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# Refugees and the International System

## *The Evolution of Solutions*

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*Everywhere modern social relations have penetrated, massive and repeated population dislocations have resulted: from the countryside to the city, between socio-economic regions, across national boundaries, between major ethno-linguistic spheres, from continent to continent. Migrants have moved long distances or short, once or several times; they have often returned to their point of origin, and the process of leaving and returning has sometimes continued over generations. Whether large-scale or small, forced (and it has very often been forced) or voluntary, compelled by war, famine, social disruption, or the hope for a better life, the complex phenomenon of migration has been fundamental to the whole modern epoch (Benymayor and Skotnes 1994).*



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## REFUGEES AND THE INTERNATIONAL SYSTEM: THE EVOLUTION OF SOLUTIONS

Refugees represent two conflicting dimensions of international politics. On the one hand, there is the question of *realpolitik* represented by the tensions which refugees create among and between states and other international actors. On the other, refugees represent a fundamental challenge to sovereignty, by forcing international actors to consider ethical principles and issues of fundamental human rights, which are part of their international obligations, over and above the interests of a tidy system of sovereign states (Skran 1988:278; Skran 1995:70-1). The history of responses to international refugee movements, and the development of legal and organisational norms to shape them, reveals a continuing concern on the part of the international system to codify, order, and make stable a process which is inherently unstable and presumed to be transitory (Rogers and Copeland 1993:39).

This paper traces the evolution of solutions to the refugee phenomenon, showing how these reflect the tensions between political imperatives and international humanitarian obligations (Skran 1995:71). It explores how the existence of refugees has been interpreted and re-interpreted in line with the prevailing conceptions of the political order, and how these differing interpretations have influenced international reactions to, and actions on behalf of refugees. A review of the evolution of refugee policy demonstrates how the interests and priorities of the most powerful have generally prevailed over moral obligations concerning international responsibility to assist refugees materially and to uphold their human rights in the world of states (Skran 1988:278; 1995:70).

Refugees are people who have lost the protection of their state of origin by crossing an international border. Even if a refugee population wholly constitutes ordinary civilians, providing refuge to one's neighbours' citizens is, to say the least, a challenge to inter-state relations; this is the case, despite assertions that providing asylum should be perceived as a peaceful and not an 'unfriendly' act (Aiboni 1978). As people without the protection of a state, in a world where political and legal identity is inextricably linked with citizenship and nationality, refugees have been construed as a continuing challenge to states' efforts to regulate relationships between themselves. Increasingly, the post-Cold war literature on refugees portrays them as a problem of state 'security' (eg Loescher 1992).

At the same time, images of large numbers of destitute people heading out to sea from Mogadishu on overcrowded leaking boats bound for Mombasa; Rwandese, living in conditions of squalor and dying in their thousands because of lack of food and water in Goma; mixtures of nationalities of all ages and both sexes detained without charge in prisons and centres such as Campsfield; and women, children and men existing for years in sub-human conditions in Hong Kong and Sarajevo - are all constant reminders of the conflict and injustices in the world today.

As will be shown, the history of responses to refugees in the twentieth century has been one long series of attempts to circumvent the problem. As one analyst puts it 'international refugee policy ... is principally articulated by the developed countries to contain and manage the global refugee problem in the light of their interests' (Chimni 1993).

## **The 'Evolution' of Solutions**

### *The inter-war period*

Since 1917, the two essential features of the 'refugee phenomenon' have been in existence; large-scale forced movements of people and an overarching international structure which is dedicated, at least in theory, to the maintenance of order and peace among nations. Although the phenomenon of refugees is not novel to this century (Marrus 1985), the technical meaning, as it developed after the First World War, was mainly concerned with distinguishing those groups who had lost the protection of their own state - that is, refugees, as apposed to ordinary migrants, ie, immigrants.

The protection of refugees came to be regarded as a responsibility of the League of Nations by the actions of a humanitarian organization, the International Committee of the Red Cross (ICRC). ICRC had been assisting Russian refugees scattered and largely destitute throughout Europe. There were said to be more than one million. ICRC's lobbying resulted in the League belatedly establishing an international programme of material assistance in 1921 (Skran 1988:277).

The ascription, refugee, as defined in the 1933 Refugee Convention, allocated refugee status according to specific nationalities (eg Russians, Armenians, Assyrians, and Turks) and included the obligation of receiving states to provide material assistance and protection (Skran 1989:21; 1995:70-1). Another separate category of people in need of protection was identified by the 1938 Refugee Convention which was concerned with the status of 'de-nationalized' Germans, mainly Jews (ibid.:21; Goodwin-Gill 1990).

Maintenance of order was the underlying purpose of the League of Nations, set up after the conclusion of the First World War to safeguard the provisions of the Versailles Treaties. The inter-war period was dominated by the spirit of the times, which was nationalism, understood as one nation for each state and, as Manzini put it, 'only one state for every nation' (as quoted in Hobsbawn 1992:4; see also Hobsbawn 1990; Gellner 1983; Anderson 1983). The establishment of nations, it was believed, would ensure that the dynastic squabbling and secret diplomacy which was blamed for the outbreak of the First World War would not be repeated. If each community or group had its own territory, instability would be eliminated (Armstrong 1982; Claude 1984). In this sense, refugees were defined in terms of their membership of a nation without a state, or without the protection of their state, and thus, in need of international protection: for example, passports (travel documents) were supplied to Russian refugees (Skran 1992), and livelihood support (employment) for Armenian refugees (Hope-Simpson 1939).

Some nations were supported by international assistance in the form of settlement sponsorship schemes to enable them to absorb those refugees seen to have an ethnic claim (eg Greece and Greek refugees from Turkey) (Hirschon 1989; Skran 1992:28-30). Furthermore, since protection and long-term assistance was mainly provided by the receiving state, the dominant solution was primarily through the labour market. Refugees could be incorporated into the host state and, by extension, the state system.

Because refugees were regarded as people in need of the protection of a state, the salient features of the international system's response included the essential recognition of the need for freedom of movement if refugees were to use their skills and energies in productive ways by finding employment and permanent residence somewhere in the world (Harrell-Bond 1990; Skran 1988:281).<sup>1</sup> This resulted in the creation of the Nansen Passport, and a definition of status which did not depend on individuals fulfilling externally fixed and judged criteria such as persecution. In fact, unlike today, refugees were not required to justify the reasons for their flight throughout the inter-war period. People were outside their state of origin and quite obviously needed protection for reasons of war, famine, impoverishment, civil disorder, discrimination on ethnic or religious grounds as well as individual persecution. Although uncoerced repatriation of refugees was regarded by all the actors in the international refugee regime (Skran 1995:148), as the most desirable solution, Nansen's efforts to promote it and to ensure the protection of those who were returned backfired badly, because the conditions which led to flight had not been removed (ibid.:148-156).

The first two High Commissioners, appointed during the inter-war period, held very different positions on the fundamental dilemma which has never been satisfactorily resolved: respect for the sovereignty of states versus the right and responsibility of states to intervene to stop the violation of human rights and to prevent exoduses. Fridtjof Nansen (1921-30) believed humanitarian assistance must be neutral, non-political, while James McDonald (1933-5), who watched the deteriorating position of Jews in Germany, argued for intervention to stop the haemorrhage. In his 3,000 word letter of resignation he wrote:

When domestic policies threaten the demoralization of human beings, considerations of diplomatic correctness must yield to those of common humanity. I should be recreant if I did not call attention to the actual situation, and plead that world opinion, acting through the League and its Member-States and other countries, move to avert the existing and impending tragedies (as quoted in Skran 1988:293).

As is well known, the League of Nations failed to intervene. The treatment of the Jews seeking refuge has been well-documented, but, however generally 'unwanted', there were many who lobbied governments to provide them refuge. In attempting to change attitudes in Britain, Angell and Buxton (1939), not only appealed on uncontested moral grounds, but also to national self-interest: economics, declining population and the threat of racial 'contamination'. One chapter of *You and the Refugee* is devoted to arguing against the 'murderous fallacy' that 'for every thousand aliens admitted, a thousand Britons are thrown out of employment' (ibid.:vii). Two chapters, however, are devoted to a discussion of the need for population engineering on blatantly racist grounds.

If present trends continue extinction faces our white Empire. Not only is it not being replenished from Britain but the tide is flowing back from the Empire to Great Britain. Only by immigration from other European stocks can the white Empire maintain itself, assuming that present population trends persist. [Receiving the Jewish refugees is] The Empire's great opportunity to renew itself and revive prosperity (ibid.).

### *The period following the Second World War*

The main international legal instrument regarding the legal status of refugees, the 1951 UN Convention Relating to the Status of Refugees, emerged as a result of European experiences of the war. The drafters of the Convention, representing 35 primarily western block countries (Weis 1994), defined refugees, not as groups, but as *individuals*, who had a 'well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion'. One may only speculate about how few of the millions of refugees in Europe would have passed the asylum procedures which are in place today. <sup>2</sup>

Reflecting the League's experience with MacDonald, and the continuing preoccupation of states to protect their sovereignty, the work of UNHCR was to be of an entirely non-political character (Holburn 1975:89). In practice, however, the politics of the Cold War became the overriding principle in granting asylum (Harrell-Bond 1985; Loescher and Scanlon 1986; Loescher 1993). The provisions of the 1951 Convention were limited to geographical space - persons fleeing events occurring in Europe before 1 January 1951, and to time - the mandate of the office of the UN High Commissioner for Refugees (UNHCR) was first limited to only three years (Holburn 1975:68).

Although the 1951 Convention was being prepared at the time of the 1948 expulsions of the Palestinians, because of the difficulty of incorporating them under the authority of UNHCR, an office which was to be entirely 'non-political', an independent legal and assistance regime, the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), was created under the UN General Assembly Resolution 194(III) of 1948 to be responsible for them. Arab states also resisted the inclusion of Palestinians under the 1951 Convention because it places responsibility on the host state for supporting refugees. Arab states were unwilling to bear such costs since they held the UN itself directly responsible for creating the Palestinian expulsion (Voutira and Harrell-Bond 1995a).

Appeals to states to receive refugees emphasized the value of free movement. The 1950s were to usher in the new and hopeful 'Era of Emigration' (Harrell-Bond 1985) as the appropriate response to the 'Free World's' ethical concerns about the situation of a 'refugee population of an estimated nine million people, "mouldering" in desperate conditions in the centre of Europe' (ibid.), and the recognition in the West of both the promise and threat these people represented in the context of the Cold War:

While their flight was seen as a 'welcome sign' - a confirmation of the tyranny of the East - their neglect endangered liberal democracy. In the struggle to maintain democratic life in the face of the more 'disciplined solidarity and far-reaching plans of the Kremlin', there was 'no choice but to secure decent conditions of life for the millions of Expellees, or face the full consequences of their hostility and its deadly exploitation by the Kremlin' (ibid.).

Resettlement around the world was to be a *permanent* solution, leading to the naturalisation of the newcomers into their host society (Kay and Miles 1988; Hathaway 1991). Repatriation was only mentioned in the Convention in negative terms, that is, states were forbidden to *refouler* someone to their country of origin (Harrell-Bond 1988a).<sup>3</sup>

States were to be encouraged to receive refugees on the basis of the economic benefits they would bring: ‘... once the [main] receiving countries (Australia, New Zealand, North and South America) were fully convinced of the potential of refugees to fuel their economies (and in the case of the United States, to provide the 2.5 million civilian labour forced required by defence-related industries)’ others would ‘clamour’ for them and this would lead to the ‘unprecedented achievement’ of a partial economic integration of western economies (ibid.). The scattering of refugees around the world would also promote, it was argued, a more favourable distribution of population by decongesting Europe and benefitting the under-populated, under-developed ‘overseas democracies’ (ibid.). Such population engineering could have been used to strengthen the position of some minority groups, but, regrettably, the planners observed, ‘The Union of South Africa with its dangerously small white population’ had called a halt to immigration (ibid.).

#### *Expanding the mandate of UNHCR*

In the aftermath of decolonization, refugees became a global problem and the UN 1967 Protocol extended the provisions of the 1951 Convention accordingly. The 1960s also saw the UN being persuaded to permit the office of the UN High Commissioner for Refugees to expand its activities beyond its primary responsibility, the protection of the *rights* of refugees as detailed in the Convention, to providing material assistance to refugees - its first relief operation under this new ruling of the United Nations was in Zaire (Bascom 1995). There are some who have seriously questioned the wisdom of this decision (Dunbar-Ortiz and Harrell-Bond 1987).<sup>4</sup>

UNHCR had also been campaigning to stretch the definition of a refugee beyond the narrow confines of the 1951 Convention since 1956. UNHCR was also deeply involved in the drafting of the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa which ‘it regarded as an achievement, a model which should be applied outside the region’ (Harrell-Bond 1990). While incorporating all of the provisions of the 1951 Convention, the new OAU regional definition of a refugee added to the grounds of ‘individual persecution’, the full range of conditions which had caused people throughout the 20th Century to lose the protection of their state: external aggression, occupation, foreign domination or events seriously disturbing public order (ibid.). As Shacknove has discussed, the OAU convention recognized what all those concerned with human rights are aware of, that the ‘normal bond between the citizen and the state can be severed in diverse ways, persecution being but one’ (Shacknove 1985). Moreover, it recognized that ‘societies periodically disintegrate because of their frailty rather than because of their ferocity, victims of domestic division or foreign interventions’ (ibid.) Reflecting the commonsense approach of the inter-war era, the OAU Convention also permits the practice of granting asylum *en masse* on *prima facie* evidence. The provisions of the Cartagena Declaration (Arboleda 1994) also embody the OAU’s expanded definition of a refugee.

#### *Decolonization: from permanent to temporary solutions for refugees*

The refugee-producing upheavals in Africa and Asia were presumed to be a temporary phenomenon caused by decolonisation and the struggles against imperialism. The assumption in Africa, that refugees would return home when the entire continent was liberated and that each country would then form a stable nation state, influenced the contents of the OAU

Convention which, unlike the 1951 Convention, includes explicit reference to repatriation. The need to confirm its voluntary character is emphasized and provision to ensure that assistance is given by governments, voluntary agencies, international and inter-governmental organisations to facilitate a safe return is included (Harrell-Bond 1990). The OAU Convention also re-confirms the importance of 'burden-sharing' between states, implying not only the need for financial assistance from outside the host state to share in supporting the immediate survival needs of refugees, but also in distributing the 'demographic burden' among states which are party to the conventions (Skran 1995:71).

The OAU was founded at a time when pan-Africanism was an ideal espoused by some prominent African leaders who hoped that there would ultimately be only one united African state, rather than a continent artificially divided by the colonizers. Instead, statist interests prevailed, with the sanctity of borders, territorial integrity and non-interference in the internal affairs of member states as the corner stones of the Organization. Unfortunately, the caveats which were included in the OAU Refugee Convention place an overriding priority on the protection of the rights and interests of states over that of the refugees:

... the Convention gives the host state the power to determine when those circumstances in the country of origin, which caused it to give refugee status, have ceased to exist. It permits states to deny refugee status to any person who has been 'guilty of acts contrary to the purposes and principles of the OAU or the UN.' In the interests of inter-state relations, it requires that refugees be settled away from the frontier of their country of origin.

... refugees are prohibited from attacking any member of the OAU 'through subversive activities, especially through arms, press, and radio, which may cause tension between Member States' (Harrell-Bond 1990)

#### *The 1970s and UNHCR's 'durable' solutions*

By the 1970s, most of the situations giving rise to mass exodus were taking place in Asia and Africa and UNHCR began to promote its now very familiar 'durable' solutions: repatriation, integration, and resettlement. The latter refers to the transfer of refugees from countries of first asylum mainly to Europe, North America, Australia, and New Zealand. Such transfers were to be 'orderly', limited to 'quotas' of particular desired nationalities or religious groups. Those resettled under such programmes receive refugee status in the country of resettlement under the provisions of the UN 1951 Convention. In the early 1970s, it was not expected that refugees from the South would be found claiming asylum outside the regions which were producing mass exoduses, nor was it envisaged that in practice, significant 'burden sharing' on the part of the donor governments would involve any more than paying the costs for providing international humanitarian aid to the host countries through UNHCR and its implementing partners.

Having abandoned the notion of permanent solutions for refugees other than those granted asylum in the industrial 'North' (whose numbers it was assumed could be strictly controlled), refugees became identified as a 'third world' problem to be resolved in these regions (Zolberg et al. 1989). Very quickly, this tidy regional solution began unravelling (Zolberg 1983). For a start, some African states honoured the obligations embodied in the UN 1951 Convention

and provided those refugees who requested it with the fundamental requirement for solving their economic problems, the means to exercise the right of freedom of movement. For example, Sudan issued travel documents to refugees as a matter of right. The consequences: the movement of some African refugees outside the region to Europe and elsewhere, the unwillingness of these 'western' countries to honour their 'CTDs' (Convention Travel Document) at the ports of entry, and pressure placed by these governments (UNHCR's donors), through UNHCR, on the Sudan government, to stop upholding this right (Nobel 1978).

Asylum was perceived as temporary (and still remains so), as was the main 'durable' solution, integration, devised to address it: the refugee camp (Stein and Clark 1985; Harrell-Bond 1986; Harrell-Bond et al. 1992; Malkki 1989; 1990; Voutira and Harrell-Bond 1995). Given that the weakest states had become the hosts of the vast majority of refugees, the refugee camp was perceived by the rich donor countries as a strategy for political containment (Karadawi 1977; 1983; Karadawi et al. 1987), and as an efficient mechanism for the delivery of humanitarian relief leading to economic self-sufficiency (Harrell-Bond 1986; 1993; Daley 1991). As Karadawi has noted:

The generally-accepted role of the agencies has been to solve refugees' problems in the host country. Aid has therefore been confined to the *symptoms* of the problem. The basic constraint of assistance is intrinsic to the idea of it. Assistance to cure the symptom would incarcerate the refugee phenomenon as a threat to the status quo. Whereas the international community has proved incapable of restoring human rights against persecution by the state, the alternative it has pursued has been first to avoid the identity of each persecuted group and try to create the uniformity of a new person called 'refugee' who should be reinstated within the state system. It has aimed to finish the marginal legal status by creating a sociological tribe of pariahs. The political sentiments of each refugee group are to be suppressed - even by the host country (Karadawi 1983).

Neither of these objectives (containment or self-sufficiency) were, in fact, achieved. Ironically, the mechanism designed to control refugees and thus mitigate the potential instability they might cause contributed instead to further instability. As the Rwanda case so graphically demonstrates, refugee camps became the seedbed for political ferment (Malkki 1989; 1990; 1992; Harrell-Bond 1994). Secondly, as far as economic self-sufficiency was concerned, for the most part, people living in refugee camps have been systematically impoverished (Stein and Clark 1985; Harrell-Bond 1986; Waldron 1987). The trend was for such refugees to become permanent cases for international welfare (Harrell-Bond et al. 1992; Harrell-Bond and Voutira 1992).

More to the point, already in the 1970s, it had been recognized that the vast majority of refugees were not living in camps and not the recipients of international assistance. Stein and Clark (1985) estimated that at the very most, 40 per cent of Africa's refugees were assisted. Another estimate put the figure of those were objects of aid at only 25 per cent (Kibreab 1987).

Voluntary repatriation, UNHCR's most desirable durable solution, still was premised on the existence of a change in the conditions which caused a mass exodus. In the early 1970s, after the peace agreement was struck with the Khartoum government, many southern Sudanese did return home from Uganda (Betts 1974). Similarly, the ending of the Rhodesia war was accompanied by the mass return of Zimbabweans in time for elections. Although heralded as one of UNHCR's great successes in facilitating voluntary repatriation, a recent article concerning that repatriation has convincingly argued, from the author's personal experience of his participation in the mass return of Zimbabweans from Mozambique, that this repatriation was neither voluntary, nor did it occur under conditions of either safety or dignity (Chingono 1995).

### *Refugee policy in the 1980s*

If the 1970s represented a difficult decade for UNHCR and other humanitarian organizations who were attempting to promote humane policies for refugees, the next decade was even more so. By the end of the 1970s, with some notable exceptions (Daley 1989; 1993), UNHCR's policy to make refugees self-sufficient through its camp or settlement policy was found to have failed (Stein and Clark 1985; Harrell-Bond 1986). In some cases, even after decades, relief programmes were still required in these agricultural settlements to sustain life. The perception of UNHCR as a failure among the governments which supported its budget contributed to the significant switch in donor enthusiasm for funding non-governmental agencies in preference to inter-governmental bodies such as UNHCR (eg see Gorman 1984).

The recognition of the failures of integration as a durable solution, and the fear that refugee influxes constituted a serious threat to international stability, led to a series of attempts simply to eliminate the problem. Within the humanitarian world, one of the responses for the failures of integration was to blame the victims, and discussions of the so-called 'dependency syndrome' suffered by refugees began to appear (Waldron 1987; Zetter 1988; 1991; Clark 1985). Refugee status itself began to be undermined through promoting the idea that refugees were not victims of human rights abuse at all, but were simply poor (and opportunistic) people 'pulled' by the aid offered as a result of gaining refugee status. If the aid package were simply moved back across the border, like sheep, refugees would all go home (Harrell-Bond 1992a). When UNHCR acted on this erroneous and dangerous assumption in the Sudan, it led to many unnecessary deaths (Ruiz 1987; de Waal 1989). Such cynicism about the situations from which refugees are fleeing has also contributed to the very common popular misconception that all refugees today are 'job seekers', opportunists in search of a 'better life', rather than 'asylum seekers' who have been forced to flee their countries to save their lives. With the increasing poverty and instability in the South, such beliefs are further reinforced by the general unwillingness to recognize the degree to which global economic inequalities and human rights issues underlie the diverse economic, environmental and civil unrest which cause refugee movements (Hathaway 1991).

Given the increased unwillingness of donors to fund what were seen as open ended commitments to assistance and relief led quite naturally to the idea that UNHCR should be in the business of promoting voluntary repatriation (Coles 1985; Harrell-Bond 1988a), through 'tripartite agreements' with governments. With some rare Central American exceptions (eg. Dona' 1995), refugees were not consulted nor did they participate in these agreements. Many observers began criticizing the coercion under which these programmes are implemented

(Crisp 1984; Richmond 1993; but also see Coles 1985; Cuny and Stein 1989). Nevertheless, of all the 'durable solutions' repatriation is perhaps the most desirable, not because it will resolve the human situation (Harrell-Bond 1986:186-201), but because theoretically it eradicates the problem for states.

Refugees are returned to their country of origin and the circle is closed: the refugees are reincorporated within the system. With UNHCR's mandate further extended by its Executive Committee to 'promote repatriation', during the 1980s even repatriation back into conflict situations became legitimate (Cuny and Reed 1992). Discussions of repatriation now refer to 'organized' (read coerced) repatriation. Only a few have dared to question the axiom that repatriation is the most desirable durable solution (Harrell-Bond 1986; 1988a; Helton 1992; Turton 1993; Allan and Morsink 1994; Sepulveda 1995; Flores-Borquez 1995).

At the same time as UNHCR's mandate was being extended to 'promote repatriation', the 1980s saw another initiative, generated from within UNHCR itself, to move away from the welfare model. The key words were: 'refugees as resources for development' and development of 'refugee-affected areas'. The Second International Conference on Refugees In Africa (ICARA II), July 1984, a fund-raising meeting for donors, provided the platform for promoting this approach (Harrell-Bond 1990). Referring to this new (old) approach as a 'new window', Petersen, a spokesman for UNCHR, asserted that for the so-called 'solutions to last, they must be linked to national developments and do away with artificial distinctions between the beneficiaries: Who is a refugee? Who is a returnee? Who is a national? 'We are also trying to do away with artificial barriers between aid to refugees and development aid' (as quoted in Harrell-Bond 1990).

Although few funds were raised at the ICARA II conference, the logic of the approach, reminiscent of the inter-war policy, was irresistible and the European Union quickly followed the lead. Both Lome III and IV included provision for bi-lateral funding to governments prepared to invest in infrastructure in refugee-affected areas which would benefit both host and refugee alike (*ibid.*; Power 1989). Such a developmental approach, which would require the incorporation of refugees into their host's economy, would also end their isolation and dependence in camps.

... there is at least one documented example, Cyprus, where the government adopted a highly interventionist approach to turn a ['refugee'] disaster into an opportunity for national development. Focusing on the need for housing and placing an emphasis upon labour intensive policies, the government met the humanitarian needs of the refugees and used the situation as a catalyst for the reconstruction of its economy (Zetter 1991a). Nepal is a similar case, where the government utilized the carpet-making skills of Tibetan refugees. From the outset, Tibetans were allowed to work productively, and were paid a wage rather than receiving food aid. Some thirty years on, having created employment for thousands of others, carpet making is the largest manufacturing industry in Nepal with foreign currency earnings of US\$50 million annually. ... (Harrell-Bond 1992b).

The reasons for the failure of UNHCR and other humanitarian agencies actively to support this developmental approach are many and complex, but the major impediments were: the fact

that the UN Development Programme (UNDP) was to be the lead agency in implementing ICARA II projects, a threat to UNHCR's control of refugee assistance, and the entrenched bureaucratic interests which had developed since the 1970s and which are served by keeping refugees on relief (Harrell-Bond 1986; 1988:1; 1992b; 1993; Mazur 1988; Dewey 1991).

*The 1980s and growing restrictionism in the 'North'*

The growing numbers of refugees from the South claiming asylum at the ports of entry of the countries of the industrialized North led to serious concerns about what became termed 'irregular movements' (Jaeger 1985; 1988). 'Irregular movements' refer mainly to those persons who have enjoyed asylum in a country in the South who were using their Convention Travel Document or other means to move to another country for employment or education not available in their host country. The notion developed that one's 'first country of asylum' should be immutable.<sup>6</sup>

First mooted in the context of detention in southeast Asia (Greve 1986; Thitapanich 1986; Helton 1989; McNamara 1989), during the 1980s, the semantically incongruous notion of 'humane deterrence' became part of almost everyday parlance to describe practices being applied to some asylum seekers including detention. The experiences of those subjected to humane deterrence was expected to send the message around the world as to what would happen to any others who dared to knock at the wrong doors. The main method which has been applied in Europe is to detain refugees in prisons or other centres (such as on boats) for long periods of time while their asylum claim is being processed. An investigation of practices in Germany in 1983 became the subject of an inquiry by UNHCR itself. Its findings were so shocking that it is unusually 'leaked' the report. One section of this report is worth repeating:

12. Food In centres where this is provided, it usually consists of breakfast, a hot lunch and a cold dinner, served at fixed hours. Persons who do not report for their meals may be punished. Most centres accommodate asylum-seekers of different nationalities and regions, and whereas some take this factor into account ... others serve meals which are alien or even offensive to them. In some there is no access to the kitchen, and it is prohibited to cook in the rooms. In one predominantly Moslem centre, asylum-seekers told us that in these conditions it was impossible for them to keep Ramadan, due to start at the time of our visit. *Moreover, pork was served to them* (emphasis added; UNHCR 1983; see also Home Office 1995).

The selective introduction of visa requirements became another method of attempting to keep refugees out (Trevi Group 1989; Strojny 1993). Despite the practice of the international community which recognizes that in situations where an individual's life is threatened, it may be necessary to resort to all means of escaping from the country which could even positively require the use of forged documents, both European and North American governments began imposing fines on airlines which carry refugees without 'proper' travel documentation (Ruff 1989; Cruz 1995). The effect of these sanctions has been to put the airline staff working in foreign airports in the invidious position of being at the front line of immigration control. However, despite the legislation and the increase in fines imposed on airlines, the numbers of refugees arriving have only been 'reduced', not eliminated as had been hoped.

Along with the fall of the iron curtain came the fear of vast numbers of east Europeans marching west. Although the apocalyptic numbers of migrants never materialized, an anticipatory measure was introduced to cope with the feared influx of immigrants from the Former Soviet Union and Eastern Europe without undermining the West's capacity to restrict the arrival of other asylum-seekers. It involved the introduction of a re-interpretation of 'voluntary repatriation' to cover those who could demonstrate an 'ethnic' claim to migrate to a European country. The groups to whom this concept was applied included ethnic Germans, Armenians, Greeks, and Jews from the then Soviet Union, Hungarians from Romania, Germans from Poland who were defined as repatriating to their respective homelands (Voutira 1991; Korceli 1992; Bade 1993). Thus the entry of a group of 'desirable' migrants was admitted without the West having to concede the ability to decide who was to enter.

#### *The 1990s and the further withering of asylum*

Finding new and more effective means of preventing refugees from gaining asylum, while acting in a manner which can be said to be in accord with humanitarian principles, has continued to tax the imagination of governments. This has been a particular problem for the members of the European Union who had all agreed on the economic benefits of upholding the principle of freedom of movement, but only, of course, between member states. Creating 'fortress Europe' has been the response. This has involved attempts to harmonize policy through agreements on asylum seekers and migration as reflected in a series of legal instruments (eg. the Schengen Agreements, the Dublin Convention, and the Maastricht Treaty) (Meijers et al. 1991; ECRE 1993).

Germany has gone further to stem the flow of migrants by investing in developing the areas of expected exodus and entering into 'readmission' agreements with its neighbours. Such an agreement with its neighbours allows Germany to return an 'illegal' migrant to the country from which s/he first crossed. Poland is one country which has entered into such readmission arrangements with Germany (UNHCR 1993; 1994).<sup>7</sup>

Already during the 1980s the concept of the 'safe' country (or, as some have put it, the principle of 'passing the buck') had entered the discussion of solutions for refugees (UNHCR 1991; Goodwin-Gill 1992; Hailbronner 1993; Amnesty International 1993; Kjaergaard 1994; Achermann and Gattiker 1995). According to the thinking behind state's behaviour is that a refugee should ask for asylum in the nearest country available. An immigration official may therefore return a refugee to any country through which the claimant has passed if its government has signed the refugee convention, and it can be presumed that it would abide by its international obligations. If, for example, a person has spent a sufficient amount of time to have reasonably expected him or her to have asked for asylum, the country is deemed to be a 'safe host country'. People who have spent only hours in transit, or have been driven by agents through to the departure lounge in, for example, Nigeria, have been returned there on the grounds that it was a safe host country. The notion that refugees can be returned to a 'safe' country through which they passed *en route* to the country where they have sought asylum led, throughout the 1980s until today, to the phenomenon of refugees 'in orbit' (Weis 1980; Zuffrey 1987; Hond 1988). Refugees 'in orbit' refers to individuals who are refused access to asylum procedures at first one and then another port of entry in another country. Sometimes this process results in a situation which lasts *ad infinitum* and may be described as *ad absurdum* (Moorhead 1989).<sup>8</sup>

It has already been noted that having received refugee status in one host country, it is not expected that an individual should leave. Safe countries, therefore, include a refugee's first country of asylum. However, one could cite many examples where refugees are demonstrably unsafe in their country of first asylum and require resettlement, for example, Malawians were pursued and murdered in Zambia during Banda's rule.<sup>9</sup>

The arrival of Bosnian asylum seekers in such unexpected places as Swaziland has led UNHCR to encourage this government to include the notion of 'safe country' in its domestic legislation.<sup>10</sup> Today, the notion of a 'safe country' is being used to justify *refoulement*. Although the lists are secret, they include countries which have been agreed on by politicians, for whatever reason, as being those which could not possibly generate a genuine refugee case (UNHCR 1991; Amnesty International 1992). According to the British Home Office, which takes its instructions from the Foreign and Commonwealth Office, Zaire has been designated such a safe country (Medical Foundation 1995).<sup>11</sup>

When, during the Gulf War, the Turkish government refused to allow the Kurds to escape to relative safety within their borders, international military forces were employed to provide these refugees with a 'safe haven' inside their own country (Helton 1988; Keen 1993; Tiso 1994). The challenge of these types of interference to the notion of state sovereignty is only possible under such conditions as existed in the war with Iraq, where there is sufficient military might available on the ground and in the air, or, as was the case in Somalia and Rwanda, there was a total collapse of the state. How much, or how sustainable is such protection has been seriously questioned (Keen 1993).

The war in the states of the former Yugoslavia has provided the most recent challenge to the international refugee legal system (McGregor 1993). The limitations of the 1951 UN Convention definition of a refugee which focuses on individual persecution provided a convenient excuse for not treating these people as refugees. The collective response of Europe and North America was to fall back on general humanitarian arguments which allowed them to provide 'temporary' protection to those who managed to escape, and to offer it on a tightly defined quota basis to cases who had suffered extreme physical injuries or sexual abuse (Hartman 1988; Luca 1994; Kjaerum 1994; Lawyers Committee for Human Rights 1992; Frelick and Cohen 1994).<sup>12</sup> The allocation of any form of temporary status which is short of full refugee status gives governments the legal grounds for forcible repatriation.

Today, all over Europe there are pockets of Bosnians who are being protected under a status which has no secure rights in that the benefits they should enjoy under the Convention are not theirs. The psychological costs of living in such limbo are yet to be measured (Ager 1993; 1994).

At the same time, a new response was invented, referred to as 'preventive protection' (McGregor et al. 1993; Frelick 1992). Dressed up by the High Commissioner herself as 'protecting the right of people not to be forcibly uprooted from their country of origin', in practice, it meant being prevented from exercising the right to seek asylum. UNHCR officials differed in the degree to which they conformed to this new policy: some actively assisted Bosnians and others to leave the war zone; others kept to the rules. One country, the Czech Republic cooperated with an NGO to mount rescue missions into the war zones including Sarajevo. The mainly women and children are kept in 'humanitarian centres', normally hotels

at the expense of this government. This humanitarian initiative arose from the government itself (Harrell-Bond 1994a)?

## **Conclusion**

An ironic element in the international response to refugees is that in trying to impose stability on unstable situations, the international community may be contributing to further instability. Since Sadako Ogata proclaimed the 1990s as the 'decade of voluntary repatriation' almost seven million refugees have returned to their country of origin (Cuny and Stein 1994). The long term impact of this, 'the most desirable solution' on both the returning refugees and the inhabitants of the area returned to, has yet to be assessed. For the returnees to Afghanistan, just one example, the country to which they were expected to return has degenerated into internecine warfare. The collapse of the peace agreement in Angola has also left refugees in limbo. Increasingly, peace agreements are proving no real guarantee of the welfare and rights of those who fled.

Writing about repatriation to Mozambique, Dolan (1995) notes that the Mozambicans have been the object of both UNHCR's 'voluntary repatriation programme and 'an ever more active policy of forcible deportation by the South African Police'. To date, both policies seem to have failed. UNHCR's operation repatriated only 31,074, or just over 10 per cent of its 'case load'; the police exercises succeeded in forcibly deporting approximately 70,000, costing R220 million. 'In financial terms, deportation is also far more significant ... [and it is a] recurring expenditure: forcible deportation alone could cost the country close to R1 billion in the next four years' (ibid.). The costs are recurring because people are simply returning as fast as they are deported.

The obvious challenge to the new South Africa is to question why both policies failed. 'One component of the answer lies in an examination of whether the conventional distinction between illegal immigrant and refugee accurately describes what people on the ground are doing ...' (ibid.).

The method in South Africa of distinguishing between 'real' and 'fake' refugees, demonstrates once again how the failure to know what is happening 'on the ground' leads to so many injustices and waste of funds. Mozambicans in rural areas have been defined as refugees, while those in urban areas are defined as illegal aliens (ibid.)!

Such an arbitrary and inhumane distinction ignores the fact that in order to survive, people must divide their families, with some members resorting to the only means of earning a living for their households through work in the urban areas and on white farms. Asking if South Africa can 'have its cake and still eat it?', Dolan (1995) points to another fundamental contradiction in the policy of forcing Mozambicans to return.

It is ironic that almost in the same breath as we hear about the need to repatriate Mozambicans ... we also hear about initiatives apparently sponsored by both the South African and the Mozambican governments through which the very land Mozambicans are supposed to return to will become unavailable for resettlement. ... [because it is being handed over] for hunting concessions to large businesses in the very areas most of the refugees hail from. ... A more

highly publicized initiative has been that ... to re-settle white South African farmers in ... Gaza and Maputo provinces. ... The only hope of survival if they return to Mozambique lies in subsistence farming, and indeed, most were subsistence farmers prior to their flight. ... It is both non-sensical and inhumane to push people back with one hand, while taking away their only economic opportunity with the other (ibid.).

Events in Rwanda most dramatically support the hypothesis that repatriation is generally de-stabilizing to the country of origin (Sepulveda 1995; see also Ruiz 1993). Successful integration, not only economic but political, so that newcomers have a stake in the success of their new homeland, must become the priority of the international system if such events as occurred in Rwanda in 1994 are not to be repeated (Harrell-Bond 1994; Frechette 1994). Such integration will never be accomplished through relief programmes (Harrell-Bond 1986; 1994).

One of the ironies of Fortress Europe (and the many other examples of almost frenzied efforts by governments to keep refugees out) is that the European Community have been organized around the recognition of the economic - if not social - advantages of the free movement of people as well as goods. In a world in which the ideology of 'market forces' predominates, why do economists exclude people, when migration has become a basic feature of social life throughout the world? After all, the scale and geographic sweep of current migratory movements indicates that the causes are 'located in the basic structures of an increasingly interlocked world system (Benmayor and Skotnes 1994:4). In this system, movement of people is not merely a condition of success, it is part of a *modus operandi*.

Moreover, there is nothing historically unique about massive migration - it 'has been a constant to the last five centuries of world history and has frequently been a key determinant of global development'. However, such incontrovertible facts tend to run against 'the grain of much common-sense thinking about migration' (ibid.).

Against all evidence, there is a strong tendency especially in the 'advanced' countries, for observers and 'opinion-makers', including scholars ... to treat migrations no matter what their scale, as isolated, random events, outside of the central thrust of social development. ... accidents of history, the result of unusual circumstances, catastrophes, deviations from the norm.

... Despite that fact that economic power brokers of the advanced countries frequently foster immigration to form pools of cheap labour power, or stimulate it through their interventions in underdeveloped economies, we are encouraged to believe that something as disruptive as migration has to be marginal, transitional, aberrant.

... Moreover, we are encouraged to think of the migrants and deviants, as the cause of disruption (ibid.).

We are brought full circle to the essential challenge which fulfilling international moral obligations to refugees and other migrants poses to the perceived self-interests of the sovereign nation-state. In recent years a number of social scientists have tried to defend the integrity of

refugee interests from a state-centred to a people-centred approach. Whether this perspective will be sufficient to account for the emerging trend towards a 'global apartheid' (Richmond 1993; 1994) is a question which needs to be asked during this 'decade of repatriation'.

## Notes

<sup>1</sup> Cross cultural research provides two overarching models of human adaptation: sedentary and nomad, pastoral adaptation. The latter defines groups in terms of some form of lineage continuity rather than specific location. 'History', *as well as refugee policy*, is 'always written from a sedentary point of view and in the name of a unitary State apparatus ... even when the topic is nomads. What is lacking is a Nomadology, the opposite of a history' (Deleuze and Guattari 1987:23; as quoted by Malkki 1992 and paraphrased here).

<sup>2</sup> In fact, because Cold War politics was the overriding variable in determining refugee status, one wonders where and when the Convention definition was applied before the 1970s (Harrell-Bond 1985; Loescher and Scanlon 1986).

<sup>3</sup> An important feature of all international conventions on refugees is that they contain this negative stricture on signatory states - the principle of *non-refoulement* - without, however, obliging them to grant asylum to a refugee. In contrast, asylum under Islamic law entails *the duty* to grant asylum (Elmadmad 1993).

<sup>4</sup> In attempting to carry out its mandate to protect refugees, without a secure budget, UNHCR has repeatedly found itself 'caught in the middle' between the conflicting political interests of states, particularly those of its major donors. (Harrell-Bond 1985;1990; Moussalli 1991; Powell 1991.) Non-governmental organizations also find themselves used as tools of state interests; those relying on government or inter-governmental funding may find themselves locked into a system which prevents the independent action required to protect the rights of refugees. (Harrell-Bond 1985; Baitenmann 1990.) Some UNHCR staff assert that in protecting refugees, control of material assistance is their only leverage in relation to recalcitrant host governments. Such an assertion would imply that UNHCR has no leverage to protect refugees against actions of those governments which support its budget. As one UNHCR staff person put it, the argument that humanitarian agencies must keep away from politics has led many to turn a blind eye to major violations of human rights. He asks, 'when does silence become complicity?' (Jambor 1991) (from Harrell-Bond 1992b).

<sup>5</sup> The failure of UNHCR to extend international assistance to spontaneously settled refugees has been criticized by Karadawi (1983) as a convenient belief which 'absolves donor agencies and governments from identifying and helping to solve the problems that are so potentially great. It is often based on the unproven assumptions about the ability of the hosts and the hosts' ecologies to support the establishment of these newcomers without deep personal sacrifices or ecological degradation. As Karadawi notes, ignoring the situation of unassisted refugees has been justified by: '... the ethnocentric argument of 'African hospitality' and ethnic links across the borders. 'Even if this were true, it becomes a tragic paradox of African society - nurtured as Africans are with the idea that no individual should be sacrificed' . As he continues, ... the dubious nature of the argument of traditional hospitality cannot be overstressed. ... At times of a major influx ' the society as a whole often tends to collapse'(as quoted and paraphrased in Harrell-Bond 1990).

<sup>6</sup> In 1983, during my fieldwork, such an 'irregular movement' occurred in southern Sudan. A Rwandese with asylum in Burundi crossed into Sudan. A refugee, first in Zaire and then

in Burundi, since the age of 7, he had completed his education as an economist, but was unable to gain employment. He moved to Kampala to look for work just before Obote's expulsions of the Banyarwanda (Winter 1983). Failing to consider the matter of the safety of such a person were he to be forcibly returned to Burundi, UNHCR's messages to its officer on the border was to return him immediately, it was UNHCR's duty being to 'discourage such irregular movements'. Fortunately, it was possible to convince the Sudanese Commissioner for Refugees to grant him asylum. The Ford Foundation in Khartoum provided him employment in his field until it was possible to negotiate directly with the Canadian resettlement programme to resettle him in that country. Ironically, he was one African who did not want to leave the continent, his ambition after participating in my research was to study the impact of refugees on their host's economy.

<sup>7</sup> In 1994, Czech immigrations officials in Prague were still resisting entering into such an agreement with Germany, arguing that until they had established similar arrangements with their other neighbours, they would remain 'un-enticed' by the financial incentives Germany had offered. UNHCR's (1988) readmission agreement with Vietnam has been the basis for returning the boat people in southeast Asia who have been determined to be illegal migrants and not refugees (UNHCR 1988).

<sup>8</sup> In a case of a refugee in orbit, discussed by Moorehead (1989) the refugee in question, after walking many days from Addis, from where he had escaped imprisonment from a hospital bed. He walked to Djibouti, acquired a Somalia passport and a visa for entry to Canada. He flew through Cyprus to Switzerland, and was sent back to Cyprus. After three months in the departure lounge, he was to be deported to Somalia (a safe country? which, at the time had a reciprocal arrangement with Ethiopia to return refugees). Enroute to Mogadishu, the plane stopped in Cairo where he was detained. Mechanical difficulties with the plane, the resistance of the pilot and the negative vote of the passengers persuaded the authorities to return him to Cyprus. Altogether, before the UK government offered him asylum, he spent six months in the departure lounge of the Cyprus airport, dependent on the 'tea ladies' and passing travellers for his subsistence. His case is not unusual (Zufferey 1987; Weis 1980).

<sup>9</sup> I have personal experience of many such cases where it has been necessary to convince both the British and the Canadian governments to grant such individuals who had asylum in particular countries that they could not be protected. (It is less reassuring to report that in two cases, it has been necessary to persuade Canada to accept refugees (a Ghanian and an Eritrean and his family) because they could not be protected in the UK.)

<sup>10</sup> personal communication with a Swazi government official, July 1994. One may only conjecture the reason, but in Zambia, where Bosnians have also sought asylum, UNHCR has been paying for hotel rooms (Interview with the Zambian Government's Commissioner for Refugees, October, 1994). It is impossible to fly to Swaziland without transitting South Africa. The facilities for receiving refugees in Swaziland, like Zambia, are also not deemed suitable for white Europeans and who is going to pay for the hotels?

<sup>11</sup> Confidential interviews with a Home Office official. His exact words were that until he received instructions to the contrary from the FCO, Zaire was considered 'safe'. With few exceptions, the return of asylum seekers from Zaire has become an almost kneejerk reaction in Britain (Medical Foundation 1995). Zaireans have made themselves suspect by the use of

particular routes through, for example, Nigeria where it is said that they have been assisted by military personnel to move through the airport to waiting planes. Whether or not a claim is abusive, the means of arrival should not be (but is) a consideration given the general norm, referred to above, that persons may have to use any means to escape life-threatening situations. Again, whether or not a case is abusive, the act of having applied for asylum is likely to put an individual in grave danger when returned to a country such as Zaire, especially, as has occurred, they are delivered to Kinshasha by European police in handcuffs (ibid.)!

<sup>12</sup> Granting temporary 'humanitarian' status is not new. In the UK it has been described as 'exceptional leave to remain'. A person granted this status has been able to appeal against it for full refugee status and it is renewable, usually on an annual basis. A person who has resided in the UK on this status may apply for nationality after the requisite period of years have passed as can a refugee or any other long-term resident. The difference for Bosnians is that the rights attached to the new temporary status have not been defined. They cannot appeal against it. Denmark, which has also followed the practice of granting Bosnians temporary status, has kept them in reception centres. Only recently has this government begun to take such steps as providing homes for families and education for the children.

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