is a combination of these two: it perceives security as an external problem of wide scope as well as internal threats to its unity and integration. Refugees threaten all three dimensions of security.⁹

Within this perspective this paper tries to understand how Turkey's multiple roles challenge UNHCR's activities.

Turkey as a Country Producing Refugees and Internally Displaced People

Turkey has been one of the most common countries of origin among asylum seekers in Europe, especially since the 1980s. The first wave of Turkish asylum seekers to Europe came immediately after the military coup in 1980 and was followed by the escalating Turkish-Kurdish conflict in 1984. The numbers of asylum applications reached approximately 264,000 Turkish nationals, mostly of Kurdish origin, between 1990 and 1996.¹⁰ By some accounts, today Turkey has the second-largest population of internally displaced persons in the world. Since fighting between Kurdish PKK and the Turkish army began in 1984, an estimated 30,000 lives have been lost, and forcible evacuations led to the destruction of nearly 3,000 Kurdish villages.¹¹ During most of the 1980s and 1990s, the government imposed a state of emergency on eleven provinces in the southeast. Conflict and fear created a larger migration. In July 1997, Turkey's deputy prime minister announced that 370,000 people had been forced to migrate during thirteen years of conflict. In 1994, Turkey's Minister of Human Rights said that 2 million people were without houses or a place to call home. The U.S. Department of State's 1997 Human Rights Report cited an estimated 560,000 people as internally dis-

placed.¹² The scope of action of security forces in south-east Turkey has included armed forays into Iraqi territory, which has negatively affected the living conditions of Iraqi Kurds.

Turkey as a Transit Country

The open-border policy within the European Union (EU) increased the importance of border-control policies for the peripheral states. On several occasions, Turkish authorities expressed their irritation at becoming a transit country as well as being a buffer zone between the East and the West. In many cases, Turkish authorities harshly criticized the Western countries for taking the most qualified or desirable refugees and leaving the rest to find their own way. The EU countries, on the other hand, criticized Turkey for not protecting its borders strictly enough against the trafficking of people. When over 1,200 persons arrived on the southeastern coast of Italy in 1998, Turkey as a transit country became an issue again. The majority of people arriving in Italy consisted of ethnic Kurds from Turkey and Iraq, as well as Egyptians, Bangladeshis, Sri Lankans, and Algerians.

While Turkish authorities announced that they would not be surprised by PKK involvement in trafficking, a state secretary in the German Interior Ministry, Eduard Linter, stated that there was suspicion that Turkey was not doing as much as it could to stop the Kurds leaving the country, probably because of the dispute between Ankara and the EU over Turkey's application for membership in the EU. He added, "It is hard to imagine Turkish security forces would not have noticed ships of this size."

In February 2000, 900 people of Kurdish descent were left on the shores of France. According to a *New York Times* report, the trafficking involved some Turkish nationals. This last development once more indicated the critical position of Turkey as a transit country.

Turkey as a Country of Asylum

In the past eleven years, there have been several large-scale influxes of refugees and persons in refugee-like situations: Iranians in the early 1980s after the Islamic Revolution, Afghans in 1982, Iraqi Kurds in 1988 and 1991, Bulgarian Turks in 1989, Bosnians in 1992, and Kosovars in 1999. The estimated numbers of refugees are high: Nearly 1 million Iranians, about 60,000 Iraqi Kurds in 1988 and half a million in 1991, almost 300,000 Bulgarian Turks, 20,000 Bosnians, and 18,000 Kosovars found asylum in Turkey in little more than a decade.¹³

Why Are Turkey's Multiple Roles Crucial to UNHCR Activities?

Turkey's multiple roles in the refugee issue affect its refugee policies dramatically. In the last two decades, the emergence of Kurdish nationalism and the rise of Islam challenged the cultural homogeneity of Turkish society. On that account, national security became an internal and external problem for the state. Any refugee coming from Iran, Iraq, or Syria approached Turkey with skepticism. Influenced by their ethnic and religious background and by terrorism in the region, Turks saw Middle Eastern refugees as a security threat to Turkey's unity. Since the UNHCR was in charge of refugees from these countries, UNHCR and Turkish officials clashed over this issue. In the last decade, Turkish refugee policies focused increasingly upon security as a result of high involvement by the Ministry of the Interior and the Defence Ministry in refugee issues. During the fourteen years of conflict with the PKK, Turkish authorities promoted the slogan "Love or Leave Turkey" to contend with rebellious Kurds, and public sympathy for the Kurdish cause diminished. In the international arena, Turkey denied that internally displaced people were a problem, and the Turkish public as well as authorities began to denounce as betrayers any refugees who wished to resettle in another country. UNHCR's assistance to Iraqi Kurds was not well appreciated by Turkish society. Furthermore, high inflation and economic instability wore down the Turkish people, and the public came to believe that Turkey had insufficient resources to deal with refugees.

In its international relations Turkey always followed the "be the Western ally" model, its active involvement in NATO and the UN a direct outcome of this foreign policy. However, the EU's constant rejection of Turkey disillusioned the Turkish public. In the last ten years Turkey became a near-pariah state, because it was more concerned about its national security, more sensitive about intervention in its national sovereignty, and more skeptical about international humanitarian and human rights organizations. The more the West criticized Turkey's low profile on human rights, the more Turkey became negative about the NGOs and international organizations and started to perceive their assistance as an international intervention in its national sovereignty.

Within such a climate, the UNHCR's role was extremely sensitive, and Turkey's bureaucratic choices and international affairs, as well as the absorption capacity of the local community, created a direct challenge to the UNHCR.

Internal Challenges

Financial and human capital management are two important internal challenges that affect the UNHCR's activities and efficacy. In the Turkey Country Program, most refugees and many asylum-seekers rely on UNHCR's limited resources for material support, which takes the form of a monthly stipend, food, shelter, basic health care, and schooling, as well as legal and social counselling. Travel costs are also paid for refugees invited to Ankara for refugee-status determination and resettlement interviews.

In the *UNHCR 2001 Global Appeal*, the UNHCR Turkey Office listed the number of non-European refugees and asylum seekers of concern as 7,000. In addition, 670 Bosnian and Kosovar refugees and 2,550 Turkish returnees were provided with UNHCR assistance. The total financial cost is announced as US\$5.7 million dollars. In 1999, the *UNHCR Global Report* working budget for the UNHCR Turkey Office was US\$252,907, and income from contributions was US\$1 million. Given the number of refugees and the financial constraints of the UN system, monetary issues became a challenge for the UNHCR. While continuing to provide assistance, UNHCR had to become involved in a constant search for funding.

Human capital management is a challenge in itself. UNHCR's expanding program to train government decision-makers and maintain public awareness requires an internal training program. Advocacy groups have raised several concerns about UNHCR's procedures and staff in Turkey. One of the biggest criticisms facing the UNHCR Ankara Office is the lack of standardized selection criteria for the eligibility interview. Although this would appear to be largely an institutional problem, it is actually a matter of internal staff training. The Ankara Office has also been criticized for the interpreters it used during the interviews. As a result, during the past three years, UNHCR Ankara moved away from the ad hoc use of interpreters and started employing full-time, trained interpreters. The absence of consistent gender-sensitive standards was identified as one major gap in the asylum system throughout the region. Sub-regional workshops on raising gender awareness started to be organized. Training of the national staff on cultural sensitivity and the need to leave personal beliefs and understandings outside the interview room, however, still remain challenges for the UNHCR.

A very substantial increase in asylum applications in the last decade has led to a backlog in applications. The result is that asylum seekers and UNHCR staff have become frustrated and/or overworked. The 1994 regulation identified the Ministry of the Interior (in collaboration with the UNHCR)

as the final decision-making body for status determination, and therefore required that the national staff be in constant communication with the Turkish authorities. High stress and frustration reduced staff empathy for asylum-seekers and refugees, or caused it to vanish entirely. The UNHCR Ankara Office is, however, very open to changes and learns a lot from different experiences, which is the biggest strength of the country program.

*Field Study Notes*¹⁴

The basement of the UNHCR Ankara Office, where the asylum seekers are interviewed, is cold, dark, and depressing. Children whose parents are going through the process are hungry, crying, and bored. The frustration of mothers is reflected on the kids. No one really talks in the room, but there is an incredible noise in the air. On the fourth floor of the same building, the national staff of the UNHCR are wrestling with difficulties that the Turkish authorities give to the asylum seekers in the satellite cities and at the borders. On the third floor, the staff are worn out about the resettlement processes that last for years . . . On the street across from the UNHCR building, children, women, and men are sitting in the dirt for days waiting for their claim to be heard.

A Canadian woman of Iranian descent who was also an asylum seeker ten years ago arrived as an intern to the UNHCR Ankara Office, to the place where she was granted refugee status. She was a Ph.D. student in Canada, working on game therapy for children. After her first week in the Office, she suggested she establish a playground in the basement for children. After her third week, she exhibited the pictures that children drew while they were waiting for their parents, on the third floor. She gave the children a "word" and wanted them to draw a picture of that word. The answers with crayons were very impressive. Happiness was black because the children did not know what it was, fear was the picture of the father, and sadness was a friend who was left back at home . . . That was the first time I felt that an actual bond was built between all the floors of the UNHCR Ankara Office.

Collaborative Challenges

In order to discover durable solutions, a variety of intermediary operating organizations, governments and the UNHCR must cooperate. This challenge has become more complicated since disseminating information about refugees, advising decision-making authorities, and taking a part in the determination of refugee status became a part of the UNHCR's responsibility. Support for the UNHCR's mandate from the political leadership, the higher levels of administration, and influential NGOs, as well as the public at large, is crucial for the adoption of policies and the success of its programs.

This paper distinguishes two different collaborative challenges that are crucial to the Turkey Country Program: collaboration with the resettlement countries, and collaboration with the national NGOs and implementing partners.

Since all non-European refugees must be resettled in a third country, collaboration with the resettlement countries is critical. The resettlement process take from six months to two years. This not only increases the financial strain on the country program but also creates psychological frustration for refugees. Once refugees are granted status, they must reside in the satellite cities determined by the Turkish government, where they are obliged to have signature duty.¹⁵ Children are not allowed to attend Turkish schools during this period. Any kind of schooling is not permitted in the satellite cities.

A shortened waiting period is the ideal solution for the UNHCR's problem. However, some resettling countries have a longer screening period for refugees from the Middle East. Resettlement countries might look at four criteria when determining acceptance of a refugee: whether the refugee's educational and professional background will make integration into the society possible, whether health is good or poor, whether the refugee's security screening is clear, and whether the refugee has a military background. However, besides being questionable on humanitarian grounds, these criteria can make the whole process longer than expected. By keeping foreign embassies in Ankara updated about the conditions of refugees in Turkey, the Office tries to establish more collaborative relationships with the resettlement countries.

Cooperation with implementing partners in Turkey is also critical to the success of the UNHCR. The UNHCR works with seven implementing partners: Anatolian Development Foundation, Argen Company, Association for Solidarity with Asylum-seekers and Migrants, Human Resource Development Foundation, International Catholic Migration Commission, and Turkish Red Crescent Society. To help serve non-European refugees, new partnerships were forged with NGOs. With the collaboration of its partners, UNHCR conducted research on the problems of refugees in Turkey, and led public information campaigns on community services. One great strength of the UNHCR Turkey Program is its collaborative relationship with its implementing partners.

UNHCR in Turkey

Turkey experienced the first mass influx of non-conventional refugees in 1988, when the Iraqi Kurds were attacked by the Iraqi government with chemical weapons. Thousands of civilian Kurds poured into Turkey in a matter of days. The Turkish government was initially against the idea of granting

asylum to the Kurdish refugees. Many Turkish parliamentarians stated that it was ironic to accept thousands of Kurdish refugees while a conflict was going on with Kurdish guerrillas in southeastern Turkey. However, the next day the Turkish prime minister announced that the humanitarian dimension of the problem necessitated opening the borders.¹⁶ Because it was the first of its kind, this mass influx was full of ambiguities for the Turkish government. Some officials believed that under international law Turkey had no obligations to these refugees, while others were hesitant to employ the term *refugee* for this group of people. It was decided to call these people “temporary guests” or “*Pershmergas*” (members of an Iraqi Kurdish sect). For the UNHCR Ankara Office, an influx of this scale was also new. Turkish authorities feared that the intervention of the UNHCR might prevent voluntary repatriation or cause new waves of migration, so they refused to allow the UNHCR to extend its assistance and protection.

From 1988 to 1991, Europe was reluctant to accept Kurdish refugees from the camps on the Turkish border with Iraq, yet at the same time criticized Turkish officials for not providing adequate assistance. This tension led to a tug of war between the Turkish government and the West. Turkish officials refused to accept US\$14 million for providing better shelter and health conditions for the refugees, arguing that the aid was an attempt by Western officials to keep refugees in Turkey rather than repatriate them.¹⁷ Friction only increased while the situation remained unsolved. Meanwhile, Turkey faced another influx of 58,144 refugees after Iraq’s invasion of Kuwait. Then in 1992, hundreds of Bosnians sought asylum in Turkey. Turkish officials requested that the UNHCR assist Bosnians who had sought temporary haven in Turkey. A camp was established near Kırklareli, and the UNHCR provided housing units and cash for other essential supplies and infrastructure. Today the UNHCR still continues to address the needs of the Bosnian population in Kırklareli and has started new projects to assist vulnerable Bosnian families—including households headed by women—children, and the elderly living outside the camp, mainly in Istanbul.

After the Gulf crisis (1990–1), there were new developments in Turkish governmental practice towards “non-Convention” refugees. With the establishment of a safe zone in northern Iraq, Turkey became more reluctant to accept asylum seekers. The result was even more friction between Turkey and the UNHCR, especially over asylum seekers who had been recognized as bona fide refugees as a result of human rights violations in Turkey itself. For example, when thousands of Turkish Kurds—mostly from Sirnak—fled Turkey in April 1994 as fighting erupted between Turkish

forces and the PKK in southeast Turkey, the UNHCR assisted 8,000 persons in towns and villages along the Iraqi side of the border. In July and August 1994, a second flow of refugees from villages in Hakkari arrived in northern Iraq. By the end of August, more than 10,000 people had settled across the border. However, the continuing conflict at the border put refugees at risk, and Turkish authorities denied permission for some NGOs to operate in the area. The UNHCR transferred 8,600 people to two sites in Atroush and established a sub-office in Dohuk to co-ordinate assistance in Atroush. While armed conflicts between the KDP (Kurdistan Democratic Party) and the PUK (Patriotic Union of Kurdistan) intensified, between March and May 1995 Turkish military operations scattered PKK elements throughout the Dohuk governorates. Turkish authorities insisted that a quick solution must be found for the Atroush camp, because they were convinced that the camp was a base for PKK terrorists. Ignoring Turkey’s accusations, the UNHCR increased its presence in the area, although monitoring during the evenings became impossible for security reasons.

In October 1995, representatives of the KDP, PUK, Turkoman Front, Turkey, U.K., and the U.S. met in Ankara to discuss settlement of the conflict in northern Iraq. Article 22 of the final statement of the meeting stated that the participants agreed to work with and support the UNHCR for the immediate voluntary repatriation of Turkish citizens in the Atroush camp. On December 21, 1996, the UNHCR turned the camp over to the local authorities.¹⁸

An official who did not want his name to be revealed stated during an interview¹⁹ that the UNHCR, other international organizations, and NGOs failed to understand the critical position of the Turkish government. Because of its logistical importance, Turkey had to be very careful, especially about humanitarian aid sent to the region. He stated that Turkish authorities found military equipment in boxes of humanitarian aid, highlighting the skepticism of Turkish authorities who feared that some international organizations and NGOs were supporting terrorism in the area. He was emphatic that terrorism, trafficking in drugs and people, and the possibility that an Islamic regime might be transferred to Turkey from Iran were threats to the integrity of the country, and any support for these conditions was unacceptable to Turkey.

With the Gulf War, the UNHCR’s activities in Turkey expanded considerably; it opened sub-branches in Istanbul, Silopi, and Van. With a total of 8 international, 9 junior professional, and 27 national staff, it became the largest country program in the UNHCR.

In 1999, when 18,000 Kosovar refugees found asylum in Turkey under the joint UNHCR/IOM Humanitarian Evacua-

tion Program, the UNHCR Ankara office and the Turkish government were more experienced with mass numbers of refugees. The Turkish government covered all the care and needs of the Kosovar refugees during their stay, and the UNHCR assisted in family reunification and monitored voluntary repatriation to Kosovo.

The 1994 Regulation

Exhausted from mass influxes, Turkish authorities introduced their own status determination in July 1994. Their regulation—entitled The Regulation on the Procedures and the Principles Related to Mass Influx and the Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country—identified the Ministry of the Interior as the final decision-making body for status determination, in collaboration with the UNHCR. The regulation also stated that once a decision was made, the foreigners were entitled to live in a specific provincial city where they were responsible for signature duty.

Article 4 of the regulation stated that individual foreigners entering the country legally were required to apply within five days to the local governorate, and if they entered illegally, they were required to register with the governorate within five days, in the city where they entered the country. Article 6, which set out the decision-making procedure for the Interior Ministry, made no reference to appeals or to the review of negative decisions. Article 8 stated, “Without prejudice to Turkey’s obligations under international law and considering the geographical characteristic of a mass influx, it is essential to stop such a movement and the advance of asylum seekers at the borders. The authorities in charge shall take necessary and effective measures to do so.”²⁰ Article 24 identified the responsible bodies in the event of a mass influx:

In order to administer any possible mass influx near our borders and to organize the co-operation, a Minister of State or the Ministry of Interior as appointed by the Prime Minister shall be in-charge. Representatives of the Turkish General Staff, the Ministry of National Defense, the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Health, the Ministry of Communications, the Ministry of Agriculture and Village Affairs, other ministries and organizations concerned along with the National Intelligence Services and Turkish Red Crescent Society shall form a provisional main coordination committee. The secretarial duties of this committee shall be performed by the ministry in charge.

Article 29 also permitted the deportation of refugees and asylum-seekers legally residing in Turkey, for reasons of national security and public order.

Although the UNHCR considered the regulation a major development in Turkey’s refugee policy, it did raise some concerns. As a result of the five-day limit in the asylum application, there were a number of *refoulement* cases. Deportation of refugees and asylum-seekers legally residing in Turkey for reasons of national security and public order caused alarm for the UNHCR because martial law was already in force in the southeastern part of the country.²¹ Furthermore, the UNHCR had no official role in the internal appeal procedure, and was informed about the list of rejected claimants.

Interference with their sovereign right to deport people, as Kirisci notes,²² created considerable resentment among the Turkish authorities, and led them to accuse the outside world of interfering in Turkey’s domestic affairs. The 1994 regulation was a means to protect the state as an absolute decision-maker on its borders and refugee policies. For that reason, it was a challenge for UNHCR to convince Turkish authorities to soften their implementation of the regulation and to be more cooperative.

Conclusion

In the last decade, the UNHCR has played a constructive role in the creation of Turkish refugee policy. By increasing its sub-branches around the country, it has not only played an important part in ensuring access to fair and efficient status determination for non-European refugees, but also promoted public awareness about the issues pertaining to them. On several occasions, UNHCR advocated reform when international standards were not being met. For example, Turkey’s implementation of the 1994 regulations led to an increase in the number of *refoulements*. UNHCR responded by preparing a report that explained the flaws in the regulation and their consequences for Turkey’s compliance with international obligations. In June 1995, UNHCR formally presented this assessment to the government. Since then, UNHCR Ankara has regularly engaged in dialogue with Turkish authorities in order to improve procedures. As a result, at least in part, no *refoulement* of recognized refugees was recorded after this date.

An important amendment to the 1994 asylum regulation extended from five to ten days the deadline for application following entry into the country. This greatly reduced the number of extra-procedural refugees.

Closer cooperation with the government in training activities also increased government confidence in the fairness

and impartiality of UNHCR's advice. Furthermore, during two major earthquakes that caused enormous casualties and material loss, the UNHCR provided emergency relief to earthquake victims and gained the respect of the Turkish public. In the context of Turkey's candidacy for membership in the European Union, UNHCR helps Turkey to uphold the best international practice for the protection of refugees. As a candidate Turkey is also expected to have produced a National Plan of Action for Adoption of the EU Acquis (NPAAA) asylum standards. UNHCR will seek close coordination and compatibility between its own program and the NPAAA.

By covering the administrative costs of its implementing partners in Turkey, the UNHCR created a well-built civil society that keeps promoting the rights of refugees and asylum seekers. It also provides an intellectual forum for refugee issues. By organizing seminars, exhibitions of photographs, and television programs to improve public awareness aimed at the Ministry of Justice, police, judges, universities, NGOs, bar associations, and civil society, the UNHCR managed to form a more receptive and well-informed public opinion. In the *UNHCR 2001 Global Appeal*, UNHCR Ankara stated that its main goal was to persuade and assist the government to create a specialized Office for refugee status determination. The creation of this specialized Office would also be necessary in the context of an eventual transfer of responsibility for refugee status determination for non-Europeans from UNHCR to the state.

A review of the last ten years of the refugee situation and the improvements in refugee law in Turkey reveals that the UNHCR's constructive and flexible approach serves as a success story. The UNHCR Turkey Office realized the realities and the challenges in its program, and, instead of trying to implement a rigid line to refugee issues, adopted a more flexible approach that included cultural and social aspects. UNHCR analyzed Turkish culture and politics well, and managed to transform some challenges into its strengths.

Notes

1. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace, 1951), 287.
2. *Überfremdung* is a term used by German-Austrian anti-immigrant parties.
3. Sadako Ogata, "Refugees: A Comprehensive European Strategy" (speech to the German UN Association and the German Association for Foreign Policy, New York, 1994).
4. Arthur Helton, "Displacement and Human Rights: Current Dilemmas in Refugee Protection," *Journal of International Affairs* 47 (1994).
5. Karen Jacobsen, "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," *International Migration Review* 30 (1996): 655.
6. When a state responds to an issue as a threat to internal or external security, it treats that matter as one of high politics, and its approach becomes increasingly aggressive and militaristic. Low politics, on the other hand, require a more peaceful, humanitarian approach. In this case, the refugee issue is a security concern for Turkey. But not so for the United States.
7. Jacobsen, "Factors Influencing Policy Responses."
8. Charles Keely, "How Nation-States Create and Respond to Refugee Flows," *International Migration Review* 30 (1996): 1046.
9. Jacobsen, "Factors Influencing the Policy Responses of Host Governments," 678.
10. UNHCR, *UNHCR Background Paper on Refugees and Asylum Seekers*, 1997, 15.
11. Kemal Kirisci, "Refugees and Turkey since 1945" (research paper, Bogazici University, 1994), 22.
12. Bill Frelick, "Turkey: Displacement and Denial" (research paper, U.S. Committee for Refugees, 1999), 4.
13. UNHCR, *UNHCR Background Paper*, 23.
14. Elif Ozmenek, "Field Notes" (Ankara: UNHCR Ankara Office, 1997), 22.
15. Signature duty is the close monitoring of refugees' daily activities.
16. *Ayin Tarihi Journal*, August 31, 1988, 111.
17. Kemal Kirisci, "Refugee Movements and Turkey," *International Migration* 29 (1991): 545.
18. Kemal Kirisci, "Is Turkey Lifting the Geographical Limitation? The November 1994 Regulation on Asylum in Turkey," *International Journal of Refugee Law* 8 (1996): 45.
19. Elif Ozmenek, "Field Notes" (Ankara: Minister of the Interior, 1997).
20. *Ibid.*, 47.
21. Ahmet Icduygu, Fuat Keyman, "Globalization, Security and Migration: The Case of Turkey." (Paper prepared for the Session on Security and Migration at the Conference on International Migration: Challenges for European Populations, Bari, Italy, 1998), 20.
22. Kemal Kirisci, "Is Turkey Lifting the Geographical Limitation? The November 1994 Regulation on Asylum in Turkey," *International Journal of Refugee Law* 8 (1996): 45.

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Le HCR au Mexique auprès des Guatémaltèques : 20 ans de présence

EDITH F. KAUFFER MICHEL

Résumé

Alors que le Haut-commissariat des Nations Unies pour les réfugiés (HCR) est sur le point de fêter 20 ans de présence au Mexique, nous proposons une analyse du travail réalisé par cette institution dans ce pays en nous limitant plus particulièrement aux activités mises en œuvre auprès des réfugiés guatémaltèques.

Malgré les restrictions liées aux circonstances de l'arrivée du HCR au Mexique et à la position des autorités vis-à-vis du statut de réfugié et de la Convention de Genève, un des atouts qui a facilité son action a découlé de son rôle d'instance de financement. En conséquence, nous pouvons mentionner certaines actions en faveur des réfugiés guatémaltèques où l'intervention directe et indirecte du HCR a été fondamentale.

Abstract

As the United Nations High Commission for Refugees (UNHCR), prepares to celebrate twenty years of its presence in Mexico, this paper examines its work there, with special focus on the programs for Guatemalan refugees. Despite restrictions linked to the manner of its initial entry in Mexico as well as to the position adopted by the authorities towards refugees and the Geneva Convention, the UNHCR's activities were made easy because of its role as a source of financing. Consequently, we are able to mention some activities of the UNHCR in favour of Guatemalan refugees where its direct and/or indirect intervention proved crucial.

Introduction

Le mandat du HCR est défini par un statut qui a été adopté le 14 décembre 1950 par l'Assemblée générale des Nations Unies et qui détermine deux compétences particulières : la protection et l'assistance¹. La première concerne les réfugiés dûment reconnus comme tels et se traduit par la recherche de solutions permanentes pour ces populations. Cette fonction implique des actions de concertation avec les autorités des pays d'installation, notamment lorsqu'il s'agit de les convaincre de recevoir les réfugiés. Parallèlement, le travail dirigé vers la mise en conformité des textes nationaux par rapport au droit international Conventionnel en matière de réfugiés dérive de la mission de protection du HCR. Cette activité de *lobbying* en faveur des réfugiés est conçue de manière à garantir une meilleure protection.

L'assistance est intimement liée à la protection, car elle consiste à satisfaire les besoins les plus pressants des réfugiés dans le pays d'accueil durant l'étape d'urgence. Et lorsque l'exil n'est pas temporaire, cette compétence inclut également la mise à la disposition des réfugiés de moyens qui facilitent leur intégration sur place.

« Entièrement apolitique, humanitaire et social² » sont les adjectifs utilisés dans les textes pour désigner les activités réalisées par le HCR. La réalité est bien différente, car le thème des réfugiés est éminemment politique. Il s'agit d'un phénomène migratoire dont l'origine est liée à l'existence de crises politiques, de conflits armés, de dictatures militaires, et les réponses proposées par les différents États sont orientées en fonction de l'intérêt national.

Les activités développées par le HCR pour assurer la protection et l'assistance des populations réfugiées dépendent des décisions de son comité exécutif, instance formée par

les États. Les politiques et les actions menées découlent ainsi de la disponibilité de donateurs qui apportent une aide selon les priorités du moment et selon les alliances entre États.

L'action du HCR auprès des réfugiés guatémaltèques au Mexique n'a évidemment pas échappé à ce schéma d'intérêts politiques des donateurs.

Une des difficultés majeures rencontrées sur le terrain était constituée par les limitations qui découlaient de la souveraineté mexicaine et de la non-reconnaissance des instruments du droit Conventionnel en la matière par ce pays récepteur. Comment le HCR a-t-il pu ainsi mener à bien ses fonctions auprès des Guatémaltèques? Comment l'institution a-t-elle pu dépasser les activités traditionnelles afin de constituer un appui tout particulier dans certains domaines?

Nous considérons que la clef de cette marge de manœuvre résidait dans son rôle d'agence de financement de la majorité des actions vis-à-vis des réfugiés guatémaltèques installés au Mexique, qui reposait sur une double stratégie. Finalement, le constat nous permet d'affirmer que le HCR a pu de cette manière mener à bien des actions exemplaires en faveur de la population bénéficiaire.

Les restrictions à une action autonome

L'action menée auprès des réfugiés guatémaltèques au Mexique s'inscrit dans un cadre restreint par la souveraineté de l'État mexicain; de ce fait, cette intervention est limitée. Après la description du contexte dans lequel se réalisaient les activités du HCR et leur évolution au cours des années, nous prendrons l'exemple de la réinstallation afin d'illustrer les limitations de son action.

1. Le cadre juridique de la présence du HCR

L'intervention du HCR au Mexique fut nécessaire au début de la décennie quatre-vingt lorsque le Mexique se vit dépassé par la magnitude des flux de réfugiés, notamment par l'arrivée de milliers de Guatémaltèques à sa frontière sud. Le 22 juillet 1980, un décret présidentiel instaura la Commission mexicaine d'aide aux réfugiés (COMAR)³. Le Mexique n'était pas signataire de la Convention de Genève, et le droit mexicain considérait uniquement le statut d'asile politique. Le 22 mars 1981, devant l'urgence de la situation fut signé un accord entre le HCR et le gouvernement mexicain qui définissait les bases de la coopération et le mécanisme de financement des projets. L'accord de siège date, quant à lui, du 5 octobre 1982 et fut approuvé par le Sénat le 17 décembre de la même année, puis publié dans le Journal officiel le 6 avril 1983⁴.

Le cadre juridique dans lequel s'inscrivait alors la présence du HCR au Mexique était extrêmement limité, et la

non-souscription de cet État aux instruments internationaux ne facilitait guère la marge d'action auprès des réfugiés. Dans ce contexte, la souveraineté de l'État mexicain pouvait être utilisée à n'importe quel moment afin de limiter l'immixtion du HCR dans les affaires relatives aux réfugiés, et l'institution était en réalité sujette au bon vouloir des autorités mexicaines qui avaient la capacité de décider de sa présence sur son territoire. Cette volonté de limiter la marge de manœuvre du HCR n'était évidemment pas propre aux autorités mexicaines; elle peut être illustrée par d'autres exemples de pays récepteurs. Cependant, dans le cas qui nous intéresse, elle était d'autant plus tangible qu'elle s'ajoutait à l'inexistence du statut de réfugié et à la non-signature de la Convention de Genève par le Mexique.

Au cours des années, cette situation a évolué. La première amélioration se produisit en 1990 quand le Mexique approuva une modification à la loi générale de population et inclut le statut de réfugié dans le droit interne⁵. Le règlement d'application de cette loi fut promulgué le 28 août 1992⁶, mais le document migratoire correspondant ne fut jamais distribué aux Guatémaltèques, ce qui a empêché cette réforme d'exercer un impact réel dans la vie quotidienne des réfugiés. Cependant, elle permit de signaler que les efforts menés par le HCR dans le domaine de l'adéquation de la législation nationale avaient porté leurs fruits.

La seconde mesure qui atténua la plus grande partie des restrictions juridiques à l'action du HCR au Mexique fut la récente signature de la Convention de Genève au début de l'année 2000⁷. Cette dernière permet une marge de manœuvre beaucoup plus large, même si la Convention fut signée avec un certain nombre de réserves. En réalité, cette décision intervint deux ans après la mise en marche de la politique d'intégration des réfugiés guatémaltèques, c'est-à-dire une fois qu'ils aient eu perdu leur statut de réfugié, et elle n'a donc eu aucun effet sur les actions menées par le HCR en leur faveur.

2. Une marge d'action limitée : exemple de la réinstallation

L'intervention du HCR auprès des réfugiés guatémaltèques au Mexique s'inscrivait dans un cadre juridique déterminé qui avait des effets sur les activités concrètes réalisées. L'épisode de la réinstallation dans les États du Campeche et du Quintana Roo illustra tout particulièrement cette réalité.

Afin de comprendre dans quelles circonstances se réalisa le transfert des réfugiés, nous rappellerons brièvement quelques faits.

L'arrivée de milliers de réfugiés entre 1980 et 1982 en territoire mexicain et leur installation spontanée dans l'État du Chiapas à faible distance de la frontière étaient dictées

par leur ferme intention de rentrer au pays le plus rapidement possible. Leur présence gênait les autorités guatémaltèques qui, sous le prétexte de poursuivre de prétendus *guerrilleros*, franchirent la frontière et pénétrèrent à plusieurs reprises au Mexique. Cette violation de la souveraineté de son voisin s'accompagna d'actions violentes menées à l'encontre des Guatémaltèques dont certains citoyens mexicains furent malencontreusement les victimes. En avril 1984, les réfugiés du camp du Chupadero, situé à proximité de la frontière, furent attaqués par l'armée guatémaltèque, et sept d'entre eux furent assassinés. Devant cette tragédie, les autorités mexicaines décidèrent de manière unilatérale la réinstallation de la totalité des réfugiés présents au Chiapas vers les États du Campeche et du Quintana Roo situés dans la péninsule du Yucatán.

Cette décision prise dans le contexte des violations à la souveraineté mexicaine répondait aussi à la volonté de protéger la population réfugiée et mexicaine. La controverse de la réinstallation fut générée non pas par la décision en tant que telle, mais par les conditions dans lesquelles elle fut réalisée par les autorités lorsqu'elles se rendirent compte du refus des réfugiés. En effet, de nombreux Guatémaltèques s'opposèrent au transfert vers des terres inconnues et éloignées de leur pays d'origine.

Afin de surmonter leurs réticences, les autorités mexicaines utilisèrent diverses stratégies de persuasion accompagnées de méthodes coercitives. Ces dernières ne se limitèrent pas aux menaces de renvoi au Guatemala et à la suppression de l'aide humanitaire. Certaines furent appliquées notamment dans la zone la plus éloignée et la moins accessible qui porte le nom de Marqués de Comillas : la principale voie d'accès à cette région, la voie aérienne, fut fermée et surveillée afin de pouvoir mener à bien le transfert. Parmi les moyens employés pour convaincre les réfugiés se trouvait toute une gamme de techniques : promesse, persuasion, suppression de l'aide alimentaire et médicale allant jusqu'à l'incendie du camp de Puerto Rico. Les institutions qui participèrent aux opérations de transfert furent la Marine, les autorités migratoires et la COMAR. Le HCR fut exclu des opérations, et les membres de certaines organisations non gouvernementales (ONG) reçurent des menaces.

Quelle fut la réaction officielle du HCR? Publiquement, le HCR reconnut la nécessité de réaliser l'opération de réinstallation et le bien-fondé de cette décision. Quant aux moyens utilisés, les fonctionnaires s'abstinrent de faire des déclarations à ce sujet.

Cet épisode illustre parfaitement les limitations de l'action du HCR au Mexique et le caractère conditionné de son intervention. Devant la réinstallation, les fonctionnaires de

l'institution optèrent pour le silence afin d'assurer la continuité de leur présence au Mexique.

Au fil des années, la stabilisation de la situation des réfugiés, l'ouverture du Mexique à une politique plus humanitaire et les transformations législatives permirent au HCR d'élargir sa marge de manœuvre.

L'avantage du financement

Dans de nombreux pays où le HCR intervient, il agit comme une agence de financement qui canalise les donations à travers des instances nationales d'attention aux réfugiés, afin de mener à bien les actions de protection et d'assistance. Son statut⁸ permet clairement la distribution de fonds à des organismes publics ou privés nationaux. Dans le cas du Mexique, il est possible d'évoquer une stratégie de double financement qui fut utilisée pour faire admettre certaines lignes d'action ou développer des projets particuliers.

1. La stratégie du double financement : officiel et non gouvernemental

Pour comprendre pourquoi le fait de financer à la fois des agences gouvernementales et des organisations non gouvernementales peut s'interpréter comme une stratégie, il est nécessaire de contextualiser l'intervention du HCR au Mexique vis-à-vis des institutions gouvernementales et des ONG.

À l'arrivée des Guatémaltèques et jusqu'en 1989 prédomina dans les sphères officielles une vision du problème orientée vers la sécurité nationale. En conséquence, l'action des ONG auprès des réfugiés fut restreinte d'une manière tout à fait consciente par les autorités. Plusieurs ONG parvinrent cependant à travailler de manière discrète durant plusieurs années.

C'est à partir de cette expérience que commença à s'observer une opposition entre l'action menée par les ONG et les activités réalisées par les autorités. Les premières considéraient œuvrer en faveur de la population réfugiée et affirmaient que les secondes agissaient seulement dans le but de contrôler les Guatémaltèques. Les secondes accusaient les premières d'utiliser les réfugiés comme un prétexte pour alimenter leur opposition au gouvernement en place ou pour obtenir un financement international. Cette fracture historique n'a pas pu être dépassée, même lorsque la perception du gouvernement s'orienta vers une vision davantage humanitaire et abandonna la logique sécuritaire.

Dans ce contexte, après avoir financé exclusivement la COMAR jusqu'en 1989, le HCR commença à appuyer les activités des ONG, dont la présence fut alors acceptée officiellement par les autorités.

2. Le financement ou la possibilité d'imposer certaines lignes d'action

La majeure partie du financement existant pour développer des actions auprès des réfugiés guatémaltèques transitait à travers le HCR⁹, et d'une certaine manière ce rôle d'agence financière lui octroyait la possibilité d'orienter son apport économique vers des projets définis, à la fois à travers les institutions gouvernementales et les ONG.

Par exemple, au cours des années d'activité intense auprès des réfugiés guatémaltèques, la majorité des postes de la COMAR, agence interministérielle mexicaine, étaient directement financés par le HCR, alors que certains fonctionnaires rémunérés par le gouvernement mexicain recevaient une indemnité versée par le HCR. Cette situation permit bien évidemment au HCR d'agir dans des conditions plus favorables, car le salaire du personnel mexicain dépendait de la présence de l'institution internationale.

C'est surtout à travers le financement des activités des ONG que le HCR parvint à imposer clairement ses priorités, car les projets proposés étaient réalisés de manière conjointe. Le fait que la survie des ONG dépendait de la continuité du financement apporté par le HCR définissait les termes de la négociation des projets : un projet qui n'intéressait pas le HCR avait de faibles chances d'être approuvé. Quant aux lignes prioritaires d'action du HCR, elles finissaient généralement par déboucher sur certains projets menés à bien par des ONG locales.

Même si la majorité des activités développées par la COMAR auprès des réfugiés dépendaient économiquement du HCR, le financement ne garantissait nullement une prise en compte totale des priorités de celui-ci par les autorités mexicaines, car les limitations déjà évoquées étaient réelles. Cependant, les activités des ONG représentaient un contre-poids : les actions que le HCR ne pouvait pas développer à travers le canal gouvernemental se réalisaient grâce au financement accordé aux ONG. C'est dans ce sens que nous considérons qu'un des principaux atouts de l'exercice diplomatique compliqué mené par le HCR au Mexique a consisté en une double stratégie de financement qui permit à la fois de concilier l'exigence de respect de la souveraineté mexicaine et de développer des actions qui allèrent bien au-delà de la protection et de l'assistance.

Des exemples d'actions exemplaires impulsées et soutenues par le HCR

En réalité, malgré les restrictions mentionnées, nous pouvons évoquer certaines actions en faveur des réfugiés qui ont été appuyées de manière décidée par le HCR au cours des années d'exil au Mexique. Nous choisirons de décrire

trois contributions majeures, dont deux d'entre elles s'inscrivent dans le cadre des solutions apportées au refuge : le retour et l'intégration. Quant à la troisième, elle concerne le rôle tout particulier apporté aux activités des femmes, principalement en matière d'organisation.

1. Le retour : coopération politique et financière du HCR

La mobilisation politique autour du retour et l'organisation de cette expérience inédite ont été tout particulièrement soutenues par le HCR sur le plan politique aussi bien à l'échelle locale qu'internationale, et le retour a bénéficié d'un financement spécial. Avant d'analyser ce double apport du HCR dans le processus de retour au Guatemala, nous tenterons d'apporter quelques éclaircissements relatifs au terme de retour et à l'histoire de cette expérience.

Le retour constituait l'une des deux modalités de rentrée au pays offertes aux réfugiés guatémaltèques et il s'opposait en cela au rapatriement individuel. Les premiers rapatriements individuels commencèrent dès 1984, et les rapatriés étaient alors inclus dans le schéma de reconstruction militarisée du Guatemala. En 1987, à la suite de la signature d'un accord, entre le Mexique, le Guatemala et le HCR, sur le thème du rapatriement qui déboucha sur la création d'une instance spéciale chargée des populations rapatriées et déplacées appelée Commission spéciale d'attention aux rapatriés et déplacés (CEAR), le président guatémaltèque Cerezo fit campagne dans les camps de réfugiés pour promouvoir le rapatriement.

En réponse à cette possibilité qui n'était pas entièrement satisfaisante pour eux, certains réfugiés s'organisèrent pour former les Commissions permanentes des représentants des réfugiés guatémaltèques au Mexique (CCPP), qui, dès lors, entreprirent de définir les conditions dans lesquelles devait s'effectuer le retour au Guatemala. Le 8 octobre 1992 furent signés les accords sur le retour avec les autorités guatémaltèques¹⁰, et le 20 janvier 1993 se réalisa le premier retour.

La principale différence entre le retour et le rapatriement résidait dans le caractère collectif, organisé du premier à la différence du second, individuel ou familial. De même, le retour impliquait certaines garanties et conditions définies par les réfugiés, tandis que le rapatriement ne permettait pas la participation de la population dans la détermination de conditions. Enfin, alors que le rapatriement signifiait la rentrée physique des réfugiés, le retour s'articulait à un projet politique de transformation et de démocratisation.

Le soutien apporté par le HCR au retour au Guatemala peut se classer en deux domaines : politique et économique.

Sur le plan politique et à l'échelle locale, le HCR a reconnu, dès leur formation, la légitimité des CCPP et leur caractère d'interlocuteur. De même, bien que participant dans l'organisation des rapatriements, le HCR a sans cesse soutenu la volonté des réfugiés qui désiraient rentrer sous la modalité du retour.

La signature des accords entre les CCPP et le gouvernement guatémaltèque se produisit à la suite d'un long processus de négociations au cours duquel les positions des deux parties semblaient inconciliables. Les réfugiés exigeaient certaines conditions que les autorités refusaient obstinément de considérer. Finalement, le contexte international et la mauvaise image liée à la présence de milliers de réfugiés hors du territoire guatémaltèque furent décisifs. De fait, le HCR intervint directement et participa à la pression internationale et au plus haut niveau : en novembre 1991, la haut-commissaire visita les camps de réfugiés du Chiapas avant de se rendre au Guatemala, acte qui signifiait un soutien inconditionnel du HCR à la cause du retour.

Bien entendu, le HCR ne fut pas la seule instance qui encouragea le projet politique de retour : les autorités mexicaines ainsi que les ONG locales, nationales et internationales participèrent à cet effort.

Sur le plan économique, le financement du retour peut se diviser en deux types d'actions, les indirectes et les directes.

Le HCR fut la principale source de financement des activités de formation de la population réfugiée réalisées dans le contexte du retour avec l'aide des ONG. Cet apport permettait d'alimenter de manière indirecte l'organisation de la population décidée à retourner au Guatemala, grâce aux activités de formation qui assurèrent un apprentissage et une prise de conscience parmi les réfugiés.

L'apport économique direct consistait, quant à lui, en un financement de la logistique des retours : les moyens de transport des personnes et des biens, les services de santé, la nourriture, tout le nécessaire pour que la rentrée au pays s'effectue dans des conditions optimales.

À la différence des organisations de femmes impulsées par le HCR, le retour surgit directement des réfugiés. Cependant, le soutien multiforme apporté par le HCR fut décisif dans sa réalisation.

2. L'intégration locale : ultime contribution du HCR

L'intégration locale figure parmi les trois solutions préconisées pour mettre fin aux situations de réfugiés, les deux autres étant le rapatriement et la réinstallation dans un pays tiers. Cependant, il s'agit d'une solution guère mise

en œuvre par les pays récepteurs qui considèrent que le rapatriement vers le pays d'origine est celle la plus indiquée. En conséquence, il existe peu d'exemples d'intégration locale de réfugiés à travers le monde. Depuis 1996 au Campeche et au Quintana Roo et à partir de 1998 au Chiapas, le gouvernement mexicain a ouvert cette possibilité aux Guatémaltèques. À la différence du retour et à l'exclusion d'un petit groupe qui réclamait la possibilité de rester au Mexique depuis 1993, l'intégration locale s'imposa comme une décision de politique étrangère largement suggérée par le HCR et financée en partie par l'institution.

Dans la genèse de la politique d'intégration, le rôle du HCR consista à convaincre les autorités guatémaltèques et mexicaines que l'intégration constituait le complément idéal du retour et du rapatriement. Pourtant, il devint évident que ces deux processus étaient en train de perdre, pour des raisons diverses, leur caractère attractif et que la présence des Guatémaltèques en territoire mexicain avait créé les conditions d'une résidence définitive et permis de tisser des liens affectifs difficilement dissolubles.

L'acceptation des autorités mexicaines fut favorisée par la sensibilité de certains fonctionnaires, par l'existence d'une ancienne proposition similaire qui n'avait pu, en raison des circonstances de mobilisation en faveur du retour, être menée à bien et par les conditions générales du refuge qui indiquaient une intégration *de facto*.

Bien que ne représentant plus la source principale de financement dans ce nouveau contexte, car l'Union européenne qui canalisait dans le passé les fonds apportés à travers le HCR décida de créer un bureau spécialisé en collaboration avec le gouvernement mexicain, le HCR participa grâce au financement de certains services et infrastructures afin de se séparer définitivement des personnes devenues alors des résidents dans des conditions optimales.

3. L'organisation des femmes : impulsion et soutien inconditionnel du HCR

En contraste avec l'image traditionnelle du réfugié victime, mourant de faim et dépendant de l'aide internationale, l'expérience des réfugiés guatémaltèques au Mexique nous présente un panorama de vitalité organisationnelle et de mobilisation politique sans précédent qui aboutirent au retour collectif et organisé de milliers de personnes dans des conditions définies par elles-mêmes et que les autorités guatémaltèques durent accepter contre leur volonté¹¹.

C'est dans ce contexte, favorisé par le HCR, qu'apparurent les organisations de réfugiées guatémaltèques, et ce

phénomène fut impulsé et soutenu de manière résolue par l'institution.

En effet, comment expliquer que les réfugiées guatémaltèques d'origine indienne, pour la majorité analphabètes et ne parlant pas espagnol, exclues traditionnellement de la sphère publique aient pu participer dans des organisations de femmes et, pour certaines, se transformer en véritables leaders de ces groupes organisés? Le HCR ne fut pas étranger à cette dynamique.

À l'échelle internationale et à la suite des terribles expériences vécues par les réfugiées du sud-est asiatique, les politiques du HCR commencèrent à incorporer une distinction fondamentale à partir des années quatre-vingt. Les responsables des programmes jusque-là conçus pour un bénéficiaire asexué estimèrent alors que l'expérience d'un réfugié et celle d'une réfugiée devaient être différenciées. Ils jugèrent qu'il était nécessaire de développer des actions de protection et d'assistance particulières dirigées vers la population féminine en prenant en compte non seulement les rôles traditionnels de mère, de fille et d'épouse, mais aussi leur participation dans les activités productives, administratives et organisationnelles.

Au Mexique, le contexte dans lequel se définit la condition de réfugié favorisa de manière indéniable le processus de participation et d'organisation des femmes. En effet, durant la période d'exil, la traditionnelle différenciation des fonctions sociales entre hommes et femmes eut tendance à se transformer notamment à l'égard de l'impossibilité pour les réfugiés du sexe masculin de continuer à assumer les fonctions inhérentes à leur masculinité, entendue comme socialement et culturellement définie. Nous faisons notamment allusion au rôle de père de famille, travailleur qui apporte les ressources économiques. Ce rôle fut difficile à perpétuer dans les conditions d'exil en raison de la situation migratoire des réfugiés, de l'irrégularité de l'emploi et du fait qu'il pouvait être substitué en partie par l'aide alimentaire.

La déterritorialisation inhérente à la condition de réfugié permit également une plus grande flexibilité des normes sociales et ouvrit l'option, pour les femmes, de participer à de nouvelles activités à l'extérieur de leurs foyers.

Dans ce contexte facilité par la situation vécue en exil et par la transformation des fonctions masculines et féminines, le surgissement de ces organisations des femmes réfugiées ne fut cependant pas l'effet du hasard. Le premier pas vers la formation d'organisations trouva son origine dans une initiative du personnel du HCR, qui entreprit de manière patiente de visiter les camps de réfugiés afin de tenter de convaincre un premier groupe de femmes. Devant leur

réaction négative motivée par de multiples raisons, notamment le manque de confiance en soi, la crainte de provoquer la colère de l'époux, le désintérêt et la perte de temps, les personnes qui étaient convaincues du bien-fondé de cette idée ne lâchèrent pas prise et parvinrent à impulser de manière graduelle les organisations de femmes réfugiées.

La création de ces organisations, qui existèrent jusqu'à ce que la majeure partie de leurs membres retournèrent définitivement au Guatemala, fut stimulée par le HCR au fil des années. Cet encouragement fut alimenté par de nombreuses ONG qui travaillèrent auprès des femmes et aidèrent les organisations en émergence dans divers domaines : éducation, santé, artisanat, droits humains, formation en général.

Bien évidemment, cette expérience fut possible grâce à l'existence d'un financement canalisé par le HCR et destiné à soutenir l'activité des organisations de femmes réfugiées et des ONG.

Devant les résistances des époux et des dirigeants réfugiés, le HCR entreprit un processus de formation et de persuasion des hommes, accompagné d'un effort soutenu destiné à convaincre les institutions mexicaines de l'impératif de soutenir les organisations de femmes.

Afin que leur participation ne demeurât pas théorique et ne fût pas empêchée par les activités domestiques, le HCR et les ONG mirent à leur disposition un certain nombre de services, comme les garderies et un programme de distribution de gazinières qui prétendaient remplacer le rustique foyer alimenté au bois. L'ensemble des actions dirigées vers l'organisation des femmes réfugiées procédait en effet d'une vision intégrale.

Ces efforts aboutirent à la formation de trois organisations de femmes : Mama Maquín, Madre Tierra et Ixmucané. La première fut créée en 1990 et les deux autres, au cours des années suivantes. Mama Maquín sut regrouper un total de 9 000 membres dans les trois États de réception et animer une série d'activités orientées vers la formation, la réflexion et la prise de conscience des femmes. L'impact des deux organisations restantes fut moindre, bien que fondamental pour leurs participantes. Les trois groupes s'inscrivirent dans le contexte du retour au Guatemala et abandonnèrent le Mexique pour s'installer dans le pays d'origine et continuer leur labeur auprès des femmes retournées.

Conclusion

La signature de la Convention de Genève au début de l'an 2000 permit de constater que, malgré les restrictions, le HCR a pu gagner un terrain considérable au Mexique, ce qui lui

permettra de se retirer avec une certaine tranquillité, une fois la question des réfugiés guatémaltèques réglée grâce à leur intégration à la société d'accueil à travers l'obtention de la nationalité mexicaine. Les futurs demandeurs du statut de réfugié demeurent, quant à eux, protégés par l'adhésion du Mexique au droit Conventionnel international.

Quant aux « ex-réfugiés » guatémaltèques — ainsi se considèrent-ils — rentrés au Guatemala pour certains, mexicanisés ou sur le point de l'être pour d'autres, ils conserveront à tout jamais dans leur mémoire le souvenir de ces dizaines de personnes venues d'autres pays arborant un logotype bleu et blanc, dont la mission consista à les accompagner un instant sur un chemin incertain et à les aider à imaginer comment construire un avenir meilleur.

Notes

1. Alto Comisionado de Naciones Unidas para los Refugiados, « Estatuto de la oficina del Alto Comisionado de las Naciones Unidas para los Refugiados », *Compilación de instrumentos jurídicos internacionales: principios y criterios relativos a refugiados y derechos humanos* (San José : ACNUR, 1992).
2. Ibid., 111.
3. *Diario Oficial de la Federación*, Primera sección (Mexico : 22 juillet 1982).
4. *Diario Oficial de la Federación* (Mexico : 6 avril 1983).
5. *Diario Oficial de la Federación*, « Ley General de Población » (Mexico : 17 juillet 1990).
6. *Diario Oficial de la Federación*, « Reglamento de la Ley General de Población » (Mexico : 21 août 1992).
7. UNHCR Press Releases, *UNHCR Hails Mexico's Accession to International Refugee Instruments*, (20 avril 2000), en ligne : <<http://www.unhcr.ch/news/pr/pro00420.htm>> (date d'accès : avril 2001).
8. Alto Comisionado de Naciones Unidas para los Refugiados, 114.
9. Certaines ONG européennes réalisaient des contributions directes dans le cadre de projets particuliers.
10. Comisiones Permanentes de Representantes de Refugiados Guatemaltecos en México, Comisión Nacional para la Atención a Refugiados, Repatriados y Desplazados, *El Gobierno de la República de Guatemala representado por la CEAR y las CCPD* (Guatemala : 8 octobre 1992).
11. Edith Kauffer, *Les réfugiés guatémaltèques au Chiapas. Le retour du peuple du maïs. Un projet politique* (Paris : L'Harmattan, 2000).

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Book Review

War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo, and Afghanistan

Julie A. Mertus

Bloomfield, CT, Kumarian Press, 2000, 157 pp.

In *War's Offensive on Women*, Julie A. Mertus—a professor of international human rights law who is especially interested in women's rights in Bosnia, Kosovo, and Afghanistan—discusses war and its effects on women. Her intention was to reach an understanding of the dynamics of conflict and to make humanitarian organizations, as well as the political, academic, and international public, more sensitive to misfortunes brought about by conflict. She also describes the international legal framework for the protection of human rights, including women's rights. The book is one a series of volumes that arose from the Project on Humanitarianism and War, which began in 1991 as an independent initiative by fifty parties, including UN agencies and governmental and non-governmental associations.

All conflicts after the close of the cold war have been characterized by disregard for basic human rights. There are many examples: persecuted Kurds, genocide in Cambodia and Rwanda, food shortages in Somalia, all forms of suffering in the Balkans, from Croatia and Bosnia to Kosovo, relocations in the North and South Caucasus, and the pre-election pillaging in East Timor. Crises in some parts of Afghanistan, in the Sudan, and in Libya have lasted for decades.

Humanitarian agencies, accustomed to providing food, medical help, shelters, and other crucial services have had to face the fact that the civilians that they are providing aid to are not casual victims of violence, but often intentional targets of military and political strategies. This is an undeniable fact, the author notes, especially for women and girls within such targeted populations. They have been subjected to forced relocation, detention, and execution, because their men have gone to war. However, claims the author, women are no longer passive victims of violence. The refugee experience is a mobilizing experience. Women become engines of resistance and key actors in resolving problems within their communities. The study of the dynamics of

humanitarian actions has been based on inductive methods, primarily on interviews with persons involved in conflicts—with aid workers, and with local and government officials. The book analyzes humanitarian efforts to protect and aid women, during the actual rendering of aid and in post-conflict reconstruction. New methods by which the inhabitants of regions in conflict, humanitarian organizations, and international law processes correspond and alleviate the effects of war on women are likewise analyzed. Special emphasis is placed on the cases of Bosnia, Kosovo, and Afghanistan.

The first chapter presents analytical instruments used to treat the problem of gender and describes the different war experiences of men and women. The author reminds us that today 40 to 50 million people have become homeless, 75 to 80 per cent being women and children. In times of war and peace, they are expelled because of internal and regional fighting, disregard for human rights, and discrimination on the basis of political opinions and activities, and on religion, race, and ethnicity. Natural disasters are also a cause of relocation and poverty. As expelled persons and refugees, women are less mobile and more susceptible to physical violence because of their reproductive function. The author highlights the fact that rape has been a strategy of war throughout history, used to display triumph over men who have been unable to protect “their” womenfolk. Rape is an effective weapon of war.

The study suggests a useful approach to analysis of aid and protection efforts, which would include examination of the needs and roles of women and men. The author lists the key concepts that such an approach should include. The first concept asks for a “gender approach” toward the social difference between men and women, a difference that is learned and changeable, and varies within and between cultures. The next concept calls for the use of a “gender perspective,” which would recognize, understand, and utilize knowledge of gender differences in the planning, application,

and evaluation of programs. Special gender needs apply to raped women and to men who suffer specifically because of their gender. Analysis of gender applies to men, women, and the social, economic, and cultural forces that determine their status. The remaining concepts pertain to violence based on differences in gender, to violence against women, and finally to the human rights of women.

The second chapter deals with the situation of women in the armed conflicts in Bosnia and Herzegovina, Kosovo, and Afghanistan. Islam is the prevailing religion in all three areas; however—as the author notes—whereas Afghanistan is identified with Islam, most Bosnian Muslims and Kosovar Albanians identify more with their European roots than with their Islamic ones. This is especially true for the majority of the Muslim Albanians in Kosovo, who regard themselves more as Albanians than as Muslims. A short survey of the situation in all three areas follows. Several aid models were applied, yet most failed. The author analyzes successful and unsuccessful approaches. Many aid workers did not recognize the social differences between men and women, their diverse health requirements, and the need to distribute appropriate sanitary products to women. Also many attempts by non-government organizations to revitalize the small-sector economy resulted in failure, because personnel who engaged in the programs were ill-equipped to deal with economic revitalization. And no project included a much-needed preliminary study of broad economic reconstruction. There were also oversights in legal protection of registration and attainment of status. For example, raped women could attain refugee status, but did not apply for it because they did not desire to relive their experiences. Furthermore, social norms prevented them from reporting the rapes they suffered. Non-government organizations also employed local women, but these women were excluded from decision making and the formulation of projects. The text illustrates many examples.

The third chapter deals with the legal framework of policy and practice. International human rights and humanitarian and refugee law have provided the framework for dealing with gender in humanitarian crises. The author analyzes the development of two key fields that are important for those providing aid: the legal definition of refugees, and international recognition of violence based on gender as a question of human rights. One aim of the analysis presented in this chapter is to offer information to humanitarian organizations that provide protection and aid so that they can become more sensitive to the issue of gender and react more efficiently and justly.

The final chapter identifies contemporary trends within

humanitarian organizations that have become aware of the problems of gender. It also offers suggestions for further actions. The basis of the analysis has been interviews with the personnel of non-governmental organizations, of the UNHCR, of the UN Office for Human Rights, and of other governmental and non-governmental organizations. The author identifies eight trends and gives her suggestions for each of them. She calls the first such trend “creating a policy and strategy of gender,” which incorporates and supports initiatives among women in developing countries, understands the present and potential role of women in developing countries, increases women’s participation in creating, applying, and evaluating projects, and supports special women’s projects linked to overall development. The second trend involves greater organizational awareness of gender and human rights, while the third relates to the integration of gender in agency activities. The fourth identified trend includes program initiatives in relation to gender, such as involving women in programs, using information from refugee women in educational programs for female victims of war, especially in those coming from women themselves, and improving conditions and overall security in refugee camps. The fifth trend speaks of greater support in international activities towards stimulating change. The sixth important trend is the development of terminology. Humanitarian organizations are continuing the debate over the use of the terms *women* and *gender*, which the author states are not synonymous terms. Her book insists on use of the term *gender* in order to focus awareness on the differing social roles of men and women, and hence on their different needs and interests. Furthermore, the term *gender* includes both men and women. The seventh trend speaks of tension between agency policies and operative disturbances. Agency policies toward gender are a constitutive part of the reality in the field. Often the policies of humanitarian organizations mutually conflict with actions undertaken. The author recommends including local women in local offices and giving them responsible positions. The eighth trend is characterized by increasing intermediation. Humanitarian organizations are becoming more active in intermediating problems of gender.

Women are becoming increasingly organized in dealing with issues in all aspects of life. The experiences of both women and men are integral to the creation of humanitarian policies and programs. Some organizations are beginning to learn from their mistakes and are starting to develop instruments that pose questions about gender. Agencies are becoming aware of the needs of the local population, and they are including local women and men in the creation of

their projects. One of the most important changes, as shown by the analysis, has been a greater sensitivity among aid groups to the perspective of gender. Such a perspective takes into consideration the way in which various roles, possibilities, and strivings among men and women affect their needs during humanitarian crises.

Refusing to take on the role of victims, women supported by international humanitarian laws and international mediation networks are now organizing themselves for survival during war and reconstruction in peacetime. Whenever women have an influence on humanitarian activities, the established network results in a change of power relations between men and women and in the establishment of equality over the short term. Yet the author concludes that this change in the relationships rarely leads further to institutional changes.

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