INTERNATIONAL PROTECTION OF REFUGEES: A HUMAN RIGHTS PERSPECTIVE

by

VIRGINIA SHINGAIRAI HWACHA-CHITANDA

A Thesis Submitted to the Faculty of Graduate Studies in Partial Fulfilment of the Requirements for the Degree of

MASTER OF LAWS

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ABSTRACT

Human rights violations force countless numbers of people to flee their homes and seek refuge in other countries. The violations take many forms: deliberate killings and acts of genocide; political, racial or religious persecution and denial of fundamental civil, political, economic and social rights. Flight, however, does not always bring the relief victims so desperately seek. Too often, refugees find themselves subjected to new abuses against which they have little protection. Physical assaults, prolonged detention under inhumane conditions, and expulsion are some of the difficulties in the process of seeking refuge.

Traditionally, the protection afforded to refugees has been limited to the refugee-specific rights regime, which consists of the *1950 Statute of the Office of the United Nations High Commissioner for Refugees*, the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*. The present work defends the position that exclusive reliance on the refugee-specific regime denies refugees the protection that is to be afforded to all other human beings by the international human rights law developed over the last fifty years. Adoption of a more comprehensive approach to the protection of refugees is long overdue and the artificial distinction between the refugee and the human-rights question should be put to an end.

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Dedication

To all the people who believed in me

TABLE OF CONTENTS

OUTLINE

This work examines whether or not contemporary human-rights instruments and mechanisms adequately afford refugees the protection to which they are entitled as human beings. The author presumes that, if the plight of refugees is approached from a human-rights perspective, that is, with the human factor as the driving force, the human rights of refugees can be adequately protected. Human rights is presented as the only ideology that has international acceptance and recognition. This approach is viable regardless of any distinctions that legal systems may choose to draw between different groups of people crossing an international border under some form of compulsion.

A human-rights perspective puts the norms of international law and the human-rights mechanisms formulated since the Universal Declaration of Human Rights[1] to the service of promoting and protecting human rights of refugees under scrutiny. Where international law has not yet developed responses for dealing with problems affecting the rights of the refugee, the international community should be required to demonstrate its ability to discharge its basic function: respecting, ensuring and advancing the dignity and rights of refugees,[2] in all circumstances, worldwide.

The work is divided into two parts. Part One addresses the relevant conceptual aspects in international human-rights law and refugee law related to the plight of refugees, with the aim of defining the scope of this work and its vocabulary. Part Two focuses on analyzing the provisions of contemporary international, regional, multilateral and bilateral human-rights standards and mechanisms, examining the extent to which they apply to refugees and

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[1] *United Nations General Assembly Resolution* 217A(III), UN document A/810, at 71 [1948]. Adopted December 10, 1948 with 48 states voting in favour, none against, and eight abstaining (see Appendix A).

[2] B.G. Ramcharan, *The Right to Life in International Law* (Oxford: Oxford University Press, 1985) at 2.

evaluating the protection they purport to guarantee. The final chapter draws conclusions and makes recommendations as to how to ensure that the protection guaranteed to refugees by human-rights standards become reality.

INTRODUCTION

The Plight of Refugees

Refugees are the human barometer of political stability, justice and order in much of the world. They constitute evidence for political failure or success in today's human society. A significant number of refugees living at a given place is often a good indicator of a breakdown in governance in their place of origin, or of the fact that a people has become victim of its own government's abuse or of an external aggressor, or that coherent governance has ceased to exist.[3]

The development of international refugee law since the Second World War[4] has established, *prima facie*, a structure allowing refugees[5] to be defined, protected and guaranteed key human rights.[6] The protection of refugees has its origin in a human-rights perspective and the General Assembly has acknowledged international protection as the principal function of the United Nations High Commission for Refugees.[7] In the refugee law context, the notion of protection encompasses, not only a prescribed class of persons,

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[3] R. Winter, "The Year in Review" in *1993: World Refugee Survey Report* (New York:, N.Y.: US Committee for Refugees, 1994) at 2.

[4] In the Pre-Second World War period, the concept of the international protection of human rights of individuals had no place in the doctrine of international law. For an extended discussion, see R. B. Lillich, ed., *International Human Rights: Problems of Law, Policy and Procedure* (Boston: Little Brown, 1991) at 33.

[5] For a definition of refugees, see Article 1, Paragraph A (2) of the *Convention Relating to the Status of Refugees* of 28 July, 1951(Appendix F), and also the discussion in Chapter 1 of this work.

[6] For a definition of the human-rights perspective, see Chapter 2.

[7] UNGA Resolution 3272 (XXIX), 10 December, 1974; UNGA Resolution 3454 (XXX), 9 December, 1975; UNGA Resolution 31/35, 30, November 1976.

but also an unrestricted human rights competence.[8]

The history of refugee law reveals that it is not founded purely on the principles of humanitarianism or the advancement of human rights, but on compromises designed to reconcile the sovereign prerogative of states to control immigration with the reality of forced migrations of people at risk.[9] It has been designed not so much to meet the needs of refugees themselves, but to govern the disruptions of states. Many perceived shortcomings of the Convention regime are therefore reflections of the resistance of states to cede their right to sovereignty over immigration matters to any significant degree.[10]

Due to such compromises, there are serious gaps in this structure which lend it to manipulation by states in their struggle to balance international obligations with national interests. The qualifications and differences between the *1951 Statute of the Office of the United Nations High Commissioner for Refugees*[11] and the *1951 Convention Relating to the Status of Refugees*[12] conspire to introduce ambiguities of interpretation or grey areas whereby loopholes in the applicable international law can be found. Goodwin-Gill succinctly presents the opposing tensions in this system, by observing that

> the legal framework within which the refugee is located remains characterized on the one hand, by the principle of state sovereignty and the related principles of territorial supremacy and self-preservation; and on the

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[8] G. S. Goodwin-Gill, "The Language of Protection" (1989) 1 (1) International Journal of Refugee Law 6 at 15.

[9] For an elaboration of these arguments, see J. Hathaway, "A Reconsideration of the Underlying Premise of Refugee Law" (1990) 31(1) Harvard International Law Journal 129 at 143.

[10] *Ibid.*

[11] *Statute of the Office of the United Nations High Commissioner for Refugees*, United Nations General Assembly, 14 December 1950 (see Appendix F).

[12] *Convention Relating to the Status of Refugees*, opened for signature July 28, 1951, 189 U.N.T.S. 137 (see Appendix G).

> other, by competing humanitarian principles derived from general international law (including the purposes and principles of the United Nations) and from treaty.[13]

Perhaps the only way to appreciate the full human dimension of the plight of refugees in countries of "refuge" is to actually experience refugeehood. An explanation such as the one that follows cannot fully portray the extent of human suffering, vulnerability, fear, lack of security, indignation and the lack of protection that is the reality, once the "myth" of international protection is put to the test. A refugee flees from a dangerous situation in the hope of finding immediate safety and security, and a chance to rebuild a future.

For most refugees, life in exile is as bad as or even worse than the conditions fled in the countries of origin. Many are confined to ramshackle camps or detention centers close to the borders of their home countries where they are the victims of constant cross-border attacks. They depend on international or private charity for survival.[14] For those refugees who are eventually resettled, many of them never emerge from the socially marginalized sectors of society.[15] They continue to suffer alienation, underemployment and unemployment.

The presence of refugees in receiving countries creates enormous social and economic pressures, particularly in the Third World. Governments walk a tight rope in trying to balance domestic affairs and xenophobic populations with international human-rights obligations and humanitarian interests. Most are extremely reluctant to accord legal status to refugees from neighboring countries for fear of damaging diplomatic relations, encouraging a mass influx of people seeking refuge, or offering protection to an ideologically

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[13] G. Goodwin-Gill, *The Refugee in International Law* (Toronto: Oxford University Press, 1983) at 215.

[14] G. Loescher, "Introduction: Refugee Issues in International Relations," in G. Loescher & L. Monahan, eds., *Refugees and International Relations* (Oxford: Oxford University Press, 1989) at 1.

[15] *Ibid.*, at 2.

incompatible group of persons.[16] Since refugee law is designed and administered by states, the availability and quality of protection afforded to refugees varies from country to country, depending on the way admission of refugees is perceived to be in keeping with national interests.[17]

Consequently, the increased occurrence and threat of further mass movements of refugees have given rise to increased protectionism on the part of receiving governments. On various occasions, some countries of asylum have closed their borders, expelled new arrivals, incarcerated and harassed those in detention centers and border camps, and denied voluntary agencies access to these areas.[18]

The result has often been that governments acknowledge that something must be done about refugee problems, but generally keep their contribution to solutions at minimum levels. Thus, it can be argued that such countries only pay lip service to the plight of refugees. Often these governments claim that the refugee burden is the responsibility of "the true culprits," namely the human-rights violators.[19]

Unfortunately, refusing to grant asylum does nothing to end human-rights violations or flight. Refugees are simply returned to danger and persecution while the oppressor is awarded a *carte blanche* to persecute would-be refugees with impunity.[20] The rationale for protection lies in the refugees' right to life, liberty and security, which are jeopardized by disregard of

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[16] *Ibid.*

[17] J.C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths 1991). See in particular Chapter 1.

[18] See Loescher and Monahan, *supra* note 14.

[19] *Ibid.*

[20] D. Matas & I. Simon, *Closing the Doors: The Failure of Refugee Protection* (Toronto: Summerhill Press, 1989) at 273.

the principles of refuge. At this point, there is no difference between seeking refuge on the basis of a well-founded fear of persecution and of civil conflict or a general breakdown of law and order; in either case, the refusal of refuge may be a critical link in the chain of causation leading to violation of the right to life, liberty and security.[21]

Traditionally, the United Nations High Commissioner for Refugees (UNHCR) and non-governmental agencies have taken initiatives only after a situation has reached such magnitude as to command international attention. While this approach may have sufficed in the past, today it does not. The geopolitical features and the character of refugee flows have changed. The situation requires the UNHCR to adjust to these new challenges and demands.

Regrettably, we cannot count on universal respect for human rights in the immediate future, nor can violations be expected to cease where they occur.[22] In fact, while human-rights issues remain high on the agenda of international organizations and national governments, seemingly working to strengthen and proliferate human-rights standards, the protection of the rights of refugees are disintegrating. In fact, the response of the international community to new policies[23] which significantly reduce the already insufficient protection afforded to refugees, has been far from adequate.

The problem of refugees continues to be among the least considered major international issues.[24] Refugee statistics demonstrate that increasing persecution, human-rights abuses and

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[21] G. Goodwin-Gill, "Refugees: The Functions and Limits of the Existing Protection System" in *Human Rights and the Protection of Refugees under International Law*, Proceedings of a Conference held in Montreal, November 29-December 2, 1987, A. E. Nash, ed. (Montreal: Canadian Human Rights Foundation, 1987) at 153.

[22] *Ibid.*

[23] Particularly in Europe and North America. See also Chapter 4.

[24] See Appendix A for refugee statistics.

civil strife as the major causes of involuntary migration.[25]

The largest number of refugees, 6.75 million in 1995, came from Africa. Africa also had the largest number of returnees, 3.08 million, as the wars in some areas came to a halt. Afghanistan produced more refugees than any other single country: 2.74 million people sought shelter within the borders of neighboring countries. Rwanda, with 1.86 million refugees, and Liberia, with 790,000 are next on the list.[26]

From the foregoing, a number of conclusions can be drawn. Firstly, notwithstanding the deliberate policies embarked upon by the international community to improve the plight of refugees 50 years ago, the refugee populations have continued to grow in unprecedented numbers. Secondly, there is undoubtedly a nexus between human flight and human rights conditions. Human rights abuses and violations are the root cause of mass and individual exodus. Indeed, the plight of refugees and human rights violations are not two separate problems, but different facets of the same problem.[27]

Thirdly, the magnitude of the plight of refugees has reached international proportions demanding international efforts. Every country is affected in one way or another. Some countries are countries of proximate refuge, others are resettlement countries and still others provide technical support to refugees that have left other countries.

Lastly, it is apparent that because of the compromise referred to above being a signatory to the Universal Declaration of Human Rights,[28] the *Statute of the Office of the United Nations*

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[25] *Ibid.*

[26] *Ibid.*

[27] D. Matas & I. Simon, *supra* note 20 at 274.

[28] *Supra* note 1.

High Commissioner for Refugees,[29] the *1951 Convention Relating to the Status of Refugees*, [30] and other regional and multilateral agreements does not confer any enforceable obligation. It may actually amount to a ploy that is deliberately aimed at misrepresenting the protection afforded to refugees. It misleads would-be refugees into thinking that flight can only result in protection when in fact the difficulties that refugees face once they have fled the source of danger are themselves often human rights violations.[31]

Nevertheless, the various international agreements enumerate the rights and obligations owed to refugees and the standards by which they should be treated. The rights that states are called upon to protect are codified in the *Universal Declaration of Human Rights*[32] and are translated into binding form in the *International Covenant on Civil and Political Rights* (ICCPR)[33] and the *International Covenant on Economic, Social and Cultural Rights*.[34] In these instruments the state is identified as the primary defender of rights. Theoretically, all people are under the protection of their country of citizenship or permanent residence.[35]

The protection which refugees need is both legal and political. It is legal in that it relates to their status and rights in other countries. It is "political" in that the situation of refugees and

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[29] United Nations General Assembly, 14 December, 1950.

[30] 189 U.N.T.S. 137. Adopted at Geneva on 28 July 1951.

[31] D. Matas & I. Simon, *supra* note 20 at 274.

[32] *Supra* note 1.

[33] *International Covenant on Civil and Political Rights*, G.A. Resolution 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976 (see Appendix D).

[34] *International Covenant on Economic, Social and Cultural Rights*, G.A. Resolution 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, UN Doc.A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976 (see Appendix C).

[35] See also A. Grahl-Madsen, *The Status of Refugees in International Law* (Leyden: A. W. Sijthoff, 1966) at 216.

solutions to their problems require presentation to governments at the political level, if the requisite measures of assistance and the necessary solutions are to be found.[36]

However, international guarantees for the protection of refugees are in themselves largely without much effect unless supported by parallel guarantees within the domestic structures of the various states which comprise the international community. This suggests the need for a certain convergence between international law and municipal law. Thus, realistically, the protection enshrined in the provisions of international refugee conventions may only be enjoyed by the refugee through parallel provisions in the municipal laws enacted by the host states.[37]

A proper appreciation of the legal regime governing any given group of refugees, therefore, must not only involve an examination of both international law and municipal law, but also seek to establish the extent to which the domestic legislation in question incorporates[38] international law and standards.

The protection of the refugee must ultimately be placed in the broader context of the protection of human beings *per se*. Human rights law explicitly affirms the right to nationality and in the case of a refugee, the right to leave and return to one's country and to protect against expulsion and exile.

From a human-rights perspective, the refugee situation is inherently abnormal and

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[36] G. S. Goodwin-Gill, *supra* note 8 at 7.

[37] Although there is no unanimity on the issue, a number of scholars, perhaps the great majority, argue that certain principles of international refugee law have now crystallized into peremptory norms which are binding upon all states even in the absence of specific individual assent. The most widely invoked principle in this regard is that of non-refoulement. For a comprehensive account, see G. Goodwin-Gill, *supra* note 13.

[38] T. Maluwa,"The Domestic Implementation of International Refugee Law" (1991) 3 International Journal of Refugee Law at 504.

objectionable. Instead of viewing refugees as a "burden," and focusing on how best to share that burden of an international welfare case, the concern for refugees must derive from the fact that they are human rights abuses made visible and offending the basic sense of what is right.[39]

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[39] B. Frelick, "The Right of Return," (1990) 2 International Journal of Refugee Law at 442.

PART ONE

CONCEPTUAL FRAMEWORK

The absence of consensus on definitions of concepts in international human rights law, in international law and in refugee law has been a significant contributing factor to problems that emerge in guaranteeing protection of the rights of refugees. Individual countries are therefore at liberty to define and implement as they deem most appropriate for their domestic situation without an obligation to an established international standard. It is impossible for refugees, even those who try very hard, to know what to expect in countries of proximate refuge, countries of asylum or even, countries of resettlement.

In any work that attempts to examine the protection afforded to refugees it therefore becomes imperative to demonstrate the definitional obstacles that exist. What emerges in the discussion that follows is the fact that although "refugee law," "international law" and "international human rights law" *prima facie* make a strong case for the protection of the human rights of refugees, the most basic issues of definitions have not been worked out, leaving the entire system at the mercy of individual states, whose commitments depend on different domestic factors at different times in their histories.

CHAPTER 1

WHO IS A REFUGEE?

Introduction

A "*refugee,*" from a lay person's standpoint, is a person who has left home and seeks refuge elsewhere because of war or persecution or natural disaster.[40]

From its inception, refugee status has evolved in response to changing social and political conditions.[41] The initial concern with *de jure* statelessness shifted to embrace *de facto* unprotected groups, and further to protect individuals at ideological odds with their state. The common thread is a recognition that it is reasonable for groups and individuals to disengage from fundamentally abusive national communities, at which point refugee law exists to provide protection by the international community.[42]

Whether the particular form of abuse consists of a denial of formal protection, a campaign of generalized disenfranchisement, refusal to allow individuals political self-determination, or calculated acts of deliberate harm, the definitional framework of international refugee law has evolved to respond to the imperative to protect involuntary migrants in flight from states which fail in their basic duty of protection.[43] The definitional problem is compounded by the reluctance of modern territorial states to recognize the special status of refugees under international law, preferring to define them as "stowaways," "boat people," "economic

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[40] *The Oxford Paperback Dictionary* (Oxford: Oxford University Press, 1992) at 679.

[41] See J. Hathaway, "The Evolution of Refugee Status in International Law: 1920-1950" (1984) 33 International Court Law Quarterly at 348 to 380.

[42] *Ibid.*

[43] J. Hathaway, *supra* note 17 at 17.

migrants," "displaced persons," "illegal aliens" or "people who have been firmly resettled elsewhere."[44] As a result the estimated number of refugees in the world today varies significantly, depending on the preference of different countries, and on how individual states choose to define *"a refugee."*

What is indisputable and uniformly evident in all refugee populations is the fact that they have been forced out of their comfort zones and have lost control of their present and future. Essentially, they are the equivalent of wreckage floating on the sea. Local people in the country in which they are "washed" may feed and shelter them, but sooner or later the time comes when their existence has to be officially acknowledged and their existence legally recognized.

As a concept of international law, the term *refugee* has evolved considerably since its entry into international affairs after World War I.[45] The earliest international legal instruments recognizing refugees date from the 1920s and assigned refugee status to specific national groups, for example, to Russians fleeing the Bolshevik Revolution.[46] Such national groups were viewed as lacking the protection of their country of origin and in need of international protection.[47] The Evian Conference of 1938, which addressed the flight of Jews from National-Socialist Germany, marked the first instance of international recognition of the refugee as a victim of persecution.[48]

The response of the international community after the First World War to the phenomenon

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[44] C.O. Miranda, "Towards a Broader Definition of Refugee: 20th Century Development Trends," 20 (1990) California Western International Law Journal 315 at 318.

[45] J. Krieger, ed., *The Oxford Companion to Politics of the World* (New York: Oxford University Press, 1993) at 777.

[46] C.O. Miranda, *supra* note 44 at 39.

[47] *Ibid.*

[48] *Ibid.*

of forced migration was to define a discrete sub-class of forced migrants as "refugees" who, in turn, became the object of international attention and legal obligations. Those qualifying as refugees found themselves entitled to help in the form of coordinated efforts by both the host government and international institutions designed to work for their benefit. In this period, the League of Nations did not attempt to define a refugee in general terms but chose to deal with each crisis as it developed. The refugees covered by these agreements had the following general characteristics:

(1) they were nationals of a particular territory

(2) they had lost the protection, in law or in fact, of the particular government controlling the said territory

(3) they were stateless or possessed no other nationality[49]

The 1951 Definition of Refugee Status

The Second World War generated tremendous refugee problems which made it necessary to promulgate a more comprehensive scheme for dealing with refugees and to create a regime to administer it.[50] In 1950, the *Statute of the Office of the United Nations High Commissioner for Refugees*[51] was passed by a United Nations General Assembly resolution, establishing a body to deal with refugees.[52] This *1951 Convention* improved on previous instruments by applying generally to all nationalities, and by substituting "persecution" for "lack of national protection" as the criterion for granting refugee status, but it retained the

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[49] *Ibid.*

[50] T. D. J. Mendel, "Problems with the International Definition of a Refugee and a Possible Solution" (1992) Dalhousie Journal of Legal Studies at 9.

[51] *Ibid.*

[52] See UN Document A/1775 (1950), [hereinafter the *1951 Convention*].

temporary and geographical limitations of previous agreements.[53]

In 1967 a Protocol[54] was passed by the United Nations General Assembly in response to the growing number of refugees outside Europe. The Protocol did not alter the reasons for the flight or the qualifications of the *1951 Convention*.

These two Conventions, which have acquired international status, define "a refugee" as a person

> [who] owing to [a] well–founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his (her) nationality and is unable or, owing to such fear, is unwilling to avail (herself) himself to the protection of that country.[55]

A point that needs to be emphasized at the outset is that the definition is worded in terms of persecution individually suffered. An individual determination is required in the case of each applicant before a state decides whether or not to grant refugee status.[56] To be entitled to the protection afforded by the Convention and Protocol, a forced migrant must satisfy the criteria of the Convention's definition of "refugee," which are as follows:

1. He/She must be "outside" his/her country of nationality or habitual residence.

2. The acts and treatment from which the applicant is seeking refuge must

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[53] *Ibid.*

[54] *Protocol Relating to the Status of Refugees, 31 January 1967*, G.A. Res. 2198 (XXI), 21 U.N. GAOR, Supp (No. 16) at 48. In force 4 October 1967. (hereinafter the *1967 Protocol*) (see Appendix G).

[55] *1951 Convention*, *supra* note 12, Article 1, Paragraph A(2). This Article will sometimes refer to "Convention" refugees. These are persons who satisfy the requirements of the *1951 Convention* or the *1967 Protocol*.

[56] See P. Hyndman, "An Appraisal of the Protection Afforded to Refugees Under International Law"(1981) 1 Lawasia at 229.

qualify as persecution, as then understood.

3. The refugee must have a "well -founded fear of persecution" and because of this must be unable or unwilling to rely on the protection of her/his country of origin.

4. The persecution feared must be due to one of, or a combination of, the enumerated reasons, namely, race, religion, nationality, membership of a particular social group, or political opinion.

"Well–Founded Fear of Being Persecuted"

The definition of a well–founded fear of persecution falls into two categories: that relating to the standard of proof required and that relating to the definition of "persecution." There is, however, considerable disagreement over what the standard of proof should be, who should bear the onus of proof, and what evidentiary requirements should be applied. For the definition to be effective internationally it is imperative that the standard of proof be uniform and predictable among receiving states.[57]

The requisite standard of proof has attracted considerable attention. An example is the United States Supreme Court decision (In *INS v. Cardoza–Fonseca*).[58] This case involved a 38 year-old Nicaraguan citizen who entered the United States as a visitor in 1979. She overstayed and when ordered deported, requested asylum. The immigration judge applied the same standard in evaluating both the withholding and the asylum claims, and denied relief because she had not established "a clear probability of persecution."[59]

On appeal, the United States Supreme Court decided that different standards should apply to granting asylum and withholding deportation. The court held that withholding of

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[57] See also Hathaway, *supra* note 17.

[58] *INS v. Cardoza-Fonseca* [1987] 480. U.S. 421.

[59] See G. Goodwin-Gill, "Supreme Court Rules on Asylum" (1987) Ref. at 8.

deportation, which gives rise to an absolute right not to be deported, requires proof on a balance of probabilities, while eligibility for asylum, which only grants discretionary admittance, requires a less rigorous standard.[60]

The requirement that both objective and subjective components must be proven in order to establish a well–founded fear of persecution works injustice on those who have, in the face of danger, reacted to what they perceived as persecution. It is unreasonable to expect people who fear for their security to weigh objectively the probability of danger. In addition, prospective refugees often have limited information and insufficient time to formulate a reasoned decision with regard to their chances of being persecuted.[61]

The *1951 Convention* does not define "persecution." This has resulted in serious problems.[62] Definitions range from liberal to restrictive. The liberal view encompasses those who argue that an affront to human dignity constitutes persecution,[63] those who view violations of human rights as a useful criterion for defining persecution,[64] and those who think that deprivation of life or liberty for more than a negligible period of time would best demarcate the limits of persecution.[65] The restrictive view equates persecution with loss of life or serious deprivation of physical freedom.[66] The concept of persecution is generally related to

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[60] Hathaway, *supra* note 17.

[61] Mendel, *supra* note 30 at 11.

[62] A.T. Fragomen, Jr., "The Refugee: A Problem of Definition" (1970) 3 Case West. Res. J. Int. L. 45 at 64.

[63] P. Weiss, *The Concept of the Refugee in International Law* (1960) U.N. Document HCR/INF/49 at 22.

[64] See G. Melander, "The Protection of Refugees" (1974) 18 Scandinavian Studies in Law at 153.

[65] A. Grahl-Madsen, *supra* note 35 at 216.

[66] See Mendel, *supra* note 50 at 193.

action taken by the authorities of a country, although it is possible for persons to be the victims of persecution even though the government has not directly or deliberately committed, nor is even desirous of committing, the acts giving rise to such a situation. The fact that the government wishes to provide protection will not alter this situation. Grahl-Madsen suggests that, if the atrocities causing the flight are only a relatively short duration, and are effectively and speedily brought to a halt by the government, there may be no need to consider those affected as political refugees. He adds, though that, if, on the other hand, the disturbances continue over a protracted period, without the government being able to control them effectively, this may be considered such a "flaw" in the organization of the State that it may justify distrust in the government, the latter conceived not as a small group of men in exalted positions, but as the machinery which should secure tranquility and order in the territory of the State. In such a case, recognition of refugee status appears to be in order.[67] According to the *UNHCR Handbook*,

> Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.[68]

Gunning criticizes the definition for being flexible enough to allow states to manipulate it to suit their national interests, thereby depriving the *1951 Convention* definition of a refugee of much of its effect.[69] A definition intended to be used for legal purposes requires clarity and the *1951 Convention* definition fails to satisfy this basic requirement.

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[67] Grahl-Madsen, *supra* note 35 at 192.

[68] United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, (hereinafter referred to as the *UNHCR Handbook*) paragraph. 65. See also Goodwin-Gill, *supra* note 8 at 42.

[69] I.R. Gunning, "Expanding the International Definition of Refugee: A Multicultural View" (1989-90) 13 Fordham International Law Journal at 168-71.

V. P. Nanda[70] suggests that, in practice, the definition of persecution generally adopted is restrictive and applies only to individuals who "face discrimination or maltreatment . . . of a very serious kind." In general, this suggestion is supported by case law from a number of countries. Even in Canada, a country traditionally regarded as liberal when it comes to formulating refugee policy, the interpretation of the definition seems to result in the exclusion of many *de facto* refugees.

Mendel identifies a British case[71] where the Immigration Appeals Tribunal held that prosecution for breach of a country's laws could not amount to persecution. If this is correct, then the millions of Jews deprived of their property and put into camps in Nazi Germany, under the laws of that country, would have been ineligible for relief.[72]

It may be, as Weiss suggests[73] that the omission to define persecution was deliberate. The drafters may have wished to introduce a flexible concept capable of being applied to different kinds of persecution as they occur. Nevertheless, today there is general agreement upon certain parameters: a threat to life or freedom on one of the grounds stated in the Convention will always be persecution.

A determination as to whether or not prosecution under any specific legislation amounts to persecution is often not easy to make. As the *UNHCR Handbook* states:

> Due to the obvious difficulty involved in evaluating the laws of another country, national authorities may frequently have to take decisions by using

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[70] V. P. Nanda, "World assistance: The Role of International Law and Institutions" (1980-81) 9 Hofstra Law Review 449 at 468.

[71] See Mendel, *supra* note 50 at 12. The case identification is withheld but it is cited as TH/5911/75. Refer to Clerk of the Tribunal Immigration Appeals, Thanet House, Strand, London.

[72] *Ibid.*

[73] P. Weiss, *supra* note 63 at 22.

> their own national legislation as a yardstick. Moreover, recourse may usefully be had to the principles set out in the various international instruments relating to human rights, in particular the International Covenants on Human Rights, which contain binding commitments for the States parties and are instruments to which many State parties to the 1951 Convention have acceded.[74]

It is important to note that the fact that a measure is of general application does not, of itself, preclude its use as an instrument of persecution against specific persons.[75] For instance, if the measure in question is a law of general application, any necessary singling out will occur when the decision is made either to prosecute or to detain. Further, it is possible that the law itself may not be in conformity with human rights standards.

The Five Reasons Specified in the Convention

In addition to a "well-founded fear" of persecution a valid claim for the refugee status must arise owing to either one, or a combination of the five grounds specified in the Convention definition discussed below.

1) Race

The *UNHCR Handbook* states that race is to be understood widely, to include all kinds of ethnic groups which could commonly be described as races. "Frequently, it will also entail membership in a specific social group of common descent forming a minority within a larger population."[76]

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[74] *UNHCR Handbook*, *supra* note 68 paragraph 60.

[75] Zink, the proponent of the restrictive view of persecution, is of this opinion. See also Grahl-Madsen, *supra* note 35 at 213.

[76] *UNHCR Handbook*, *supra* note 68, paragraph 68.

2) Religion

Persecution on account of religion has frequently been a cause of refugee movements. Freedom of thought, conscience, and religion are protected by Article 18[77] of the *Universal Declaration of Human Rights*.[78] *The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief*[79] also gives useful indication of the interests which should be protected, as does Article 18 of the *International Covenant on Civil and Political Rights*.[80]

3) Nationality

The term "nationality" is usually taken to include members of a specific ethnic or linguistic group and citizenship. It may occasionally overlap with the term "race."[81]

4) Membership of a particular social group

A "particular social group" generally comprises persons of similar ethnic, cultural, religious,

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[77] Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belie, and freedom either alone or in the community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

[78] *Supra* note 1.

[79] *Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief*, adopted 18 January 1982, UN GAOR Supp. (No. 51). Also at United Nations General Assembly Res. 36/55 of 25 November 1981.

[80] *Supra* note 33.

[81] *UNHCR Handbook*, *supra* note 68, paragraph 74. See also Grahl-Madsen, *supra* note 35 at 218-219.

or linguistic background, habits, or social status.[82] As further stated in the *UNHCR Handbook*:

> Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because of the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such is held to be an obstacle to the Government's policies.[83]

5) Political opinion

"Political opinion" includes those persons who have fled their country to avoid persecution on the ground that they are alleged, or known, to hold opinions critical of the government. However, it may be difficult to establish a link between the political opinion held by the person concerned and the measures taken by the state in response. Sanctions are rarely expressed as imposed for opinion alone. Often it is argued that the reason for the measures taken is an alleged breach of the law, rather than any political belief or opinion.

A tribunal, faced with the task of deciding whether the measures taken against the person concerned is persecution or breach of the law will have to consider the legislation applicable, the alleged motives of the person who breached that legislation, and the type and severity of the punishment specified in the legislation. These considerations will then need to be measured against the value accorded by international human rights instruments to the interests of human dignity and integrity, and to the right to freedom of opinion and expression.[84]

Suffice it to mention that the *1951 Convention* and the *1967 Protocol* have been seriously

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[82] P. Hyndman, *supra* note 56 at 71.

[83] *UNHCR Handbook*, *supra* note 68, paragraph 78.

[84] See *Universal Declaration of Human Rights*, *supra* note 1, Articles 13, 18, 19, 20 21, 23, 26, 29, and 30.

criticized for being indifferent to the realities of the refugee problem even as late as 1967. The 1951 Convention was primarily drawn up to deal with the situation of displaced persons in Europe immediately after World War II. The drafters the Convention were anxious to make their obligations specific and to ensure that those obligations could not be extended indefinitely. Today, circumstances have changed and many people who need international protection of the kind provided by the Convention do not fall within its ambit.[85] In fact, only when the refugee problems from other regions of the world spilt into Europe, did European countries react in some manner. Consequently, as other regions of the world suffered refugee problems they too developed definitions that included their refugees for purposes of qualifying for international protection.

The Organization of African Unity Definition of Refugee Status

The first regional arrangement was the *Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa*,[86] established in 1969. It broke new ground by extending protection to all persons compelled to flee across national borders by reason of any man-made disaster, whether or not they can be said to fear persecution:

> The term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/her country of origin or nationality, is compelled to leave his/her place of habitual residence in order to seek refuge in another place outside his/her country of origin or nationality.[87]

The period lasting from the 1950s and into the mid-1980s marked the rise against

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[85] P. Hyndman, *supra* note 56, at 150

[86] The *Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, entered into force June 20, 1974 (hereinafter the OAU Convention).

[87] *Ibid.*, at Article 1(2).

colonialism and foreign domination. Under the *1951 Convention* the majority of the Africans in flight from the forces of oppression and in search of bases from which to launch their wars of liberation did not qualify as refugees. A convention on the African problem had to be found to provide a legal basis upon which the international community could protect refugee populations caused by man-made activities.

This standard represents an important conceptual adaptation of the Convention refugee definition, in that it successfully translates the core meaning of refugee status to the reality of the developing world without suggesting that victims of natural disasters or economic misfortune should become the responsibility of the international community.[88] Rather, the OAU definition acknowledges that four important modifications of the *1951 Convention* definition are required in order to accommodate the specific context of abuse in states of the developing world.[89]

First, the OAU definition acknowledges the reality that fundamental forms of abuse may occur, not only as a result of the calculated acts of the government of the refugee's state of origin, but also as a result of that government's loss of authority due to external aggression, occupation, or foreign domination. The anticipated harm is no less wrong because it is inflicted by a foreign power in control of a state, rather than by the government of that state *per se*. This modification simply recognizes the need to examine a refugee claim from the perspective of the *de facto*, rather than the formal, authority structure within the country of origin.

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[88] "Even this broader (OAU) definition would not cope with complex refugee situations with multiple causes, including ecological or economic disasters ....On humanitarian grounds, there is a strong case to be made for a broader approach....Where a person's life, liberty or safety is threatened, it is immaterial whether that threat is the result of persecution or some other forms of danger...." Independent Commission on International Humanitarian Issues, *Refugees: The Dynamics of Displacement* (London, Atlantic Highlands, N.J.: Zed Books, 1986) at 46.

[89] J.C. Hathaway, *supra* note 17 at 17.

Second, the OAU definition reverts to the pattern of pre-World War II refugee accords in recognizing the concept of group disfranchisement.[90] By its reference to persons who leave their country as a consequence of broadly based phenomena such as external aggression, occupation, foreign domination, or any other event that seriously disturbs public order, the OAU recognizes the legitimacy of flight in circumstances of generalized danger.[91]

While the accommodation of abuse at the hands of a *de facto* government is little more than an extrapolation from the intent of the *1951 Convention* definition, while group-based refugee determination has its historical antecedents in European practice, there are two additional features of the OAU definition that are unprecedented in international refugee law.[92]

The *1951 Convention* definition and all of its predecessors link refugee status to the prospect of abuse resulting from some form of personal or group characteristic: in the case of the *1951 Convention*, from one's civil or political status.[93] The OAU definition, on the other hand, leaves open the possibility that the basis or rationale for the harm may be indeterminate.[94] As long as a person "is compelled" to seek refuge because of some anticipated serious disruption of public order, they need not be in a position to demonstrate any linkage between their personal status, or that of some collectivity of which they are a member, and the impending harm.[95] The African standard emphasizes assessment of the gravity of the

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[90] *Ibid.*

[91] *Ibid.*

[92] *Ibid.*

[93] A Convention refugee is a person outside her country "...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...": *1951 Convention*, *supra* note 12, Article 1(A)(2).

[94] J.C. Hathaway, *supra* note 17 at 17.

[95] *Ibid.*

disruption of public order, rather than motives for flight. Therefore individuals are largely able to decide for themselves when harm is sufficiently proximate to warrant flight.

The OAU Convention also extends international protection to persons who seek to escape serious disruption of public order "in either part or the whole"[96] of their country of origin. This, represents a departure from past practice which generally assumed that a person compelled to flight should make reasonable efforts to seek protection within a safe part of her own country, if one exists, before looking for protection abroad.[97] There are at least three reasons why this shift is contextually sensible.

First, issues of distance or the unavailability of escape routes may foreclose travel to a safe region of the refugee's own state. Underdeveloped infrastructure and inadequate personal financial resources may reinforce the choice of a more easily reachable foreign destination.[98] Second, the political instability of many developing states may mean that what is a "safe" region today may be dangerous tomorrow. Rapid shifts of power, and the consequent inability to predict accurately where safe haven is to be found, may lead to a decision to depart the troubled state altogether.[99] Finally, the artificiality of colonially imposed boundaries in Africa has frequently meant that kinship, language group and other natural ties often stretch across national frontiers. Hence, persons in danger may see the natural safe haven to be with family or members of their own ethnic group in an adjacent state.[100]

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[96] The OAU Convention, *supra* note 86 at Article 1(2).

[97] "The fear of being persecuted need not always extend to the whole of the refugee's country of nationality .... a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so" *Handbook* (1979), *supra* note 68 at 21-22.

[98] See J.C. Hathaway, *supra* note 17 at 18.

[99] *Ibid.*

[100] *Ibid.*

Although the OAU's intent was to develop a regional definition of refugee, the African Convention ultimately predicted the course of the world's refugee problems. In effect, the African Convention suggests an amendment to the *1951 Convention* and the *1967 Protocol* definition, which enables internationally coordinated efforts to aid many more forced migrants who otherwise might be excluded. For example, the UNHCR has given assistance to Afghan refugees in Pakistan,[101] many of whom would have had difficulty fitting the 1967 Protocol definition, either because the numbers were so great that no individual determinations could practically be made, or because the individuals were, in fact, fleeing war–like conditions in their homeland.[102]

The relevance of the OAU definition to conditions in the developing world has made it the most influential conceptual standard of refugee status apart from the *1951 Convention* definition itself. It has provided the basis for enhanced UNHCR activity in Africa. It was at the root of the proposed conventional definition of persons entitled to territorial asylum, and it has inspired the liberalization of a variety of regional and national accords on refugee protection.[103] UNHCR's competence in Africa has been recognized as extending also to refugees who have fled owing to external aggression, occupation, foreign domination or events seriously disturbing public order.[104]

The Organization of American States Definition of Refugee Status

In recognition of the inadequacy of the *1951 Convention* definition to embrace the many involuntary migrants from generalized violence and oppression in Central America, the state

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[101] Report of the UNHCR, 37 UN GAOR Supp. (12) at 70, UN Document A/37/12 (1982).

[102] 36 UN GAOR C.3 (53rd meeting), paragraphs 1–2.

[103] Hathaway, *supra* note 17 at 19.

[104] G. Goodwin-Gill, *supra* note 21 at 150.

representatives of ten Latin American states in 1984, responded by agreeing to a definition that is similar to that enacted by the Organization of African Unity. In addition to Convention refugees, protection as refugees was extended to

> persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression , internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.[105]

This definition was approved by the 1985 General Assembly of the Organization of American States, which resolved "to urge Member States to extend support and, insofar as possible, to implement the conclusions and recommendations of the Cartagena Declaration on Refugees."[106]

The OAS definition shares some of the innovative characteristics of the OAU Convention. First, it acknowledges the legitimacy of claims grounded in the actions of external powers by virtue of its reference to flight stemming from foreign aggression.

Second, it offers a qualified acceptance of the notions of group determination and claims in which the basis or rationale for harm is indeterminate. The qualification stems from the fact that while generalized phenomena are valid bases for flight, and while acceptance of a claim is not premised on any status or characteristic of the claimant or group to which they belong, all applicants for refugee status must nonetheless show that "their lives, safety or freedom have been threatened."[107] This requirement, that the putative refugee be demonstrably at risk due to the generalized disturbance in their country, contrasts with the OAU Convention's

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[105] *Annual Report of Inter-American Commission on Human Rights 1984-1985*, OAE/ser.L/II.66, document 10, rev. 1, at 190-193.

[106] Adopted at a colloquium entitled "Coloquio por la Proteccion International de los Refugiados en American Central, Mexico y Panama: Problemas Juridicos y Humanitarios" held at Cartagena Colombia from 19-22 November 1984. See also UNHCR, "OAS General Assembly: An Inter-American Initiative on Refugees" 27 (1986) Refugees Magazine at 5.

[107] *Ibid.*

deference to individuated perceptions of peril. Finally, the OAS definition, unlike its African counterpart, does not explicitly extend protection to persons who flee serious disturbances of public order that affect only part of their country.

The references to claims grounded in "internal" conflicts and "massive violations of human rights" provide helpful clarifications of established principles, but in substantive terms do not break new ground. Any situation of internal conflict would surely "disturb public order" and hence be included within the general language of both the OAU and the OAS definitions. Moreover, while the granting of refugee status based simply on the existence of massive violations of human rights would have been a major innovation, this ground of claim as codified adds little to the Convention definition, in view of the obligation of refugee claimants to show that their lives, safety, or freedom have been threatened by such human rights abuses.

Overall, the OAS definition of refugee status indicates something of a compromise between the *1951 Convention* standard and the very broad OAU conceptualization. It expands the 'persecution' standard of the *1951 Convention* to take into account abuse that can result from socio-political turmoil in developing countries; but it constrains the protection obligation to cases where it is possible to show that there is some real risk of harm to persons similarly situated to the refugee claimant.

The Council of Europe Definition of Refugee Status

The Council of Europe has also introduced standards of refugee protection that go beyond the *1951 Convention* definition, although the changes are significantly more modest than those of the OAU or OAS.[108] In its Parliamentary Assembly's Recommendation 773 in 1976, the Council of Europe expressed its concern in regard to the situation of *de facto* refugees

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[108] *Ibid.*, at 21.

that is, persons who either have not been formally recognized as Convention refugees, although they meet the Convention's criteria, or who are "unable or unwilling for ... other valid reasons to return to their countries of origin."[109] Member governments were invited to "apply liberally the definition of 'refugee' in the Convention"[110] and "not to expel *de facto* refugees unless they will be admitted by another country where they do not run the risk of persecution."[111]

To date, Recommendation 773 (1976) has only been partially implemented. While the Committee of Ministers have stipulated that Convention refugees not formally recognized as such should be protected from return,[112] no text has been adopted to deal with the rights of the broader class of refugees outside the scope of the Convention definition. Overall, it can be said that the Council of Europe has acknowledged the legitimacy of the claim to protection of an expanded class of refugees, but has not moved to formalize their status or rights.[113]

In those countries not subject to one of these regional agreements, however, there is evidence of a willingness to protect refugees who may not meet the *1951 Convention* definition. Pakistan and Iran, for example, sheltered the largest concentration of humanitarian refugees in the world, made up of persons forced to flee from the Afghanistan conflict.[114] Similarly, Hong Kong, Thailand and other southeast Asian states have in most cases provided temporary refuge to Indochinese migrants in refugee-like situations, pending their

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[109] Council of Europe, Parliamentary Assembly Recommendation 773 (1976).

[110] *Ibid.*

[111] *Ibid.*

[112] Council of Europe, Committee of Ministers Recommendation R(84)1 (1984).

[113] See C.J. Hathaway, *supra* note 17 at 21.

[114] *Ibid.*, at 23.

resettlement abroad.[115]

Conclusion

In sum, the picture that emerges from refugee situations, at different times and in different parts of the world, is that a refugee is a person who needs to be recognized, protected and re-established in a community in which he/she has rights simply because he/she is a human being. Regrettably, there does not exist a cohesive international position or solution that guarantees the refugee the protection needed.

If anything the various regional definitions cause greater confusion and room for manipulation to the disadvantage of the refugee. For example, what would happen to an African, who flees from civil war into a refugee camp in a neighboring African state, which also soon suffers a civil war, with imminent threats to kill thousands of locals and refugees? The African finds his way independently to Europe and seeks refugee status. Under the *1951 Convention*, this person is not a refugee, while under the OAU definition, he is. Although this scenario is only illustrative, there are many refugees who experience this in real life. For the most part, many become "orbit refugees," being thrown from one country to another, while countries labor to justify their claims of not being responsible to provide protection.

Having established the above, this work, although concentrating on the rights of forced immigrants outside their countries of origin, takes the view that a refugees are person who have left their home, whether or not they have crossed a national boundary, for whatever reason and who no longer enjoy the protection of their country of origin, or are unwilling or unable to avail themselves of that protection. They are all entitled to basic human rights, which, according to Louis Henkin, are defined as

> claims which every individual has, or should have upon the society in which

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[115] *Ibid.*

he or she lives...[116]

From a human rights perspective, the refugee situation is inherently abnormal and objectionable. Coerced departure is a violation of the human right to remain peacefully in one's home. It is exile.

Indeed, it is from this perspective of human rights that this work will examine the protection afforded to the rights of refugees by the international mechanisms which purport to do so.

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[116] L. Henkin, "Rights Here and There"(1981) 81 Columbia Law Review, at 1582.

CHAPTER 2

CONCEPTUALIZING HUMAN RIGHTS

In all the specificity and detail of the *Universal Declaration of Human Rights*,[117] the *International Covenant on Economic, Social and Cultural Rights*,[118] the *International Covenant on Civil and Political Rights*[119] and various regional human rights agreements, there is no specific and universal definition of a "human right." It is difficult to comprehend whether this was an omission or an act of compromise to achieve a balance in a difficult negotiation, presumably to allow for flexibility in interpretation.

The concept of human rights, like "democracy," is espoused by all the world's ideologies. However, it has not been defined conclusively in political, philosophical and legal discourse. Intuitively, the word "human" suggests that the rights deemed human are those that pertain essentially to the human species. One need only be human to be entitled to human rights.

The word "rights" carries its own jurisprudence of definitional controversies. Hohfeld[120] defines the word "right" as an ambiguous term used to describe a variety of legal relationships, balanced by a duty. Sometimes it is used in the strict sense of a right holder being entitled to claim something, with a correlative duty to another. At times it is used to indicate a privilege or liberty to do something. On other occasions, the word "right" stands for an immunity from having one's legal status altered by another person's act, while it also refers to a power to alter legal rights and duties. In spite of all these meanings having been

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[117] *Supra* note 1.

[118] *Supra* note 34.

[119] *Supra* note 33.

[120] N.W. Hohfeld, *Fundamental Legal Conceptions as Applied to Judicial Reasoning* (New Haven: Yale University Press, 1923).

identified as rights, each concept invokes different protections and produces different results.[121]

Judgment on definitional issues can only be acceptable if based on a unanimous format regarding which rights are regarded as absolute, which are universal, which should be given priority, which can be overruled by other interests, which call for international pressures, which can demand programs for implementation, and which will be fought for.[122]

The problem is compounded by the insights of philosophical analysts. The contract theory of rights perceives rights as ensuing from a legally binding promise made by one person to another, often for a reciprocal promise or commitment or consideration. The typical equation is that offer + acceptance + consideration = binding contract. The parties to such contracts are said to owe obligations to each other by virtue of their mutual promises to do or to refrain from doing specified acts. The contractual undertakings can be legally enforced by either of them. Hence they are bound to perform their obligations.

The inadequacy of the contract theory of rights in determining which are 'human' lies in the fact that rights universally acknowledged as human rights do not import any contractual relations in which parties, be they the state or its citizens, exchange mutual promises of action or forbearance. For example, the rights of the hungry to be fed, the rights of children to be educated and the right of a citizen to a fair trial, make no essential reference to a prior promise on the part of those with correlative obligations. These rights are in fact, claimable, assertable and upheld without involving the notion of contract in any way.[123]

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[121] *Ibid.*

[122] J. Shestack, "The Jurisprudence of Human Rights" in *Human Rights in International Law. Legal and Policy Issues* T. Meron, ed. (Oxford: Oxford University Press, 1984) at 70.

[123] See T. Campbell, *The Left and Rights: A Conceptual Analysis of the Idea of Socialist Rights* (London: Routledge and Kegan Paul, 1983) at 115.

The power theory of rights deems one to have a right when one is able to require another to act or to refrain from acting in a certain way, thereby limiting that person's freedom of choice. This theory has a positivist outlook in that, in establishing the existence of any right, all that needs to be done is to verify the relevant rules or laws by which one can impose an obligation on another, or have that obligation waived by the right holder. The drawback of this theory is that human rights do not find expression only in rules. Such rules of law can become empty of moral content, hence failing to provide any effective protection for human dignity which many human rights theorists would claim, ought to be the proper basis of human rights.

The interest theory of rights has been proposed as an alternative to both the contract and the power theories of rights. According to this theory, to have a right is to have an interest protected or furthered by the existence or non-existence of a rule, law or understanding requiring action or inaction in ways which are designed to have a bearing on the right-holder. Obligations are owed to the right holder because they are obligations to further protect the right holder. The interest theory is criticized for including the notion that one's rights need not relate to one's welfare.

These theories shed light on the concept of human rights, but they do not provide a substantive definition of human rights. For this reason, an attempt will be made to determine what human rights are, by establishing responses to needs that arise.

This approach argues that human rights are not absolute, and may be restricted in order to secure the comparable rights of others and the interests of the community at large. Such limitations do not deny the worth or existence of such rights, but underscore the fact that while these rights are not extinguished they may, in certain circumstances, be properly overridden. It is in this light that the assertion is made that human rights are *prima facie* claimable rights and not absolute rights.

With the advent of the Second World War and the horrors of human suffering at the hands of citizens' own governments, the positivist and the naturalist theories entered a new era. The new philosophers[124] argued that only a positive law which meets universal values of a society can function as an effective legal system. In a larger sense, the object of the revived natural rights thought was an attempt to work out principles which might reconcile the "is" and the "ought."[125] They concluded that an absolute minimum of any just system of rights must include some recognition of the value of individual freedom and autonomy.[126]

Revival of the rights theory has had a beneficial influence on international human rights norms. This is the spirit that drove the drafters of the *Universal Declaration of Human Rights*, which begins with the concept:

> Whereas recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[127]

In a similar vein, Article 1 of the *Declaration* provides:

> All human beings are born free and equal in dignity. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.[128]

These articulations reflect the philosophy that in any morally tolerable form of social life there must be certain protections of individual rights. However, affirming that principle is one thing, formulating and implementing mechanisms for such protection is quite another.[129]

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[124] See J. Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980).

[125] Shestack, *supra* note 122 at 86.

[126] *Ibid.*

[127] *Supra* note 1.

[128] *Supra* note 1, Article 1.

[129] Shestack, *supra* note 122 at 71.

Broadly conceived, human rights are a "standard of achievement for all people and all nations."[130] They empower citizens to act to vindicate these rights, to insist through the exercise of their rights that these standards be realized, and to struggle to create a world in which they are practiced and enforced.[131] In 1981, Louis Henkin gave a perspective of human rights with a clarity intended, but perhaps never quite achieved by most philosophers.

> By rights I mean what is now called human rights, claims which every individual has, or should have, upon the society in which he/she lives. To call them human suggests that they are universal: they are the due of every human being in every human society. They do not differ with geography or history, culture or ideology, political or economic system, or stage of development. They do not depend on gender or race, class or status. To call them "rights" implies that they are claims "as of right," not merely appeals to grace, or charity, or brotherhood, or love; they need not be earned or deserved. They are more than aspirations, or assertions of "the good," but claims of entitlement and corresponding obligation in some political order under some applicable law, if only in a moral order under a moral law.
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> When used carefully, "human rights" are not some abstract, inchoate "good." They are rights particular, defined, and familiar, reflecting respect for individual dignity and a substantial measure of autonomy, as well as a common sense of justice and injustice.[132]

There is a consensus on the need for recognition and protection of the dignity of the human being. To assert that international human rights is the world's first universal ideology is not too farfetched.[133]

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[130] J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, New York: Cornell University Press, 1989) at 14.

[131] *Ibid.* at 15.

[132] L. Henkin, *supra* note 116 at 1.

[133] D. Weissbrodt, "Human Rights: An Historical Perspective" in *Human Rights*, Peter Davis, ed., (New York: Routledge, 1988), at 1.

The problem is that much of the momentum toward human rights remains at the level of ideology.[134] Universalistic claims have often been rhetorical strategies to justify political shifts in power within specific historical and geographical contexts. In reality human rights constitute a historical phenomenon that is crucial because it presents the concrete actions of real people in real social contexts and not only the abstractions of naturalism. The myths, the unending stories of events, and the enormous range of social forms which constitute human history provide information about human domination, exploitation, misery, and the will to resist and revolt against domination. The operative presumption here, is that all people are striving for their own integrity. They want to believe that their lives constitute something true, something whole, something valid for themselves and for others with whom they interact.

Analyzing human rights from a historical perspective, which views the individual as a social and political entity, allows consideration of the dynamic and priority - induced nature of human rights. In other words, human rights must be viewed from a holistic perspective. Carol Gould writes that in a holistic perspective,

> human rights are grounded on what are taken to be universal structures of society or on the requirements of the common good.[135]

Holism does not require universal structures. Social structures are historical and cultural constructions. Human rights need not be rooted in a transcendental or universal notion of the common good.[136] Holism, which directs attention to the totality of social relations within a given context, should leave room for multiple claims based upon significant differences

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[134] B. Fields and W.-D. Narr, "Human Rights as a Holistic Concept" (1992) 14 Human Rights Quarterly at 77.

[135] C. Gould, *Rethinking Democracy: Freedom and Social Competition in Politics, Economy, and Society* (New York: Cambridge University Press, 1988) at 208.

[136] B. Fields and W.-D. Narr, *supra* note 134.

among the participants.[137] It allows for consideration of the human rights issues of people in different stages of social, economic and political development. For example, the critical issue over which the struggle for Zimbabwean independence was fought by its freedom fighters from 1890 to 1980 was the right to self-determination; and thus was resisted by Rhodesian white settler farmers and soldiers who considered it a threat to the right to own property. Both rights are indeed fundamental human rights worth fighting for, but they had different priority ranks depending on the race of the freedom fighter and the settler farmers' racially based government.

The historical relationship between the modern state and human rights has been a basis for some severe problems and contradictions. First, the modern state is constituted by its geo-political borders. It thus often brutally separates people into citizens and foreigners, with the latter enjoying a much lower status than the former in terms of rights of participation and security.[138]

The treatment accorded by the United States during the 1980s to people fleeing persecution at the hands of the US-supported governments of El Salvador and Guatemala was extremely harsh compared with that accorded to people fleeing from Eastern Europe. This is a glaring example of how the treatment of refugees not only often involves human rights abuses by the country of origin but also by the receiving country.

The modern state claims a monopoly on the use of legitimate coercive power inside its borders and against any external aggression. From a human rights point of view this poses two problems. The first is that the modern state and its representatives tend to take the security of the state as the most important frame of reference for a wide range of policies. When people are convinced that they are in a condition of constant insecurity, and when the

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[137] *Ibid.*

[138] *Ibid.*, at 1.

state presents its main function as that of protecting them in the face of continuous threat, rights other than that of survival always go by the wayside in the name of national security.[139]

Conclusions

To the extent that the human being is naturally a social and political animal, human rights have universal applicability. But at the same time, human rights must be context-sensitive. We must start with a careful assessment of a specific situation in which an individual including ourselves as both participants and observers, or a group is involved. We must then examine the claims to freedom, social recognition, equal position, and integrity made within that context. Human rights must be based upon real human beings rooted in their social contexts.

Human rights need a decentralization that escapes the power of the state and the corporation at local levels. Thus, there must be dual struggles for democracy and rights at the local level and an institutional recognition of the global implications of these struggles at the international level. The basic goal of international human rights law, as Garcia-Amador has written,

> is to ensure the protection of the legitimate interests of the human person, irrespective of his nationality. Whether the person concerned is a citizen or an alien is then immaterial: human beings, as such, are under the direct

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[139] *Ibid.*

> protection of international law.[140]

International law today imposes an obligation on states to accord to aliens within their jurisdiction the equal protection of these basic rights. In this regard, the United Nations Charter, in force since 1945, states in Article 55 that one of the organization's purposes, *inter alia*,

> is to cooperate in promoting and encouraging universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

By Article 56,

> all member states pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

The term "pledge" in Article 56 has been interpreted to mean that member states have accepted an international obligation.[141] The principle of non-discrimination in the protection of human rights is also enshrined in the 1948 Charter of the Organization of American

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[140] G. Amador, "Violations of Human Rights and International Responsibility," in *International Protection of Human Rights*, L. Sohn and T. Buergenthal, eds., (Indianapolis: Bobbs-Merrill, 1973) at 132.

[141] For example, in its 1971 opinion on Namibia, the International Court of Justice ruled that the human rights provisions of the United Nations Charter are directly binding on member states. The court ruled that in order to determine whether the laws and decrees applied by South Africa in Namibia constitute a violation of the purposes and principles of the Charter of the United nations, the question of government discretion is not relevant; nor is it necessary to investigate or determine the effects of those measures upon the welfare of the inhabitants.

states.[142] Article 3(j) of Chapter 1 of the Charter states,

> The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex.

The preamble of the Universal Declaration, referring to the pledge of UN member states to promote universal respect for and observance of "human right and fundamental freedoms," states:

> Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, now, therefore, the General Assembly Proclaims this Universal Declaration of Human Rights.

The use of the words "a common understanding of these rights and freedoms" clearly suggests that this Declaration was intended to be declarative and to interpret the term "human rights and fundamental freedoms" stated in the U. N. Charter.[143]

Human rights are, therefore, prescriptive norms that emerge from and guide social forms and practices. They cannot be pulled out of the air or the mind of a thinker. They have to be rooted in socio-historical forms which come about as a result of the political character of human beings. Human beings must be recognized as full potentialities that are more or less realized within given societal forms. Those forms which are conducive to less prejudice, less discrimination, and fewer psychological insecurities are more conducive to human rights.

Finally, the concept of human rights stands for the demands that are made on the basis of

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[142] *Charter of the Organization of American States*, 2 U.S.T. 2394.

[143] The term "human rights and fundamental freedoms" appears in Article 55 of the *United Nations Charter.*

societal values, and focuses on the morally appropriate way of treating human beings either in their individual capacities or as members of social groups or collectivities. In this conception human rights are accorded to individuals or groups so that they can realize their self worth and dignity, and organize society in ways that these goals are both effectuated and respected.

CHAPTER 3

THE RIGHTS OF REFUGEES

Internationally, the rights of refugees are protected by two distinct and co-existing regimes, namely, the refugee-specific rights regime, based on the *1951 Convention*, and the general international human rights law regime, comprising a large range of specialized universal accords and regional human rights regimes of Europe, Africa and the Americas. A comparison of refugee law and human rights law reveals a number of rights unique to each regime.[144]

The Refugee-Specific Rights Regime

A logical starting point in this relationship is to review the purpose and historical context of the *1951 Convention*. Prior to the development of international human rights law in the post Second World War period, traditional international law was exclusively a "law of nations" rather than a "law of people." A wrong committed by a state against an alien was interpreted as a wrong against the alien's state of nationality. The alien had no individual rights that could be enforced against the host state.[145] The position of the refugee was therefore particularly precarious because, lacking a state of nationality to represent their cause, they were without protection. Therefore the approach embodied in the *1951 Convention* can legitimately be considered progressive in international law. To place the *1951 Convention* in context it should be remembered that, at the time of its drafting, the only comprehensive standard for international human rights law was the *Universal Declaration*,[146]

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[144] J. C. Hathaway and J. A. Dent, *Refugee Rights: Report on a Comparative Survey* (Toronto:York Lanes Press, 1995) at 43.

[145] R.B. Lillich, *supra* note 4.

[146] *Supra* note 1.

an unenforceable statement of human aspirations. For the first time the individual became clearly a subject of international law and the holder of an extended range of human rights.[147] The Refugee Convention has accumulated, and will continue to accumulate a potent symbolic value. It embodies a moral obligation which many states subscribe to, albeit imperfectly.

The *1951 Convention* sets minimum standards for the treatment of refugees, immediately accessible and contained in one document specifically addressing the particular vulnerability of refugees. It embodies a moral obligation which states subscribe to, albeit often imperfectly. It addresses unique dilemmas relating to personal status, naturalization, illegal entry, the need for travel and other identity documents, and especially the threats of expulsion and refoulement.[148]

What is curious about the *1951 Convention*, however, is its silence on basic civil rights: the right to life, liberty, and security of person, to protection from slavery, torture, and arbitrary arrest, detention or imprisonment, the right to equal protection before the law, and the right to freedom of thought, opinion and expression.[149] The right to family re-unification is not formally guaranteed by the *1951Convention* but is included only at the level of a non-binding resolution in the drafting conference's Final Act.[150] This exclusion of critical civil rights puts into question the intent of the drafters. Did they intend the Convention to be operational

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[147] R.B. Lillich, *supra* note 4.

[148] See W. Kalin, "Just Another Brick in the Wall? A Swiss Report on the use of Computerized Texual Elements in Substantiating Negative Asylum Decisions" (1989) 1(1) International Journal of Refugee Law, at 83.

[149] See B. Chimni, "International Academy of Comparative Law" National Report for India, (1994) at 16-19.

[150] See the analysis of T. Einarsen, "The European Convention on Human Rights and the Notion of an Implied Right to *de facto* Asylum" 2 (3) (1990) International Journal of Refugee Law at 47.

within general human rights law and therefore that all other non refugee-specific rights would be protected by that regime? The impact of the *Convention* on the political level could be described as latent or indirect, to the effect that the very existence of international obligations[give rise] to a general legislative attitude in favor of living up to the standards. Beyond that type of effect, the 1951 Convention could most certainly be interpreted as a purposeful weakening or even abolishment of the international protection of refugees, hence jeopardizing also national protection arrangements specifically aimed at this group of aliens.[151]

The most important rationale for a refugee-specific rights regime is as a vehicle for codification of a more extensive range of rights guaranteed than those foreseen by conventional human rights law. As the Denmark Report noted,

> specific protection needs, deriving from the absence of availability of national state protection of their (refugees) basic human rights, can presumably be reflected only by the continued existence of some form of specific international system.[152]

A criticism of the *1951 Convention* regime is the changing nature of the refugee phenomenon since its enactment. Whereas the delegates at the Conference of Plenipotentiaries in 1951 were concerned with refugees of racial and religious minorities in Europe, and dissidents from communist countries, the 1990s refugees flee from the poorer nations of the south and present a range of needs different from those of the stereotypical refugees of the Cold War era.[153] The Convention's continuing emphasis on race, religion, nationality, membership in a particular social group or political opinion fails to address the current problems of physical security and the fulfillment of basic survival needs in the context of large-scale refugee

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[151] See J. Vedsted-Hansen, International Academy of Comparative Law, National Report for Denmark, (1995) at 15-16.

[152] *Ibid.*

[153] For example the European refugees for whom the Convention was drafted were considered to be primarily in need of legal protection rather than material assistance.

influxes.

The *1951 Convention* has a Eurocentric bias which is evidenced by the insistence that states assimilate and resettle refugees.[154] The expectation that poor states permanently absorb massive numbers of refugees currently enjoying asylum in their territories is impractical, unnecessary, and potentially destructive of communal rights to self-determination.[155] For the majority of developing countries who have difficulties meeting needs of their own citizens, the *1951 Convention* rights regime is too expensive and therefore impractical and unattainable. This requirement also does not take into consideration the reality of refugeehood - for a refugee the best and most permanent solution is to return to his/her homeland.

There is a conflict between the right to freedom of movement in the 1951 Convention (Article 26) nd security concerns, particularly where mobility may facilitate the involvement of refugees in armed activities against their country of origin, thereby exposing the host country's population to the risk of attack from the armed forces of the refugees' country of origin.[156] In response to security concerns, countries of asylum have confined refugees to camps. While Article 26 of the *1951 Convention* makes no allowance for such restrictions of movement, the exemptions of EXCOM Conclusion No. 22,[157] which applies to the

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[154] Article 34 of the Convention provides that "...Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every possible effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

[155] S. Nkiwane, *The Legal Condition of Refugees in Zimbabwe: A Report Prepared for the International Academy of Comparative Law*, Harare, Zimbabwe, September 15, 1993. The report for Zimbabwe considers the Convention's integration bias to be inappropriate for African host countries.

[156] *Ibid.*, at 18.

[157] EXCOM Conclusion No. 22 applies to temporary asylum policies for mass influxes of asylum-seekers, pending a durable solution.

temporary asylum policies for mass influxes of asylum seekers, pending a durable solution, may reflect the beginnings of an attempt to attenuate the *1951 Convention*'s rigidity in recognition of legitimate state concerns.

Another problem of the *1951 Convention* is that it maintains a relativist standard of treatment for refugees, which bases the needs of refugees on the needs of other foreigners or nationals in the receiving country rather than on the specific needs of the refugees only.[158] The provisions of the convention dealing with the rights of refugees are loosely drafted to the minimum standard, with provisos appealing to individual states to apply to a higher standard if they choose. Efforts to provide guidelines such as in the *UNHCR Handbook* have not improved the situation because interpretation has been marginal, seeking only not to breach the *1951 Convention*, while in effect undermining its spirit for the protection of a vulnerable group of people.[159]

The categorization of refugees as part of the immigrant community is unacceptable because it loses sight of the absence of choice in the case of refugees. Subjecting them to the requirements of immigration law at the ports of entry undermines the spirit of the *1951 Convention*. Its individualistic approach does not translate easily into the actual protection of big numbers. The experience of many developing countries in Africa, Asia and South America is that as hosts they have to deal with large influxes of refugees.[160]

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[158] See Articles 12 - 24 of the *1951 Convention*. See also M. K. Addo, *The Legal Status of Refugees in the United Kingdom, A Report prepared for the XIVth Congress of International Academy of Comparative Law*, (Athens: 1994) at 13.

[159] *R v. Secretary of State for the Home Department ex parte Sivakumaran* (1988) 1 AC 958, illustrates this point. When six Sri Lankan Tamils sought asylum in the U.K alleging persecution because of their race, the Home Secretary argued that their fear was unjustified, contrary to the intervention and counsel of the UNHCR. See also *R v. Secretary for the Home Department ex parte Diaby* (1993) QB.

[160] E. Khiddu-Makubuya, *The Legal Condition of Refugees: The Uganda Case* (Kampala, Uganda: Faculty of Law, Makerere University, 1993) at 19. Uganda's history as a host country has been that it has had to deal with big influxes of refugees from Rwanda and

The other real difficulty relates to the need to reconcile the *1951 Convention* approach with the national interest of a host country. Real protection can only be provided within available means. The reality facing a majority of developing countries, is that they have limited resources[161] and must cope with the majority of the world's refugees. They are not, for the most part, able to provide the same standard as the developed countries in the north. It is objectionable that the standard set by countries of the north for themselves, when faced with a different set of circumstances, is still the yardstick by which developing countries are measured.

The *1951 Convention* does not provide a specific remedy or catalogue of procedural and substantive rights for refugees whose status is denied. This omission may be due to an oversight or it could be a deliberate decision to emphasize the Convention's scope as limited to refugees whose status is confirmed. An argument that this group of refugees is not entitled to any rights crumbles in the face of provisions such as Article 32(2) of the *1951 Convention* which confers rights of due process on refugees who are to be expelled; and this provision may credibly be interpreted to cover the fate of refugees whose status is denied by the receiving state. Rights of refugees whose status is denied by the receiving state are also emphasized in procedural agreements such as the Conclusions of the UNHCR Executive Committee[162] and the Recommendations of the Committee of Ministers of the Council of Europe.[163] Both envisage rights of appeal and due process for refugees whose status is denied by the receiving state.[164]

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the Sudan.

[161] *Ibid.*

[162] Conclusion 8 (XXVIII) on the Determination of Refugee Status (1977) (see Appendix J).

[163] Recommendation R (81) on the Harmonization of National Procedures Relating to Asylum.

[164] Addo, *supra* note 158 at 13.

Thus, the logical question is: why do refugees not simply benefit from the more fulsome domestic human rights regime of a receiver state, taking into account the norms of the International Bill of Human Rights? There are strong and viable arguments to suggest the contrary.

PART TWO

PROTECTION MECHANISMS

In the post Second World War period, a major objective of the United Nations has been the design of mechanisms to ensure that the ideals of the Universal Declaration of Human Rights can be enforceable. The early steps toward this objective were taken with the promulgation of the *International Covenant on Civil and Political Rights*[165] (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights*[166] (ICESCR). The two instruments establish a variety of supervisory mechanisms including inter-state complaints and individual and group petition procedures. The implementation mechanisms for the existing system of protecting the human rights of refugees are broadly divisible into four:

1. the constituent instruments of the principal international agencies charged with the protection of refugees

2. regional and multilateral conventions binding states to accord to refugees as defined therein, certain rights and standards of treatment or, in the human rights domain, to assure certain rights to all persons within their territory

3. the rules and standards of general or customary international law regulating relations between states, thus contributing to solutions

4. national legislation or implementation.[167]

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[165] *Supra* note 33.

[166] *Supra* note 34.

[167] G. Goodwin-Gill, *supra* note 21 at 156.

CHAPTER 4

INTERNATIONAL PROTECTION MECHANISMS

Human rights violations can be brought to the attention of the United Nations in a number of ways: first, through public debate in organs such as the Commission on Human Rights, in which governments and non-governmental organizations (NGO) may seek audience; second, the circulation of written statements in the Commission, even though, in the NGOs' case, as opposed to governments, there are many restrictions; and third, the thematic or country rapporteur or working groups currently in existence that may look at the human rights problems falling within their mandate in any country.[168] Such thematic procedures currently exist for arbitrary and summary executions, torture, enforced and involuntary disappearances, religious intolerance, and the use of mercenaries, amongst others.

On the United Nations General Assembly[169] agenda, human rights items originate in reports of the Economic and Social Council (ECOSOC).[170] Under Article 62(1) and (2) of the *United Nations Charter*, "ECOSOC may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." ECOSOC, composed of fifty four (54)[171] members, holds two regular sessions each year. Human rights items are usually referred to ECOSOC's Second(Social) Committee, (which is a "sessional" committee on which the full membership are represented), although some items are dealt with in the plenary meetings without reference to a committee. The reports

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[168] B.G. Ramcharan, "Strategies for the Protection of Human Rights in the 1990s" (1991) 13 Human Rights Quarterly, at 156.

[169] Under Article 13(1a) of the *Charter*, the General Assembly is responsible for the codification of international law.

[170] Under its protection or supervision, the Economic and Social Council (ECOSOC - Article 60) is authorized to pursue human rights activities.

[171] *Supra* note 169 at Article 62(1).

of the Social Committee, which contain draft resolutions and draft decisions, are submitted to the ECOSOC for consideration and final action in plenary sessions. In 1946, the Economic and Social Council established the Commission on Human Rights.[172]

The Commission on Human Rights

One of the most lasting contributions of the *United Nations Charter* has been the establishment of the Commission on Human Rights (the Commission) which is provided for in Article 62. At the recommendation of the General Assembly, ECOSOC authorized the Commission to create the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.

The Commission under its mandate undertakes studies, prepares recommendations and drafts international human rights instruments. It also accepts special tasks assigned by the General Assembly or the ECOSOC, including the investigation of allegations concerning violation of human rights and the handling of communications relating to such violations. The Commission also co-operates closely with all other United Nations bodies having competence in the field of human rights and assists ECOSOC in the co-ordination of human rights activities in the United Nations.

During its first session the Commission on Human Rights, approved by the Economic and Social Council in its resolution 75(V) of August 5 1947, recognized that it had no power to take any action in regard to any complaints concerning human rights. Nevertheless, a progressive evolution led to the adoption by ECOSOC of its resolution 1503 (XLVIII) of 27 May 1970.[173]

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[172] *Ibid.*, Article 68.

[173] M.J. Bossuyt, "The Development of Special Procedures of the United Nations Commission on Human Rights" (1985) 6 Human Rights Law Journal, at 181.

The 1503 Procedure

By this resolution a confidential procedure was established for the examination of human rights communications. The Secretariat prepares a summary of each communication received by the United Nations and sends a copy to the government concerned, with a request for a reply. Summaries of the communications are transmitted to members of the Sub-Commission and the Commission.[174]

Once a year, a Working Group, composed of five members of the Sub-Commission designated by their respective geo-political groups, meets for two weeks before the session of the Sub-Commission to decide, on the basis of the communications summarized in the monthly lists, whether there exists in a given country "a consistent pattern of gross and reliably attested violations of human rights." The decision to forward communications to the Sub-Commission has to be taken by a majority of the members of the working group. Communications which are not transmitted to the Sub-Commission by a minimum of three members are no longer considered for forwarding to the Commission for onward transmission to the Economic and Social Council. At the point of non-transmission the procedure loses its confidential nature.[175]

Being confidential, the 1503 procedure has all the advantages of established procedure, consisting of successive steps taken by the organs involved. A progressive adoption of these steps, which individually are considered to constitute sanctions, may induce the government concerned to accept a dialogue with the United Nations agency involved. Before reaching the level of the Commission, the governments concerned are invited to present written

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[174] *Ibid.*

[175] *Ibid.*, at 182.

replies. At the level of the Commission they are also invited to participate in the discussion of the human rights situation in their country. At every level of the procedure it may be assumed that the cooperation shown by the government concerned in replying to these invitations will generally dispose the agency involved favorably, and eventually increase the chances of that government escaping further review. Whatever the agency may be, it is quite probable that cooperation will be appreciated and neglect resented.[176]

Everything which induces a government to cooperate is particularly important because the efficacy of United Nations procedures depends on the measure of dialogue which can be established between the United Nations and a government. The procedure is useful as a means of putting pressure on the country concerned. Keeping a communication pending at the level of the Sub-Commission can be effective for inducing a government to start a dialogue with the United Nations, rather than forwarding the communication to the Commission, where it can be rejected as soon as it gets there.

The main usefulness of the procedure is twofold: a) confronting the human rights situations in a given country within the framework of the confidential procedure may facilitate the Commission's eventual decision to deal with it in public session. As will be demonstrated below, most "country oriented" (public) procedures have been preceded by a decision of the Sub-Commission to forward communications to them by a decision within the framework of the confidential procedure; b) situations in countries neglected by world public opinion can be brought to the attention of the Sub-Commission - and eventually the Commission - within the framework of the confidential procedure. It is highly unlikely that these organs would ever address themselves to these situations if there was no such procedure.

The confidential nature of the 1503 procedure is often criticized. It is, however, not without justification that the communications are kept confidential at the initial phase of the

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[176] *Ibid.*

procedure, and that discussions of the Working Group of the Sub-Commission on those communications are held in closed sessions. After all, the pre-trial inquiry and the deliberations of judges in any judicial trial are generally also confidential. Nevertheless, the emphasis on confidentiality in the 1503 procedure is grossly exaggerated. The decisions of the Sub-Commission taken with respect to communications forwarded by the Working Group can be made public at the end of the closed meetings. If the Commission was able to establish such a practice beginning in 1978, there is absolutely no reason why the Sub-Commission should not be able to adopt exactly the same practice.

The possible effects of the 1503 procedure are often minimized because of its confidential nature. However, one should be aware of the limits of the confidentiality of the procedure. As a matter of fact, with the exception of the deliberations of the Sub-Commission's Working Group on communications, which are really secret, not only the 26 independent experts of the Sub-Commission but also the 43 Governments which comprise the constantly renewed Commission know exactly what happens under the confidential procedure. Consequently, all decision makers in the United Nations in the field of human rights are aware of the available information on the human rights situation in the countries concerned.

This fact can be quite embarrassing to the governments concerned, particularly when they are invited to explain themselves before the Commission. There is no doubt that a continuous review of the human rights situation in a country progressively erodes its human rights reputation at the United Nations.

The confidential procedure probably suffers more from its inability to react immediately on urgent information, and from the difficulty of breaking through the majority requirements of the Sub-Commission's Working Group on communications, than from its confidential nature.

The 1235 Procedure

Economic and Social Council resolution 1235 (XLII) of 6 June 1967 established the procedure by which the Commission holds an annual public debate focusing on gross violations of human rights. Within the framework of the public procedure, the members of the Commission and the Sub-Commission can, during a debate in public session, refer to violations of human rights in any part of the world. This procedure may lead to the adoption of resolutions and, in exceptional cases, to the establishment of special procedures. There has been a genuine breakthrough with these procedures since 1975.

Article 34 specifies that the Security Council investigates disputes which might give rise to international conflict. On occasion the Trusteeship Council (Article 87) and the International Court of Justice have decided human rights questions. The Secretariat is designated as a key human rights actor in the Charter (Article 97-99).

However, since the adoption of ECOSOC - resolution 1503(XLVIII) of 27 May 1970, a tremendous development has taken place in the form of new public procedures. Particularly the "thematic" procedures, which grew out of the "country oriented" procedures --- to which development the confidential procedure contributed substantially --- could decrease somewhat the importance of the confidential procedure. The "thematic" or country working group and special rapporteurs can act much more swiftly than the agencies involved in the confidential procedure.

The fact-finding mission and publication of reports by NGOs is an invaluable contribution to the protection of human rights. Often, these organizations are the only ones that are able to expose situations of gross violations of human rights. NGOs unearth human rights violations and then look for the United Nations and the regional organizations such as the OAU, the OAS, or the Council of Europe, to act upon the information to combat human rights violations.

The individual complaints procedures available, under the Optional Protocol to the

International Covenant on Civil and Political Rights, and the Convention Against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination, offer useful avenues for providing individual redress in cases of breaches of the provisions of their respective treaties.[177] The International Covenant on Civil and Political Rights established procedures under which individuals or groups may, if the state concerned has expressly consented to such procedures, file complaints. However they fall short of adequate response mechanisms, as a system that is able to anticipate and prevent violations, act to bring violations to an abrupt stop, and to promote remedy and compensation where possible.

United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees (UNHCR), was established by the General Assembly as of 1 January 1951, by the adoption of the Statute of the United Nations High Commissioner for Refugees, as an annex to Resolution 428(V) to provide international protection to refugees. The Statute's authority is only moral and advisory. It is not binding upon states and entails no legal sanctions.

Notwithstanding, governments are called upon to co-operate with the Office in providing international protection and seeking permanent solutions to the problems of refugees by way of voluntary repatriation and assimilation into new communities.[178] The Statute expressly provides that the "work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate to groups and categories of refugees."

The UNHCR Statute also spells out the relationship of the High Commissioner with the General Assembly and the Economic and Social Council (ECOSOC). Under the authority

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[177] B.G. Ramcharan, *supra* note 168, at 157.

[178] UNHCR Statute, *supra* note 11 paragraph 1.

of the General Assembly the UNHCR shall follow policy directives of either the General Assembly[179] itself, or of ECOSOC.[180] The High Commissioner is required to report to the General Assembly through ECOSOC. The High Commissioner may request the opinion of the advisory committee on refugees should the need arise.[181]

These instruments are first jurisdictional, in the sense that UNHCR's interest is refugee specific, and second, functional or pragmatic, in the sense that ways and means must be found for modeling UNHCR's contribution to accord with its non-political and humanitarian mandate, and to fit within existing mechanisms of investigation and adjudication.

Limitations of the Statute of the United Nations High Commissioner for Refugees

There are significant limitations on the effectiveness of the UNHCR. The most significant limitations are with respect to jurisdictional and functional operations in the sense that the UNHCR must model its contributions so as to accord with its non-political and humanitarian mandate, while at the same time keeping within existing mechanisms of investigation and protection.

A potential country of refuge is under no obligation to permit the UNHCR to operate within its territory. UNHCR is not a supra-national nor a sovereign body. It can only operate within an actual or potential host, if the host consents to its presence. UNHCR's inability to establish an international presence, even in refugee facilities that it funds, dramatically identifies a fundamental weakness in international protection that goes beyond the issue of attacks on refugees. UNHCR can pressure, persuade and embarrass governments into giving

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[179] *Ibid.*, paragraph 3.

[180] *Ibid.*, paragraph 4.

[181] *Ibid.*, paragraph 4. ECOSOC is empowered to establish an advisory committee, for the purpose of consultation with the High Commissioner.

it access to refugee groups in need of protection and assistance, but it cannot demand access. If governments wish to deny the existence of refugees or admit their existence but deny access, UNHCR is virtually helpless. It can plan, prepare, alert, and protest, but it cannot act within a sanctuary without an invitation from the government.[182]

The international human rights regime has considerable limitations on the protection it can afford to refugees. It is not specifically designed for the protection of refugees, and any protection refugees may derive is coincidental.[183] They cannot be advised or expected to depend entirely on this manner of protection.

The current arrangements for international protection do not meet the requisite standards of intercession necessary for a prompt, adequate and effective international protection system, because the Secretary General's response is conditioned upon complex political responsibilities.[184]

There is nevertheless plenty of scope for effective co-operation with human rights organizations that have a specific role in particular contexts, such as the International Committee of Red Cross. Human rights concerns frequently present a commonality of

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[182] See also R. Winter, *The Karens of Burma: Thailand's Other Refugees* (Washington D. C.: United States Committee for Refugees Issue Brief, 1993).

[183] In the United Kingdom, for instance, international human rights law treaties are not considered binding unless they have been incorporated into municipal law. The courts have occasionally resorted to these treaties in the event of uncertainties and ambiguities in United Kingdom law but the political institutions have been known to ignore the ECHR completely. In the case of *R v. Secretary of State for the Home Department ex parte Fernandez* the courts held that the Home Secretary had not acted improperly when he refused to stay a deportation order pending the hearing of the applicant's petition before the European Commission on Human Rights.

[184] B.G. Ramcharan, *supra* note 168 at 157.

interest which can be exploited to the advantage of the refugee.[185]

UNHCR's competence in Africa has been recognized to extend to refugees who have fled owing to external aggression, occupation, foreign domination or events seriously disturbing public order. This is confirmed in the practice of states and has been explicitly endorsed in Article I(2) of the 1969 OAU Convention.[186]

UNHCR's mandate in Central America is of similar dimensions. This was confirmed in the 1984 Cartagena Declaration, which includes as refugees those who have fled because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that seriously disturb public order.[187]

There is a disjuncture between the obligations of states and the competence and the responsibility of UNHCR. It is most clearly apparent with respect to refugees other than those with a well founded fear of persecution or who come within regional arrangements, but who are nevertheless of concern to UNHCR.[188]

The *1951 Convention* Relating to the Status of Refugees

The Convention defined the standards of treatment to be accorded to refugees by those states ratifying the international instrument. Thus responsibility for the refugees was transferred from countries of origin to the ratifying states. There were no specific provisions as to how the High Commissioner could, or should, promote voluntary repatriation, but there were

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[185] G. Goodwin-Gill, *supra* note 104 at 156.

[186] *Supra* note 86.

[187] *Ibid.*

[188] *Ibid.*

detailed provisions about how external settlement should be promoted.[189]

The Convention has, and continues to serve, a good purpose in providing broad and firm guidelines as to the human entitlements of refugees. It, however, lacks an effective mechanism to enforce the terms of Article 33. The Convention provides that disputes between parties to the Convention may be referred to the International Court of Justice. Article 38 goes on to elaborate as follows:

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

Although it is theoretically possible that a signatory could sue another signatory for violating Article 33, by sending a refugee back to a land in which his life or freedom would be threatened, in reality this has yet to happen. Each signatory is reluctant to criticize other signatories for fear that its own refugee practices might be criticized. An individual refugee has no standing before the International Court of Justice (ICJ).

The International Court of Justice will consider presiding over a dispute if it generates a significant amount of hostility and ill-will. It is unlikely that practices that adversely affect an "insignificant" refugee will generate sufficient interest and concern to trigger a formal proceeding before this forum. More importantly, when problems of refugee populations cause friction between nations, diplomatic pressure and negotiation are more effective ways of resolving the dispute, than litigation. The informal methods are effective but they disregard the interests of refugees as individual human beings and focus on the interests of the states. Therefore, although the rejection of refugees at the border, that is countenanced by new laws in most of Europe violates Article 33, this is unlikely to be curtailed by any

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[189] For an examination of the development of the Office of the UNHCR see G. Coles, *Solutions to the Problem of Refugees and the Protection of Refugees: A Background Study* (Geneva: UNHCR, 1989) at 74-85.

international adjudication pursuant to the *1951 Convention*.[190]

Assessed in terms of its contribution to enforceability, the failure to include in the *1951 Convention* any mechanisms to scrutinize compliance with stipulated rights contrasts unfavorably with the usual inclusion of at least a periodic reporting and review mechanism in most international human rights conventions. While a periodic reporting system might reasonably have been constructed in reliance on the *1951 Convention*'s Article 35(2),[191] no steps have in fact been taken to subject implementation of the *1951 Convention* to a formal process of interstate scrutiny. Whereas the fact that an extraordinarily high number of states have acceded to the *1951 Convention* would otherwise bode well for its potential efficacy as a vehicle for the promotion of refugee rights, this lack of an effective enforcement mechanism remains problematic.

The Weaknesses of the International Human Rights System

Governments are the main violators of human rights, but paradoxically also the best placed for guaranteeing respect for human rights. Many procedures, particularly those available to the United Nations Commission on Human Rights, depend mainly on member governments to become properly operational. Certainly Non-Governmental Organizations play an essential role. They generally provide the indispensable information on human rights

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[190] M. Fullarton, "Restricting the Flow of Asylum-Seekers in Belgium, Denmark, the Federal Republic of Germany, and the Netherlands: New Challenges to the Geneva Convention Relating to the Status of Refugees and the European Convention on Human Rights" (1988) 29 Virginia Journal of International Law at 105.

[191] Article 35(2) of the 1951 Refugee Convention provides: "In order to enable the Office of the High Commissioner or any other agency of the United nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning: (a) the condition of refugees; (b) the implementation of this Convention; and (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees."

violations and try to convince governments to take initiatives. But only governments may table resolutions in the UN Commission on Human Rights and only governments have voting rights. Governments are political organs and the Commission composed of 53 governments is eminently a political body. Politicization of human rights is an inherent weakness of the UN Commission's work. Human rights must be the driving force in government foreign and domestic policy and not happen perchance in the course of some political agenda.

Finally, the United Nations has no systematic review procedure for monitoring the state of human rights in each country and for informing itself about problems of violations taking place or expected. They depend on external sources to provide information, whereupon action may or may not ensue.

CHAPTER 5

THE ORGANIZATION OF AFRICAN UNITY

The African Charter on Human and Peoples' Rights[192] establishes a supervisory mechanism in which the African Commission on Human and Peoples' Rights plays a pivotal role.[193]

Machinery of Enforcement

Observance of the rights and duties guaranteed under the African Charter are to be ensured by two organs, namely the Assembly of Heads of State and the African Commission of Human and People's Rights.[194]

Communications from States

In the case of communications from states, the Charter envisages primary, amicable, bilateral settlements, through either negotiation or other peaceful methods of settlement of disputes. Article 47 requires a state having reasons to believe that another state party to the Charter is in breach of the provisions thereof to draw the attention of the transgressing state to the

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[192] Adopted on 27 June 1981 by the Assembly of Heads of State and Government of the Organization of African Unity (OAU). The Charter entered into force on 21 October 1986 and has been ratified by forty-one member countries.

[193] Article 45 of the African Charter grants a broad mandate to the Commission. Four functions may be distinguished: promotion, protection, interpretation of the Charter.

[194] O. Okere, "The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems" (1984) Human Rights Quarterly at 149.

matter in writing and also to address the same commission.[195] The offending state must give a written reply clarifying the matter within 3 months, including relevant information relating to the laws and rules of procedure applied and applicable, as well as addressing actions already taken or the course of action available.[196] Where the issue is not settled within three months through bilateral negotiation or by any other peaceful procedure, either state shall have the right to submit the matter to the Commission through the chairman and shall notify the other states involved (Article 48). Even without any attempt at amicable settlement, a state could refer a matter to the Commission (Article 49). The condition precedent to admissibility of the complaint is the exhaustion of local remedies, "unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged" (Article 50).

When the Commission receives a complaint, it is to adopt the following procedure: It notifies the state accused of being in violation of the Charter; it investigates the matter (Articles 51 and 52); it attempts amicable settlement; it writes up a detailed report; and it eventually transmits this report to the states concerned and to the Assembly of Heads of State and Government with its recommendations (Article 54). The report may finally be published by the chairman of the Commission, if the Assembly of Heads of Government so decides (Article 59).

The Charter's insistence on negotiation reflects the fact that most African states are not politically willing to expose themselves to the possibility of a legally binding judgment in the field of human rights. Thus, the Charter does not provide for the establishment of a court, even on an optional basis. The search for a mutually acceptable solution to a dispute also may be thought to be in keeping with some aspects of African tradition, which generally promotes conciliation rather than adjudication or those adversarial methods common to the

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[195] *Ibid.*, at 151.

[196] *Ibid.*

Anglo-Saxon legal tradition.[197]

Communications from Individuals and Groups

Human rights violation allegations against individuals or groups will be considered by the Commission when they satisfy the following conditions:

1. if they indicate their authors, even if anonymity is requested
2. if they are compatible with the Charter of the OAU or with the Human Rights Charter
3. if they are not written in disparaging or insulting language directed against the state concerned and its institutions or to the OAU
4. if they are not based exclusively on news disseminated through the mass media
5. if they are sent after exhausting local remedies
6. if they are submitted within a reasonable period from the time that local remedies are exhausted or from the date the commission is seized of the matter
7. if they do not deal with cases which have been settled by the states involved, in accordance with the principles of the Charter of the United Nations, the Charter of the O.A.U., or the provisions of the African Charter on Human and Peoples' Rights.

The Commission is also assigned the general responsibility to promote human and peoples' rights (Article 45). In particular, it has been assigned the function of collecting documents, undertaking studies and researching on African problems in the field of human and peoples' rights, organizing seminars, symposia, and conferences, disseminating information, encouraging national and local institutions concerned with human rights, and if the need arises giving opinions or making recommendations to governments.

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[197] C. Flinterman and E. Ankumah, "The African Charter on Human and Peoples' Rights" in *Guide to International Human Rights Practice* Hurst Hannum, ed. (Philadelphia: University of Pennsylvania Press, 1984) at 162.

Investigatory Powers

The African Commission also has investigatory powers. Article 46 of the Charter permits the Commission to "resort to any appropriate method of investigation," an open-ended authorization which is not limited by the immediately following reference to information from the Secretary General of the OAU "or any other person capable of enlightening it [the Commission]."[198]

However, as is the case in international mechanisms, the Charter itself places serious obstacles in the way of an activist Commission, which ultimately depends on political decisions by the OAU Assembly of Heads of States and Government for its authority.[199]

The Place of Human Rights in the OAU Charter

The protection of human rights is peripheral in the scheme of priorities of the OAU. Conceived principally as a political organization whose preoccupation is the unity of African states (its very name underlining the concern for unity), the OAU Charter recognizes protection of human rights only within the context of promoting African unity. Even though the Charter makes reference to and embodies some notion of human rights, it remains incontestably true that the focal point in the internal affairs of the organization are political unity, noninterference in the internal affairs of other states, and the liberation of African territories still under colonial domination.[200]

Although the preamble to the OAU Charter mentions the Universal Declaration of Human

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[198] *Ibid.*, at 161.

[199] This situation is similar to the ultimate authority of the Committee of Ministers of the Council of Europe and the Organization of American States in their respective regions, particularly before regional courts were established or their jurisdiction widely accepted.

[200] O. Okere, *supra* note 194 at 142.

Rights as containing the principles to which the state parties reaffirm their adherence and reaffirms "freedom, equality, justice and dignity as essential objectives for the achievement of the legitimate aspirations of the African peoples", in all spheres of human endeavour[201] these are expressions with more of a rhetorical than practical function.

The reality is that Africa is more concerned with consolidating political power and control of its governments than with recognizing and promoting rights and freedoms."[202] The leaders are jittery and hypersensitive to criticism. Media expressions are often appropriated as mouthpieces of the single ruling political party to eulogize an omniscient "messiah."[203]

African governments are reluctant to condemn human rights violations within the region, despite the confidential machinery created in the Charter.[204] Remedies for individual violations of human rights are essentially nonexistent, and the Commission's authority to investigate a non-state communication would seem to depend on the Assembly, once a preliminary determination has been made that a case appears to concern serious or massive violations of human rights.

Yet, the broad authority enjoyed by the Commission to receive information from any source, and its ability to attempt to influence states during the course of even a confidential investigation, should not be ignored. While it is unfortunate that an individual victim cannot force an adjudication of alleged violations, the African Commission does retain the potential for innovation and meaningful action. The most important aspect of any international human

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[201] *Ibid.*

[202] *Ibid.*, at 143.

[203] For example, Zambians, during Kenneth Kaunda's leadership (1964-1991), had to chant the slogan, "One Zambia, One Nation, One Nation, One Leader, That Leader, Kaunda. On earth, Kaunda, In heaven, Kaunda," in praise and idolization of the President.

[204] C. Flinterman and E. Ankumah, *supra* note 197 at 168.

rights system is its ability to make governments responsive to their own citizens.[205]

The Charter's Substantive Provisions

The African Charter contains a relatively large number of protected rights, but many are significantly weakened by the inclusion of "clawback" clauses, which appear to permit states to act with a great deal of discretion in limiting theoretically protected rights.[206]

The fragility of substantive rights guaranteed under the African Charter is underscored by the Charter's provisions on the individual's duties "towards his family and society, the state and other legally recognized communities and the international community," which are set forth in articles 27-29. Article 27(2) provides that an individual's right "shall be exercised with due regard to the rights of others, collective security, morality and common interest." Article 29 provides, *inter alia*, that each individual has the duty "to serve his national community by placing his physical and intellectual abilities at service;. . . .not to compromise the security of the State; . . . to preserve and strengthen social and national solidarity; . . . [and] to contribute to the promotion of the moral well being of the society."[207]

African states are still justifiably suspicious of their ex-colonial masters, because the tendency of western countries has been to condemn the practices in African states by western standards. They fear that potent implementation machinery would give the latter an undue advantage, which would be seized to perpetuate past injustices. The experts who would enforce the Covenant would be drawn from the ranks of their former rulers, since they would easily qualify as persons with recognized competence in the field of human rights. Ambassador Quaison-Sackey of Ghana expressed the fear quite frankly:

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[205] *Ibid.*, at 169.

[206] *Ibid.*, at 166.

[207] *Ibid.*

> What is more, we fear that any agreement on our part to a special group of experts would commit us in a large measure. Supposing the group came out advocating the partition of South West Africa - which we all oppose -what will be the position of African states in regard to such a recommendation?[208]

The human rights mechanisms are much less accessible to refugees. Africa is beset by overwhelming economic and social problems and massive political disruptions. These conditions contribute to making Africa the major refugee producing continent.

One increasing problem concerns people who are displaced from their traditional homes as a result of drought, famine, civil war or state policy. African refugee law says nothing about this situation, the closest phrase being in Article 1 of the OAU Convention, namely ". . .events seriously disturbing public order. . . ." However, because such persons are not forced to ". . .seek refuge in another place outside(their) country of origin . . .," they do not qualify for the Convention description of the term "refugee," despite the fact that the UNHCR has (through its "good offices" mandate) endeavored to assist such internally displaced refugees in any way possible, even while clearly recognizing the political problems thereby invited.[209]

"Economic" Migrants and "Illegal" Aliens

African refugee law, as is the case universally, does not recognize persons who leave their countries of origin solely on the grounds that the economic situation is unbearable. This denies the fact of the close linkage between the achievement of economic and social rights

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[208] This is precisely what happened in 1957 when the U.N. Good Offices Committee (consisting of U.S.A., Great Britain and Brazil) deliberated on South West Africa. The Committee was appointed under General Assembly Resolution 1143 XII. For the report of the Committee see A/3900 of 1958. Latif O. Adegbite, "African Attitudes to the International Protection of Human Rights" in *International Protection of Human Rights (Proceedings of the Seventh Nobel Symposium, Oslo, September 25-27, 1967)*, A. Eide and A. Schou, eds. at 74.

[209] J. Oloka-Onyango, "Human Rights, The OAU Convention and the Refugee Crisis in Africa: Forty Years After Geneva"(1991) 3 International Journal of Refugee Law at 458.

on the one hand, and the respect for political and civil rights on the other.

Given the nature of dictatorships that exist on the African continent, there is no denying the fact that the two are inextricably linked. Africa's economic crisis is as much political as anything else. A clear example is that of the Ethiopians, facing a combination of civil war, hunger and famine. The Somalis are nomadic business people. Faced with no avenues in which to channel their wares on account of war, they simply moved out. It is quite possible that their motives were more closely related to the loss of livelihood than to the prevailing hostilities. The intransigence of refugee law on this matter is clearly not justifiable in all cases and at all times, especially when the social and economic ramifications of political measures become all the more apparent. This is especially evident today, as "structural adjustment" policies produce adverse social and economic effects[210] and a human rights record is made the yardstick in qualifying for economic aid.

African Refugee Policy

Although a good number of African countries have ratified the OAU and Geneva Conventions, and the *1967 Protocol*, few have adjusted their domestic legal regimes to reflect these international standards, nor in practice do they adhere to the provisions of these instruments. Many refugees can stay in a country for several years and never be allowed rights and liberties of the ordinary citizen. To cap it all, there is no monitoring mechanism established by the OAU , save for the Bureau for Refugees, that can effectively pursue the matter of adherence to the principles of the Convention, or indeed monitor the laws and practices of member States in this regard.[211]

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[210] *Ibid.*, at 459.

[211] *Ibid.*

The Traditional Solutions

The OAU Convention upholds the three traditional solutions to the refugee problem, namely: voluntary repatriation, integration or naturalization, and resettlement in a third country. Voluntary repatriation is not very effective because it depends largely on the political goodwill of the government in power. It thus relates directly to the democratic question and its attendant issues. Integration and naturalization may solve issues of ethnic and social tension, yet foster xenophobic feelings and deep resentment. Resettlement in a third country only applies in fact to a small proportion of Africa's refugees, who are mainly rural in origin, unskilled and uneducated.[212]

All governments must be urged to reform their domestic legal regimes to reflect the traditional principle of generosity enshrined in the OAU Convention. More importantly, governments must be prevailed upon to give refugees, however temporary their asylum, the legal recognition that is guaranteed to any other person within their jurisdiction. It is important to separate the refugee issue from the question of immigration, and to seek solutions based on universal respect for human rights.[213]

The ultimate success of this Charter rests with the African States themselves, and one can only hope that they are, in the words of the Charter's Preamble, "firmly convinced of their duty to provide and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa."[214]

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[212] *Ibid.*

[213] *Ibid.*, at 460.

[214] C. Flinterman and E. Ankumah, *supra* note 197 at 169.

CHAPTER 6

THE EUROPEAN HUMAN RIGHTS PROTECTION MECHANISMS

In response to the human atrocities and extent of human suffering at the hands of a sovereign state before and during the Second World War, the Council of Europe sought to foster greater unity among member states by the maintenance and further realization of human rights and fundamental freedoms. The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter called the European Convention or the ECHR) was signed in 1950 in Rome and came into effect on 3rd September 1953.[215] The ECHR attempts to protect the basic civil rights of all people within the jurisdiction of signatory states.

To ensure the observance and effective implementation of the European Convention, the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe were established and mandated to receive and adjudicate disputes from contracting states and from individuals on the violation of their rights.

The Protection Machinery

The European Commission of Human Rights is a quasi-judicial body composed of a number of members equal to the number of parties to the Convention,[216] elected for a period of six

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[215] The Convention is now in force, varying in degrees in all 26 member countries of the Council of Europe. It is held as a standard of achievement in tis own right of a unified Europe.

[216] D. Shelton, "The Inter-American Human Rights System" in *Guide to International Human Rights Practice*, Hurst Hannum, ed., (Philadelphia: University of Pennsylvania Press, 1992) at 136.

years. Any violation of the Convention alleged to have been committed by a contracting state may be referred to the Commission.

According to Article 25(1),

> The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation by one of the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions.

The most important requirement is that the applicant be "a victim", direct or indirect. As such the Commission will not entertain an *in abstracto* application or an *actio popularis*. The alleged violation must be of a right protected under the Convention.

The right of individual application, which is the basis of the collective guarantee of the rights, set forth in the Convention may be exercised only against those states which have accepted the competence of this Commission to receive such applications. Indeed 25 of the 26 contracting states have lodged an optional declaration allowing an individual petition.[217] Suffice it to mention here that the Convention does not create a criterion which excludes any person within the jurisdictions of contracting states. The Commission meeting *in camera*[218] examines the admissibility of an application, according to the guidelines for admissibility of all applications.[219] The Commission's opinions are not legally binding on the state parties. The Commission may refer a case to the Court, whose decisions are binding, and participates in the proceedings before the European Court.[220] Acceptance of the jurisdiction of the Court is optional under Article 46 of the Convention, but all parties have made the declarations

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[217] Poland is the only contracting state not yet accepting the right of individual petition.

[218] Article 33.

[219] Articles 26 and 27(3).

[220] D. Shelton, *supra* note 216 at 137.

necessary to accept the Court's jurisdiction. The European Court of Human Rights consists of a number of judges equal to the number of states of the Council of Europe. The judges serve in their individual capacities and not as governmental representatives. The Court's judgments are final and legally binding. They are declaratory in nature but the Court has no power to quash decisions of national courts or authorities. However, it may, and often does, award "just satisfaction" or financial compensation to those whose rights have been violated.

The Committee of Ministers

The Committee of Ministers is the political and executive arm of the Council of Europe and acts as the ultimate guarantor of human rights under the Convention. Its members serve as governmental representatives of the member states. If a case is not referred to the Court, the Committee of Ministers may decide whether there has been a violation of the Convention. The Committee of Ministers is responsible for supervising the execution of the Court's judgment. It can require a state to take measures to remedy a violation, but its ultimate sanction is to suspend or expel a state from the Council of Europe. However, there is no record of an expulsion from the Council.

Important as the individual complaint procedure has proved, however, it would be wrong to conclude that the state has somehow been supplanted by the Convention's international machinery. The cooperation of states remains crucial to the success of the European Convention system, and the functioning of the Convention machinery reflects a concern to encourage cooperation and ensure that signatory states retain confidence in the Convention and its agencies. The emphasis on consultation with governments during the handling of complaints, the obligation to seek a friendly settlement, and the confidentiality of the proceedings are features of which an applicant needs to be aware.[221]

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[221] *Ibid.*

It should also be stressed that the Convention is a procedure of last resort, subsidiary to national protection. It provides a system of 'outer protection' for the traditional range of civil and political freedoms which, by and large, are already protected under the legal systems of the participating states. The most frequent reason for rejecting complaints is that the applicant has no grounds for invoking international remedies, given the protection secured or available under domestic law.[222]

The European Community

In view of the lack of a human rights mandate for the Community, the Community institutions seem not to be concerned with the right to seek and enjoy asylum as such. The only concern is the harmonization of the asylum policy of EC member states in the view of the abolition of internal frontiers.[223] It is nevertheless important to note that the EC, unlike the European Convention on Human Rights and most international law, has a direct effect in EC member countries and prevails over any inconsistent domestic law. In general, individuals cannot bring an action directly in the European Court of Justice but must commence proceedings concerning the interpretation of the Treaty of Rome. This can be referred to the European Court of Justice for a preliminary ruling under Article 177 of the *Treaty of Rome*.[224]

The European Parliament

The European Parliament is the directly elected "legislature" of the Economic Community, although its powers are more advisory and supervisory. The Parliament has a Human Rights

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[222] *Ibid.*

[223] M. Conley, "The Institutional Framework of Refugeee Law and Political Forces" in *Human Rights in the Twenty-First Century: A Global Challenge*, Katheleen and Paul Mahoney, eds., (Boston: M. Nijhoff, 1993) at 637.

[224] D. Shelton, *supra* note 216 at 153.

Sub-Committee, whose mandate is to consider human rights concerns globally. It is an important forum for NGOs to consider as a channel for communicating reports and concerns about violations of human rights anywhere in the world. The Sub-Committee adopts resolutions and can contribute to other pressures on non-EC governments to cease human rights abuses the world. There is no requirement to exhaust domestic remedies, and there is no procedure to determine admissibility. It also has the competence to request the Commission of the European Community to bring an action against the offending member state under Article 169 of the *Treaty of Rome*. There seems to be an overlap with the individual petition procedure under the European Convention on Human Rights. Cases which concern rights protected under the European Convention should probably be dealt with under that machinery. Nevertheless, for rights that fall outside the scope of the European Convention, the potential of the European Parliament's petition procedure should not be ignored.[225]

The Protection of Refugees

The European Parliament has utilized the human rights approach for dealing with the right of asylum and the rights of refugees. It has taken as a starting point the international human rights instruments and pointed out what is needed to effectively institute the right to seek and enjoy asylum.

Refugee policy has been inextricably linked to the Community's mandate with regard to the protection of human rights. To link this position with the question of refugees, the European Commission presented a proposal for a directive on the coordination of rules on the right to asylum and refugee status. A resolution presented to the European Parliament in March, 1987 stipulated that

> all measures adopted in regard to the right of asylum must take as their starting point respect for human dignity, the Convention on Human Rights of

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[225] *Supra* note 223.

> the Council of Europe, the United Nations Declaration on Human Rights and guidelines adopted by the by the European Parliament on the drawing up of a European policy on human rights.[226]

The main principles in the European Parliament's resolution were:

(1) strict respect of the principle of *non-refoulement* and non-discrimination of those asylum seekers who appeared at frontiers without visas

(2) visa requirements should not make it impossible for people to seek refuge from their own countries

(3) applications for asylum should be dealt with thoroughly and rapidly with procedural safeguards and with legal assistance and under strict observance of the relevant international instruments

(4) the applicant must be free to choose the country of asylum in the EC and the chosen country will have sole responsibility for granting asylum

(5) a refusal to grant asylum should be duly motivated in writing and must be ultimately the subject of independent judicial review and appeal, with suspensive effect

(6) recognized refugees in the EC should have the same rights and obligations as Community citizens from other member states.[227]

In addition, the Council of Europe adopted Recommendation No. R (84)1 on the protection of persons satisfying the criteria in the Geneva Convention who are not formally recognized as refugees.[228] The recommendation calls for the scrupulous application of the non-refoulement clause so that no

> person should be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling

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[226] M. Conley, *supra* note 223 at 636.

[227] *Ibid.*

[228] Council of Europe, Committee of Ministers, Recommendation No. R(84)1 on the Protection of Persons Satisfying the Criteria in the Geneva Convention who are not Formally Recognized as Refugees, 25 January 1984.

> him to return to, or remain in, a territory where he has a well-founded fear of persecution.[229]

The European Convention does not contain any explicit reference to refugees or asylum seekers. It does not even guarantee the right to enter one's own country. However it contains provisions that potentially provide protection for refugees if read in the spirit of the Universal Declaration of Human Rights.

Einarsen[230] finds that the ECHR allows for the development and a refinement of certain safeguards in asylum cases which are already inherent in the jurisprudence established in Strasbourg, and that it is actually capable of filling some of the gaps left by the *1951 Convention* Relating to the Status of Refugees.

Article 3 of the European Convention provides that,

> "No one shall be subjected to torture or inhuman or degrading treatment or punishment."

There is significant case law in the application of Article 3. In the case of *X v. Federal Republic of Germany*,[231] the European Convention clearly embraced the principle that a decision to deport, extradite or expel an individual can give rise to a question under Article 3, if the applicant might be subjected to torture or inhuman treatment in the receiving state.

In *Altun v. Federal Republic of Germany*,[232] the applicant, a Turkish citizen, had applied for political asylum in Germany, contending that he would be at risk of ill treatment and torture

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[229] *Ibid.*

[230] T. Einarsen, *supra* note 150 at 362.

[231] Application N0. 1462/62, 5 *Yearbook of the ECHR*, at 256-261. Although this principle was upheld in this case. the application was declared inadmissable as manifestly ill-founded in accordance with Article 27(2).

[232] Application No. 10 308/83, Stocktaking on the ECHR Supplement 1984 (1985), at 45-7.

in Turkey. The application was declared admissible by the Commission with respect to the question, whether deportation would constitute inhuman and degrading treatment within the meaning of Article 3.[233]

In the landmark case of *Soaring v. United Kingdom*,[234] the issue was whether Article 3 can be applicable when the adverse consequences of extradition are, or may be, suffered outside the jurisdiction of the extraditing state, as a result of treatment or punishment administered in the receiving state.[235] It was accepted that, if convicted in the State of Virginia, the applicant might be sentenced to death and face six to eight years on "death row".[236] In the Court's view,

> having regard to the very long period of time spent on the death row in such extreme conditions, with the ever present and daunting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offense, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3.[237]

The United Kingdom, for its part, argued that Article 3 should not be interpreted so as to impose responsibility on a contracting state for acts which occur outside its jurisdiction. They argued that extradition does not involve the responsibility of the extraditing state for inhuman or degrading treatment or punishment which the extradited person may suffer outside the state's jurisdiction. In their view, to hold that surrendering a fugitive criminal the extraditing state has "subjected" him to treatment or punishment that he will receive following conviction and sentence in the receiving state would be straining the language of

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[233] See Einarsen, *supra* note 150 at 365.

[234] (1/1989/161/217), Judgement of the European Court of Human Rights.

[235] *Ibid.*, paragraph 85.

[236] See Einarsen, *supra* note 150 at 366.

[237] *Supra* note 225, paragraph 111.

Article 3.[238]

Addressing, the British arguments, the plenary Court stressed that in interpreting the Convention,

> regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms... .Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that the provisions be interpreted and applied so as to make its safeguards practical and effective.[239]

Article 3 is an absolute prohibition of torture and of inhuman or degrading treatment or punishment.[240]

The Court also argued that the European Convention is a living statement which must be interpreted "in light of present-day conditions; and in assessing whether a given treatment or punishment is within the meaning of Article 3, the Court cannot but be influenced by the developments and commonly accepted standards of the member states of the Council of Europe."[241] There is thus an *implied right* to freedom from exposure to torture or to inhuman treatment or punishment in the receiving state under the Convention, a right which might be applicable in asylum or deportation cases as well as extradition.

Compared to the principle of *non-refoulement* laid down in Article 33 of the *1951 Convention*, there is no doubt Article 3 of the ECHR can be triggered, whether or not the applicant's life or freedom would be threatened for reasons of "race. religion, nationality, membership of a particular social group or political opinion." By comparison subjective fear is a condition for recognition as a "refugee" under Article 1 of the *1951 Convention*, although

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[238] *Ibid.*, paragraphs 87 and 88.

[239] *Ibid.*, paragraph 83.

[240] *Ibid.*, paragraph 88.

[241] *Ibid.*, paragraph 102.

it may not be taken into account when assessing whether a fear of persecution is "well-founded". The same is presumably true with respect to Article 33 of the *1951 Convention*; whether "life or freedom would be threatened" upon return has to be assessed on the basis of objective circumstances only.

To establish the likelihood of inhuman and degrading treatment, the Court in the *Soaring* case held that,

> Therefore if the foreseeable consequences are very serious, even a small risk can be significant and thus "real."

The Court also addressed the problem of "indirect *refoulement*". Each contracting state to the European Convention has an independent responsibility to "secure to everyone within their jurisdiction the rights and freedoms" of the Convention. With respect to Article 3, that must imply a duty for each contracting state to consider whether a real risk of exposure to ill-treatment is a foreseeable consequence of any act of deportation. The same reasoning applies to the principle of non-refoulement. In the case of *R v. Secretary of State for the Home Department, ex parte Bugdacay*,[242] the House of Lords stated,

> [If] a person arriving in the United Kingdom from country A sought asylum as a refugee from country B, assuming he could establish a well-founded fear of persecution there, it would, it seems to me, be as much a breach of Article 33 of the Convention to return him to country B.

In some circumstances discrimination may be so serious as to constitute, in itself, degrading treatment within the meaning of Article 3. The Commission in the *East African Asian*[243] cases considered that the racial discrimination, to which the applicants had been publicly subjected by the application of the immigration legislation, constituted an interference with their human dignity which in the special circumstances amounted to "degrading treatment"

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[242] *R v. Secretary of State for the Home Department, ex parte Bugdacay*, (1987) AC 514.

[243] 3 E.H.R.R. 1981, at 77-103. The Comission concluded by a six to three vote that Article 3 had been violated.

in the sense of Article 3 of the Convention.

Deportation from a contracting state may also be contrary to Article 3 if there is no safe third country willing to accept that non-citizen on a more permanent basis and any likelihood of successive deportations. In *Dolani's*[244] case the Commission found that Dolani's continuous expulsions from one country to another might raise a question under Article 3.

In conclusion, even though the jurisprudence is still scarce, human rights grounds might provide an alternative basis for protection against the immediate enforcement of a deportation order in Europe.

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[244] Application 5399/72; Stocktaking 1984, at 233.

The Right to an Effective Remedy

The European Convention, in Article 13 guarantees "everyone whose rights and freedoms as set forth in this Convention, [the] right to an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." Hence, so far as it is claimed, Article 13 can be applicable to the protection of refugees. The present state of the law is summarized by the European Court in the 1988 case, Plattform "Ärzte für das Leben."

> Under its case law, Article 13 secures an effective remedy before a national "authority" to anyone [including refugees] claiming on arguable grounds to be the victim of a violation of his rights and freedoms as protected in the Convention; any other interpretation would render it meaningless.

In *Boyle v. Rice*[245] the Commission explained that even a less than *prima facie* case under Article 3 at the time when the case arises at the national level, can trigger the right to an effective remedy. In the words of the Commission: a *prima facie* case, in the sense of Article 13, is established if the issue "merits further examination."[246]

The Commission confirmed one necessary element in the powers of the national authority, that is, that a remedy is only effective if it "can render a binding decision granting redress."[247] Thus the principle of an effective remedy for alleged or potential violations of the rights and freedoms protected by the Convention has been established.

Under Article 13, the internal logic of the Convention provides an argument in favor of

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[245] Judgement of 27 April, 1988, Series a, no. 131, at 21.

[246] *Ibid.*, at 23.

[247] Vol. 28, Ser. A, at 30. On the question of the meaning of "effective remedy" some guidance can be found in the case of *Klass*. The authority referred to in Article 13 may not necessarily in all circumstances be a juridical authority in the strict sense. Nevertheless, the powers and procedural guarantees an authority possesses are relevant in determining whether the remedy before it is effective. See also the case of *Silver*, Vol. 61, Ser. A.

extended procedural safeguards whenever an arguable claim is raised under Article 3. Thus, in the *Soaring* case, the applicant claimed that judicial review before the courts, although available, was too narrow in scope to allow for proper consideration of the issues under Article 3. It was argued that

> the required remedies can hardly be said to be "effective" within the meaning of Article 13 if the State authorities are not prepared to grant suspensive effect.

In this line of reasoning, the applicant has a legitimate interest in remaining in the respondent State until the Convention issues have been re-examined by a proper national authority.

Taken together, the provisions of Article 3 and Article 13, give meaning and context to the notion of implied rights to *de facto* asylum under the ECHR. However, despite the existence of such implied rights to *de facto* asylum, there is a divergence between "book law" and "law in action." Despite the numbers of individuals denied asylum in European countries, the Commission has received relatively few applications. Several factors may help to explain this.

First, those asylum-seekers denied entry have generally been sent away so quickly that there was neither time nor legal assistance available to file claims with the European Human Rights Commission. Secondly, those asylum-seekers who have been permitted to enter but are subsequently expelled, although under less pressure than those denied entry at the border, often find that procedures are cumbersome and onerous; under Article 26 of the Convention, all effective domestic remedies must be exhausted before filing a claim before the Commission. Third, and perhaps most important, many refugee advocates and lawyers are unaware that the ECHR provides protection to asylum-seekers and are often totally unfamiliar with the whole Strasbourg system.

However, because refugee and asylum policies are such highly politicized issues, it is likely that if an asylum case should appear before it, the Commission would consider the

consequences of stricter scrutiny of national practices. The governments might claim that if asylum-seekers are guaranteed rights, and if Strasbourg interferes, this would leave the doors to Europe open for an uncontrolled invasion from the Third World. This "danger" is vastly exaggerated.

An important question is the role that general human rights instruments can and ought to play with regard to the protection of asylum-seekers and refugees. The ECHR helps to show how an international human rights instrument even without expressly stated asylum rights, might provide better protection than a specialized instrument lacking enforcement mechanisms. This could have practical implications for the role of human rights instruments in the field of refugee and immigration law.

In Strasbourg the onus to establish the danger of ill treatment in a receiving state is on the applicant. As a result few asylum-seekers have successfully claimed protection under Article 3. This requirement, therefore, renders the implied right to freedom from exposure to ill treatment in receiving states somewhat illusory.

Organization for Security and Co-Operation

The Organization for Security and Co-Operation (OSCE)[248] in Europe was created in early 1970. Under the name of the Conference on Security and Co-Operation in Europe, (CSCE), it was called upon to serve as multilateral forum for dialogue and negotiation between East and West. The first meeting of the CSCE led to the adoption of the Helsinki Final Act in 1975, which concerns respect for human rights and fundamental freedoms, including freedom of movement, thought, conscience, religion and belief. The CSCE included all the European states, the United States of America, Canada and the Soviet Union. Since 1991,

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[248] The development of the security situation in Europe in the 1990s has led to a fundamental change in the CSCE. Reflecting this change, the 1994 Budapest Summit changed its name to OSCE.

Albania and the independent states that were recognized following the dissolution of the Soviet Union and Yugoslavia also joined the CSCE.[249]

After Helsinki, the CSCE was a diplomatic process, with flexible structures and short term schedules made. The process was able to approach issues in a comprehensive way because it could focus on a specific issue's unique needs. Of particular importance was the linkage of human rights to general security and co-operation. The CSCE established that a country systematically violating the fundamental liberties of its own citizens could not be internationally trusted and should even be considered as a potential threat to other countries.[250]

In 1989, a "Human Dimension Mechanism" was created to give greater political legitimacy to the ability of a state to raise with another state an individual case or situation concerning human rights through diplomatic channels. This mechanism requires any state which receives such a representation or request to reply in writing not later than ten days after the request. If this does not resolve the matter, the complaining state can ask for a bilateral meeting to discuss the case, to take place as soon as possible and as a rule within one week of the date of request. The complaining state also may bring the matter to the attention of the other CSCE states through diplomatic channels, and may refer any matter not resolved bilaterally to the next meeting of the CSCE.[251]

At the September 1991 meeting in Moscow of the Conference on Human Dimension, it was decided that a "resource list" of at least four or five experts would be appointed, with three experts selected by each state. These experts may be invited by a state to undertake a

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[249] The total membership of the OSCE is now 55

[250] D. Matas, *No More: The Battle Against Human Rights Violations* (Toronto: Dundurn Press, 1994), Chapter 7, 72 - 82.

[251] *Ibid.*

mission to that state to "facilitate resolution of a particular question or problem relating to the human dimension of the CSCE." In addition there is an interstate mechanism upon the request of six CSCE states or by any ten CSCE states on their own initiative, in order to "establish the facts, report on them and ... give advice on possible solutions to the question raised." The intention is that such missions will be entitled to make an on-site visit to the state concerned without that state's specific consent. This mechanism was invoked with great success in the imprisonment of Vaclav Havel in Czechoslovakia and over "systemization" in Romania.[252]

As a diplomatic procedure open only to states, the mechanism may be of only marginal utility to individuals and non-governmental organizations in attempting to redress human rights abuses. The striking feature of the Helsinki process, which was largely responsible for its success, was that there were absolutely no formal mechanisms. The whole process was a process of intergovernmental meetings, each meeting deciding when the next would be. Non-governmental organizations are the implementation arm of human rights instruments.

The CSCE had no permanent secretariat until 1991, when three small offices were established in Prague, Vienna and Warsaw.[253] Further impetus and possibilities for concerted action within the CSCE framework were outlined in the new Helsinki Document of July 1992. It established a number of practical tools to strengthen the CSCE's contribution to the protection of human rights and management of the unprecedented change under way in Europe. It declared the CSCE a regional arrangement in the sense of Chapter VIII of the United Nations Charter. In particular, it called for an ambitious role for the CSCE in early warning, conflict prevention and crisis management. A newly created High Commissioner on National Minorities was tasked with responding, at the earliest possible stage, to ethnic tensions that have the potential to develop into a conflict within the region.

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[252] *Ibid.*

[253] *Ibid.*

In December 1993, a new body, the Permanent Committee (since December 1994 the Permanent Council), was established in Vienna, significantly expanding the possibilities for political consultation, dialogue and decision-making on a weekly basis. Determined to give the CSCE new political impetus at the 1994 Budapest Summit, CSCE was renamed to OSCE and declared the primary instrument for early warning , conflict management and crisis management. The document also called for a discussion within the OSCE on a model of common and comprehensive security based on CSCE principles and commitments.

The 1995 Ministerial Council Meeting in Budapest approved for the OSCE to fulfil new challenging tasks put before it under the Dayton Agreement on Peace in Bosnia and Herzegovina.

The European Social Charter

There also exists the European Social Charter[254] (entered into force in 1965) which was designed as the counter part of the European Convention on Human Rights in the field of social and economic rights. The European Social Charter is not supervised, nor is it possible for an individual to complain about a breach of a state's obligations.[255]

European Responses to the Plight of Refugees

European countries have sought solutions through political consultations directed towards negative measures, aiming to limit the number of asylum-seekers reaching Europe which, by and large, are in total disregard of both the European Convention and the *1951 Convention*. For instance visa requirements are imposed and penalties are levied on carriers for taking undocumented passengers, and stricter scrutiny of asylum applications includes the restrictive

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[254] *European Social Charter*, 529 U.N.T.S. 89, entered into force February, 26 1965.

[255] D. Shelton, *supra* note 216, at 153.

approach to interpretation and application of the definition of a refugee by administrative bodies and courts. A comparative analysis of European policies towards 'refugees' illustrates the divergent interests of states in the protection of refugees. This lack of agreement causes tension with the UNHCR.

The interpretation of "safe-return" varies considerably between countries. The Swiss delegation to the European Consultation on Refugees and Exiles reported that the Swiss government argued for the return of all rejected asylum-seekers "if their situation in their country of origin would not be worse than that of people already there."[256] The discussion on a safe return implies a shift from determining whether certain groups are *de facto* refugees and require protection, towards the question of whether a safe return can be guaranteed. But the views adopted by Switzerland and Germany indicate a broad interpretation of "safe" return, potentially violating Article 3 of the European Convention.

In Austria a new asylum law entered into force on June 1, 1992. It provides for accelerated processing of asylum applications from Hungary, Poland, Romania and the former Yugoslavia and for making a clear distinction between asylum seekers and intended immigrants. The provision which permits asylum rejection of "obviously unfounded" cases, requiring that the applicant leave Austrian territory immediately with no possibility of appeal, has come under criticism by some human rights advocates.[257] Austrian authorities also imposed visa requirements on nationals of Romania, Bulgaria, and Turkey in 1990 and on nationals of Serbs, Kosovars, Montenegrins and Macedonians in 1992, and later that year

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[256] "European Consultation on Refugees and Exiles," meeting report, 10 March 1987, as cited by J. Cels, "Responses of European States to *de facto* Refugees" in *Refugees and International Relations*, G. Loescher and L. Monahan, eds., (Oxford: Oxford University Press, 1989) at 209.

[257] The Secretary General of the Austrian Section of Amnesty International said, the effect of the new law would be to render Austria "a country without refugees." USCR, *World Refugee Survey 1993* (1993), at 112.

Bosnians were included on the list.[258]

Denmark is a party to the Dublin Convention under which any asylum seekers who have arrived in Denmark via another safe country will be returned directly to that country.

Hungary, in acceding to the 1951 United Nations Convention on refugees and its 1967 Protocol. Under Hungarian law, asylum seekers from outside Europe have no legal status. Hungary deports to their country of origin asylum seekers who are determined by UNHCR in Budapest not to face persecution or physical danger upon return.[259]

Italy has through the 1992 Boniver Decree modified its 1990 "Martelli Law." The modifications serve to widen the gamut of convictions for crimes which would lead to expulsion and to speed up the process of deporting aliens arrested for committing a crime. This new legislation also distinguishes between "clandestine" and "irregular" aliens. The Martelli law gave legal authority to reject asylum seekers at the border, if they had previously stayed in third countries that were signatories to the UN Refugee Convention. It made persons who entered Italy surreptitiously or with tourist visas ineligible for asylum.[260] Italy is also party to the Dublin Convention and the Schengen Supplementary Agreement according to which a duty to protect by one of the member states must be established before a claim can be made.

Switzerland received less refugees between 1992 and 1994 than at any other time.[261] This drop is attributed to the restrictive measures introduced at the beginning of 1988. The Verfahren laws of 1988 subjected undocumented asylum seekers to accelerated procedures,

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[258] *Ibid.*

[259] *Ibid.*, at 129.

[260] *Ibid.*, at 129.

[261] *Ibid.* In 1993 the number dropped to 17,960 from 41,629 in 1991.

limited the right to work, shortened the period of appeal, and instituted a return to the "first country of asylum." Switzerland's failure to develop legal instruments regulating state behavior towards *de facto* refugees has been a consequence of the unwillingness of states to agree to additional obligations, the conflicting interests among states, and the absence of political commitment.

UNHCR has strongly criticized the governments, arguing that in cases of large influxes of asylum-seekers it might "be necessary to find an intermediate solution for the group as a whole, for example by regularizing the situation of the refugees on a temporary basis until individual screening can be carried out, or by resorting from the outset to a so-called *prima facie* group determination of refugee status."[262]

Governments have responded by criticizing UNHCR for showing a lack of understanding of the "political ramifications of maintaining traditional refugee policies, which implies that the advice of the Office should not be of such a nature that it leads to confrontations between the Office and individual governments when judging whether a particular ethnic or religious group, as a group could be considered at risk of persecution."[263]
Government frustration with UNHCR's attitude follows from its claim that these persons are of concern to the Office, as reflected in the various General Assembly resolutions. But states have viewed this practice as "the international agency taking over the Sovereign State's function of deciding whether or not asylum outside the Convention should be granted and the general effect is twofold, namely that the normal (and proper) functions of immigration control are inhibited and the effective limitation of the refugee definition in the *1951*

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[262] *Ibid.*

[263] Statement by Jonas Widgren, Under-Secretary of State, Swedish Ministry of Labour, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, *Responsibility for Examining an Asylum Request, Report of Seminar held in Lund, Sweden, 24-26 April 1985* at 28.

Convention is de facto, enlarged."[264]

Conclusion

Europe is in a historic process of change, one reinforced by the political transformations in eastern Europe beginning in 1989, the unification of Germany, and the dissolution of the USSR and Yugoslavia at the end of 1991. The political and economic re-integration of Eastern European countries into "Europe" creates substantial challenges and possibilities for increasing the degree of human rights protection available to all Europeans, not least at the national level.[265]

The well-developed procedure of the European Convention on Human Rights has long been cited as a model for other human rights mechanisms, although the relatively limited substantive scope of the European Convention has been criticized. As the Council of Europe, the European Community, the Commission on Security and Cooperation in Europe, and other institutions vie for influence in the "new" Europe, it is hoped that effective measures to protect the entire range of human rights will be included in any proposals for reorganization or revision.[266]

The only safe prediction is that the protection of the rights of refugees will remain a constant challenge for whatever international structures are finally established.[267] The most hopeful scenario, and perhaps the most likely, is one in which the various European institutions which can contribute to the protection of human rights evolve a strategy of cooperation and complementarity, rather than indulging in competitive jurisdictional disputes. Different

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[264] *Ibid.*, at 23.

[265] D. Shelton, *supra* note 216, at 156.

[266] *Ibid.*

[267] *Ibid.*, at 157.

kinds of rights may well demand different means of supervision and implementation, and one can envision a future in which the goal of new or restructured institutions is to promote rights as effectively as possible, in cooperation with national governments.[268]

[268] *Ibid.*

CHAPTER 7

THE AMERICAS PROTECTION MECHANISMS

Organization of American States Protection Mechanisms

The Inter-American Commission on Human Rights is the principal agency created under the Charter of the Organization of American States (OAS) to promote the observance and protection of human rights and serve as a consultant to the OAS on human rights matters.

The Rights Protected and State Obligations

The OAS Charter contains few references to human rights, although there are provisions specifically devoted to representative democracy, human rights and equality, economic rights, and the right to education.

The American Declaration of the Rights and Duties of Man[269] and the American Convention on Human Rights[270] protect primarily civil and political rights, although the Convention defines them in more detail. The Declaration also addresses numerous economic, social and cultural rights, such as rights to property, culture, work, health, education, leisure time, and social security. Only the first of these rights is guaranteed by the Convention, although Article 26 of the Convention does call for progressive measures by states to achieve "full realization of the rights implicit in the economic, social, education, scientific, and cultural

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[269] Organization of American States Resolution, XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev. 1 at 17 (1992).

[270] Organisation of American States, Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978 reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."[271]

US Immigration and Refugee Legislation

Although the United States of America has helped to draft and has ratified the United Nations and the Organization of American States charters, supported and voted for the Universal and Inter-American Human Rights Declarations, and has been the leading mouth-piece for human rights around the world, the United States has one of the worst records in the world for ratification of international rights agreements.[272]

The Refugee Act of 1980[273] is the most significant legislative measure the Congress has undertaken to date to bring this country's law into conformity with basic international law principles in the refugee area.[274] Section 201(a) of the Act amends section 101(a) of the Immigration and Nationality Act by adding a new paragraph which defines the term "refugee" in language virtually identical to that used in Article 1 of the *1951 Convention.* By so doing, Congress has directly incorporated an international definitional standard into U.S. law which should help reduce, in theory, the likelihood that determinations of refugee status under the Act will be inconsistent with this accepted international standard. However,

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[271] *Ibid.* Article 26 of the *American Convention on Human Rights.*

[272] For a discussion of the U.S. record in ratification of international human-rights agreements, see R. B. Lillich ed. *U.S. Ratification of the Human Rights Treaties With or Without Reservations?* (Charlottesville: University Press of Virginia, 1981).

[273] Pub. L. No. 96-212, 94 Statute. 102 (1980) (codified in 8 U.S.C. SS 1101-1254).

[274] Senator Edward Kennedy, the original sponsor of the Act, had this to say: "This Act gives statutory meaning to our national commitment to human rights and humanitarian concerns-which are not now reflected in our immigration law." Report of the Senate Judiciary Committee, Review of U.S. Refugee Settlement Programs and Policies 80 (1980) (text of the "Conference Report and Analysis of the Refugee Act of 1980" transmitted to the President).

the 1980 Act indicates that, in connection with the admission of refugees of "special humanitarian concern to the United States," the attorney general may not waive sections 212(a) (27), (29) and (33) of the Immigration and Naturalization Act "with respect to such an alien for humanitarian purposes, to assure family unity, or when it otherwise would be in the public interest."[275]

In other words, whether or not an alien is "of special humanitarian concern" to this country may depend on his ideology. Indeed it is arguable that the ideological exclusion of aliens, who otherwise would qualify for refugee status under section 201 of the Act, constitutes a violation of the *1951 Convention* and 1967 Protocol, on the ground that such exclusion is discriminatory and inconsistent with the object and purpose of the two documents.[276]

The 1980 Refugee Act adopted the *1951 Convention* definition of "refugee". Determination of how the United States has chosen to interpret the *1951 Convention* definition involves examining judicial review of refugee decision. Courts, especially the Supreme Court, have chosen to interpret the *1951 Convention* restrictively, thereby providing the executive branch with legal authority to limit the obligations under the *1951 Convention.*

1. Well-Founded Fear

The UNHCR Handbook elaborates a two-part test - subjective and objective - for judging when a fear proves "well-founded."[277] United States courts have generally followed this pattern of evaluating the fear of a potential refugee.[278] Subjectively, the applicant must

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[275] Sections 101(a), 207(c)(3) of the Refugee Act of 1980.

[276] Goldman and Martin, "International Legal Standards Relating to the Rights of Aliens and Refugees and the United States Immigration Law" (1989) Human Rights Quarterly at 323.

[277] *UNHCR Handbook, supra* note 68, Sections 37-38.

[278] See *Cuadras v. INS.* 910 F.2d 567 (9 Cir. 1990); *Balazoski v. INS.* 932 F.2d 638 (7th Cir. 1991); *Ravindran v. INS* 976 F.2d 754 (1st Cir. 1992); *Huaman-Cornelio v. BIA.*

demonstrate a genuine fear of persecution, which brings claims of credibility into question Although in the large majority of cases courts find enough of a subjective fear to require a complete consideration of the objectivity of the fear, if courts doubt the genuineness of the fear, they will deny the application without bothering to make a detailed evaluation of the objective merits of the case.[279] Objectively, the applicant must present specific facts which can prove that a reasonable person in the applicant's position would fear persecution.[280]

2. **Persecution**

The UNHCR Handbook states that the *1951 Convention* envisioned that a threat to life or freedom" or "other serious violations of human rights" would amount to persecution.[281] United States courts have preferred to examine the problem more narrowly in the context of individual cases, holding that short-term detention which fell short of significant curtailment of life or freedom did not constitute persecution;[282] Also, punishment for crime will not amount to persecution unless the punishment flowed from an "improper governmental motive."[283]

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979 F.2d 995 (4th Cir. 1992); *Alsheweikh v. INS.* 990 F.2d 1025 (8th Cir. 1993).

[279] See *Rodriguez-Rivera v. INS*, 848 F.2d 998, 1000 (9th Cir. 1988) (Salvadorian who lived in El Salvador 6 months later than time of alleged persecution); *Aharez-Flores v. INS.* 909 F.2d 1, 5 (1st Cir. 1990) (Salvadoran who lived in El Salvador 4 years after time of alleged persecution); *Castillo v. INS*, 951 F.2d 1147 (9th Cir. 1991) (Nicaraguan who lived in Nicaragua 5 1/2 years after time of alleged persecution); These cases indicate that the subjective test of well-founded fear has more vitality than some analysts have suggested. For arguments for a purely objective standard, See Grahl-Madsen, *supra* note 35 and Hathaway, supra note 17 at 65-67.

[280] *Matter of Mogharrabi*, Dec. 439 (BIA 1981)

[281] *UNHCR Handbook, supra* note 68, at 51.

[282] *Zalena v. INS.* 916 F2d 1247, 1260 (7th Cir. 1990) (detention for short time with no mistreatment is not necessarily persecution).

[283] See *Mabugah v. INS.* 937 F.2d 426, 429 (9th Cir. 1991), where a Filippino faced charges initiated by the Marcos regime of misappropriating corporation funds to a political party. The court ruled that since the Aquino government had continued the prosecution, the

The United States Supreme Court has suggested that persecution would represent a "seemingly broader concept" than "life or freedom."[284] Generally, however, courts have required a substantial degree of harm before they have classified the harm as 'persecution'. For instance, economic deprivation will constitute persecution only if it resulted from a governmental act specifically aimed at the person or group and the deprivation sharply curtails the ability to earn a livelihood.[285] And, although various groups may be persecuted, if the government has the will and the ability to protect an individual, harm inflicted by another group will not constitute "persecution."[286]

An examination of recent case law reveals that courts have indeed applied this "narrow, grudging construction" in cases involving all five enumerated grounds. One court held that as long as a government cooperates with members of other races and nationality the court would presume that the government punishes members of a particular minority race or nationality for legitimate reasons and thus has not persecuted an individual applicant on account of race or nationality.[287] Regarding religion, if a government has the will and capability to prosecute groups that persecute people on the basis of religion, the persecuted

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prosecution in all likelihood stemmed from no improper motive. Enforcement of military conscription will not qualify either unless the enforcement becomes "disproportionately severe" or the conscription requested proves "contrary to the basic rules of human conduct."

[284] *INS v. Stevic* 467 U.S. 407, 428 n.22 (1984).

[285] See *Desir v. Ilchert*, 840 F,2d 723, 727 (9th Cir. 1988) (Haitian driven into hiding by threats on life severely impaired in ability to earn livelihood and persecuted); *Zalega v. INS*, 916 F.2d 1257, 1260 (7th Cir. 1990) (Pole fired by government and restricted from acquiring more land could still earn substantially the same living and insufficiently deprived for persecution).

[286] *Adebisi v. INS*, 952 F.2d 910, 913-14 (5th Cir. 1992).

[287] *Matter of T*, interim Decision No. 3187 (BIA 1992) (Tamil in Sri Lanka not subject to persecution on account of ethnicity because the Sri Lankan government cooperated militarily and politically with other Tamil groups.

people cannot claim refugee status.[288] Similarly, if the government persecutes but has non-religious motivations for its actions, a more liberal court ruling will not find persecution on account of religion.[289] Courts have interpreted particular social group rather narrowly, and rejected most claims to membership in a particular social group.[290] Finally, the Supreme Court in *INS v. Elias-Zacharias*[291] decision exhibits the narrow interpretation now given to "political opinion." The final effect is that the stricter scrutiny of whether persecution occurred on account of one of the five enumerated categories does not illustrate any lack of compliance with the *1951 Convention* definition on the part of the United States, but it defeats the spirit of the *1951 Convention*.

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[288] *Elnager v.INS*, 930 F.2d 784 (9th Cir. 1991) (Christian in Egypt not subject to persecution on account of religion because government did not persecute on account of religion, would provide an adequate remedy for any harm, and would protect him from radical groups who would persecute him on account of religion).

[289] *Matter of R*, Interim Decision No. 3195 (BIA 1992) (Sikh in Punjab region of India persecuted by policemen to obtain names of members of guerrilla group, so not persecuted on account of religious beliefs); But see *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992) (since Iranian religious law prescribes death for belief in Christianity, Christian subject to religious persecution despite "low profile" of belief).

[290] For examples of sub-populations ruled not to constitute a "particular social group," see *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1577 (9th Cir. 1986) (young working-class urban males); *Arriaga-Barrientos v. INS*, 925 F.2d 1177, 1180 (9th Cir. 1991) (military membership).

[291] *INS v. Elias-Zacharias*, 112 Supreme Court, 812 (1992). The case involved an 18 year-old Guatemalan who was asked by armed, uniformed and masked guerillas to join their forces and had refused. When they promised to return, he fled, fearing either persecution by the guerillas for refusing to join or retaliation by the government if he di join the guerillas. After he had left, the guerillas did in fact returned to his home on two occasions to look for him.

The language of Article 1[292] and Article 33[293] of the *1951 Convention* logically implies that a person who reaches the United States border must have a claim for asylum and *non-refoulement* and therefore the United States cannot evade its duty by not individually hearing asylum claims of people at its borders.[294] However, with the large numbers of people reaching the border and requesting asylum,[295] the United States has resorted to the questionable practices of mass pre-judgment of refugee and asylum claims and routine detention of asylum seekers.[296] The United States chose to prejudge groups of applicants in order to expeditiously evaluate the merits of a claim of refugee status and return those judged to have insufficient evidence of persecution or risk of persecution.[297]

3. Detention of Asylum Seekers

Article 31 of the *1951 Convention* requires that countries not detain asylum seekers unless investigatory purposes or a chance of disappearance or harm to public order compels

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[292] Because the term "refugee" applies to a person, not a group, under Article 1, determinations of refugee status would have to evaluate individual cases, not group cases. See *1951 Convention*, *supra* note 12 at Article 1.

[293] Returning groups of people without individualized determination would risk return of legitimate individual refugees; a person becomes a refugee upon satisfying the definition, not when a state recognizes the refugee. See *1951 Convention*, *supra* note 12, at Article 33; "Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee." *UNHCR Handbook*, *supra* note 68, at 156.

[294] Goodwin-Gill, *supra* note 8 at 18-19.

[295] The United States assumed at the time of passage of the Refugee Act that admission of 5,000 people annually through asylum would prove generous, even though backlogs existing at the time made that expectation unrealistic even then.

[296] K. Hailbronner, "Non-Refoulement and 'Humanitarian' Refugees: Customary International Law or Wishful Legal Thinking?" (1986) 26 Virginia Journal of International Law at 857.

[297] N. Zucker & N. Zucker, *The Guarded Gate: The Reality of America's Refugee Policy* (San Diego: Harcourt, Brace & Jovanovich, 1987) 68 at 93.

detention of an individual.[298] In an ad hoc response to 125,000 fleeing Cubans in 1980, however, the United States indefinitely detained Cubans deemed dangerous, which generated fierce controversy.[299] When subsequently faced with large numbers of Haitians seeking asylum, the United States decided to detain the Haitians without bond.[300] The purpose of the detention centered not on national security but on deterrence of asylum seekers, even though Haitians represented fewer than two percent of the people entering the United States illegally.[301] Further, the United States carefully detained Haitians in places where pursuit of asylum claims would prove virtually impossible due to the lack of counsel or interpreters.[302] This led to a ruling by the Supreme Court that the INS had violated its own regulations prohibiting discrimination in the application of detention.[303]

The case of the Haitian refugees detained indefinitely at the United States naval base in Guantanamo Bay because they had tested positive for HIV[304] represents a well-publicized incident of detention. Congress has barred immigrants with HIV from entry to the United States but not refugees with the same problem. The law provides that a refugee with an excludable medical condition can receive admission "for humanitarian purposes, to assure

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[298] *1951 Convention*, *supra* note 12, at Article 31(1) "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees ... provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."; Article 31(2) "The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized....".

[299] See A. C. Helton, "The Legality of Detaining Refugees in the United States" (1986) 14 New York University Review Law and Social Change 353.

[300] Zucker and Zucker, *supra* note 297 at 179-180.

[301] *Ibid.*, at 163.

[302] *Ibid.*, at 201.

[303] *Jean v. Nelson*, 472 U.S. 846 (1985).

[304] *Haitian Centers Conned v. Sale*, 823 F.Supp.1028 (E.D.N.Y.1993) (Sale 11).

family unity, or when it is otherwise in the public interest."[305] The United States had never tested any other country's asylum seekers for HIV, creating a presumption that the exemption would apply.[306]

Canadian Refugee Protection

Canada has signed[307] and ratified the *1951 Convention*, with the following proviso[308] with respect to Articles 23 and 24. Canada is therefore obligated Canada not to return any person to a country where his/her life or freedom would be threatened. This commitment is violated in a number of different ways, the most dramatic being by interdiction abroad. Canada operates an Immigration control program at its overseas posts, employing some twenty-six officers. These officers both stop and train airline officials to stop refugee claimants coming to Canada. Some 9,000 persons are intercepted by the program each year.[309]

Denial of access to Canada for the purpose of seeking refugee protection takes other forms besides interdiction. The combination of carrier sanctions (imposed on airlines for transporting those reported to immigration inquiries for violation of the Immigration Act on arrival), the imposition of visa requirements on refugee-producing countries, and denials of a visa to anyone who wishes to come to Canada to make a refugee claim stops many more than the interdiction program.[310]

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[305] 8 U.S.C. No. 1157(c)(3) (1988).

[306] *Supra* note 303, at 1048.

[307] Date of accession: June 4, 1969. Date of entry into force: September 2, 1969.

[308] "Canada interpretes the phrase 'lawfully staying' as referring only to refugees admitted for permanent residence; refugees admitted for temporary residence will be accorded the same treatment with respect to the matters dealt with in Articles 23 and 24 as is accorded visitors generally."

[309] Matas, *supra* note 250 at 143.

[310] *Ibid.*

Interdiction, preventing a refugee claimant from ever coming to Canada to seek protection, is a practice that may lead to a refugee being forcibly returned to danger, or never being allowed to leave the country of danger. When an interdicted refugee is forcibly returned to the country of danger fled, then Canada shares the responsibility for that forced return, because of the interdiction, even if Canada is not the returning state.[311] Refugee determination procedures are deficient in a number of different ways.[312]

Refugee claimants are denied access to counsel on their arrival. They may be interrogated about their claim, in the absence of a lawyer, by an immigration officer. What they say at the initial interview may (and often is) then be used at their refugee hearings to (cast) their credibility into doubt.[313]

The Executive Committees of the United Nations High Commission for Refugees has concluded that claimants should be given the benefit of an appeal, before they are required to leave, even for manifestly unfounded claims. In Canada, there is no appeal. There is only judicial review, restricted to technical, legal points.[314]

Canada notoriously chooses the skilled, young, educated and healthy refugees from camps. The ill, weak and unskilled are left to languish. There is little question of the interests of the refugees nor, indeed the purpose for which refugee laws exist. Instead Canada is interested in getting a service from the refugees,[315] by exploiting their need for protection. Signatories are not free to choose whether or not to protect refugees. They are obliged to do so.[316]

The specific intention of the Canadian authorities is to deflect the arrival of so called

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[311] *Ibid.*

[312] *Ibid.*

[313] *Ibid.*

[314] *Ibid.*

[315] See Matas, *supra* note 20 at 304.

[316] *Ibid.*, at 304.

spontaneous refugees who may move across borders in an irregular fashion, and to make them go elsewhere, perhaps to another state of asylum. This approach precludes the possibility of protection for the refugees who move beyond the first country they enter in flight from their homeland. [317]It does not take into consideration the needs of the refugee.

The Contadora Act on Peace Co-Operation in Central America

A positive action in Latin America is the Contadora Act on Peace and Co-Operation in Central America that was signed in 1986 by the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. The Act dealt with voluntary repatriation in the region, co-operation to facilitate third country resettlement and a promise by the Governments of the area to undertake efforts to eliminate the causes of the refugee problem.[318]

Conclusion

Solutions should always be the objective for international action. The limits of law and organization are often apparent at the grassroots level, where UNHCR, States and refugees interact in a sometimes tense relationship of competing interests. The unifying objective of humanitarian, durable solutions can be lost in the process of protection, the very exercise and achievements of which may produce further protection problems. It is no great success, even in the short term, to have refugees confined and dependent in closed camps, in a jurisdictional limbo far removed from true community. For these reasons, inherent limits to the protection function deviate from the ultimate objectives of the system.[319]

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[317] A. C. Helton, "The Detention of Refugees and Asylum Seekers: A Misguided Threat to Refugee Protection" in *Refugees and International Relations*, Gil Loescher and Laila Monahan, eds., (Oxford: Oxford University Press, 1989) at 137.

[318] *Ibid.*, at 635.

[319] G. Goodwin-Gill, *supra* note 21 at 153.

CHAPTER 8

ENFORCEMENT ALTERNATIVES

What is the possibility of enforcing these international obligations?

Implementation is a key problem in making the system of international protection of human rights effective, and it has proved a difficult one.[320] The jurisdiction of international courts depends upon the consent of nations involved, and few states have given such consent with respect to human rights questions. The European Convention, under which a number of states have consented to the jurisdiction of the European Court of Human Rights, is a notable exception. Even if international courts had jurisdiction to render judgments against nations violating human rights obligations, there is no international police force which could enforce such orders. Consequently, international human rights law must rely heavily on voluntary self-compliance by states, buttressed by such moral pressures or other forms of influence as either concerned nations or international organization are prepared to exert.[321]

The number and variety of existing and conceivable enforcement techniques are too extensive to be described in detail here. However, some broad categories may be suggested. One way of looking at these options is in terms of the "level" at which enforcement action occurs. Thus, international human rights obligations can be enforced through action: (1) within the national system of the state concerned itself; (2) by other states in the course of international relations; or (3) by international agencies.[322]

The easiest way to implement human rights, and the ultimate way if they are to become truly

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[320] R.B. Bilder, "The Status of International Human Rights Law: An Overview" in *International Human Rights Law and Practice: The Roles of the United Nations, the Private Sector, the Government and their Lawyers*, J. C. Tuttle, ed. (Chicago, Illinois: American Bar Association, 1978) at 13.

[321] *Ibid.*

[322] *Ibid.*

effective, is through action by individual nations or by their own citizens pursuant to their own national law. That is to say, the most significant type of enforcement measure is to ensure that human rights obligations are incorporated into a state's own domestic law and those domestic remedies exist for violations of those obligations. Thus, most human rights treaties expressly require that the states incorporate relevant obligations into their domestic law, and that they provide appropriate local remedies. Human rights treaties and procedures also frequently require that nations periodically make reports to other parties or to international organizations on their compliance with human rights obligations, including the incorporation of these obligations into domestic law. Where human rights obligations have become part of domestic law, citizens and private groups will frequently have direct access to courts and other domestic procedures for directly vindicating such rights.

Enforcement can also occur at the state-to-state level. Thus one nation, or a group of nations, may complain directly to another nation concerning that nation's alleged breach of human rights obligations, and can bring various types of foreign relations pressure to bear in an attempt to influence that other nation to cease such violations.

Enforcement can also occur at the level of international organizations. There are now a wide variety of international fora in which complaints of human rights violations can be raised,[323] as discussed in Chapter Four, herein. These include the regional procedures under the OAU, European and American human rights conventions. United Nations bodies such as the General Assembly, the Security Council, Human Rights Commission, or the Inter-American Commission on Human Rights, the provisions under the *Helsinki Accord* consider human-rights matters on their own initiative without state-to-state complaint.[324]

Enforcement options can also be assessed in terms of the nature of the party instituting the

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[323] As noted, these include the *United Nations General Assembly*, the *Commission on Human Rights*, the *Inter-American Commission on Human Rights*, the committees established under the *Covenant on Civil and Political Rights and the Race Convention* held under the provisions of the *Helsinki Accord.*

[324] R. B. Bilder, *supra* note 319, at 14.

complaint. The complainant may either be a state; an international organization or agency; or a private individual or group.

In international human rights law, as in international law generally, an effective system rests primarily on the concept of enforcement by states. In theory, a state violating its international human rights obligations will be called to account by other states. In practice, however, this has only rarely occurred. States have generally been reluctant to antagonize friendly nations by criticizing their human rights behavior and have typically been willing to raise human rights issues only with respect to either their enemies or certain politically isolated states. Even gross violations of human rights by states, such as Rwanda, have largely been ignored.[325]

Another possible approach is to rely on an international organization such as the United Nations or one of its agencies, such as the Human Rights Commission, to raise human rights issues. However, the issue must somehow be brought to the attention of the international organization before it is competent to deal with it. Again this frequently requires that the issue be raised by some state or group of states, although it may in some cases be raised by individual petition. Once appraised of the matter, however, the agency may often pursue it by means including fact-finding and investigation. However, since international organizations are comprised of states, political considerations will usually continue to have a strong influence.[326]

Another alternative is to permit human rights issues to be raised by private individuals or groups.[327] Where human rights obligations are incorporated in domestic law, or where domestic law includes provisions for implementing a national policy of enforcing other nations' compliance with their human rights obligations, private individuals or groups may

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[325] *Ibid.*

[326] *Ibid.*

[327] For a useful discussion of procedures in these areas, see G. DaFonseca, *How to File Complaints of Human Rights Violations: A Practical Guide to Intergovernmental Procedures*, (World Council of Churches, 1975).

raise such issues directly in national courts or agencies.

Domestic Laws Relating to Refugee Status

Those countries that have adopted domestic laws for the determination of refugee status have implemented the recommendations of the UNHCR unevenly.[328] As the focus shifts from individuals fleeing political or religious persecution to great numbers of persons fleeing war poverty, and economic instability, the human rights principles upon which the 1951 Convention and other instruments are based become less important than political considerations. At the domestic level, inequality of treatment among different refugee groups can be founded on fundamental political disagreements, often masquerading as legal or procedural issues.[329]

For the refugees, this could mean a losing choice between being persuaded to return to areas where they face persecution or to remain in situations where they face threats to their lives and freedom. This further deprives persons of their liberty for no other reason than their having been forced into exile. It is a practice that is legally questionable under Articles 31 and 33 of the *United Nations Convention and Protocols Relating to the Status of Refugees*, which prohibit the imposition of penalties and restrictions on movement, as well as on *refoulement*.

National Sovereignty Versus International Obligations

As human rights institutions and instruments have evolved, they have been subjected to certain recurring problems. One of the most challenging issues has been the question of how to balance national sovereignty with international human rights. If human rights are to have significance, they must be trans-national in application, meaning that states must of

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[328] D. Carliner, "Domestic and International Protection of Refugees" in *Guide to International Human Rights Practice*, Hurst Hannum, ed. (Philadelphia: University of Pennsylvania Press, 1984) at 258.

[329] *Ibid.*, at 266.

necessity relinquish some measure of autonomy.

An advantage of regional human rights organizations over international ones is that the locally proposed standards can be more compatible with indigenous values. Consequently, implementation of those standards is less likely to be regarded as cultural imperialism. States will be more inclined to comply with rules which are concordant with their political culture.

Another complexity is that states have a peculiar role to play in the field of human rights. Since it is states which most frequently violate human rights, it is an awkward arrangement, to say the least, that they should also be designated champions of human rights. In the absence of enforceable international human rights machinery, it is unlikely that those rights will be safeguarded. If states perpetrate human rights abuses, then a complaints procedure limited to state submissions will accomplish little. States will not report their own misdeeds. As mentioned previously, states are generally reluctant to report violations in other states because this may sour diplomatic relations. When states do lodge complaints, they are often politically motivated. Thus, when international enforcement does permit individuals to send communications to tribunals, this constitutes a real advance.

Due to governmental pressures to avoid public condemnation, the selection of members of various human rights bodies has involved a similar concern. Many would have preferred persons serving in their individual capacities, rather than as their government representatives, because such persons would be relatively free to investigate alleged human rights abuses in an independent manner. As the human rights institutions have become increasingly bureaucratized, even the so-called independent experts and individuals not officially representing their state governments (as in the case of the Sub-commission) have been subject to governmental control.

CONCLUSION

THE INTERNATIONAL HUMAN RIGHTS REGIME

The development of human rights law has to some extent minimized some of the oversights of the refugee-specific rights regime. Human rights law has evolved beyond the norms of the refugee regime so that the scope of the general international human rights regime, under the auspices of the United Nations and other regional organizations, is now broad enough to cover the rights of refugees. Resorting to the protection offered to refugees under international human rights law is a positive way of "limiting" the seemingly "unlimited" areas of discretion that states have carved out for themselves under refugee treaties.[330]

The role of supervisory bodies established under the international human rights regime are an obvious additional advantage to the use of international human rights. These bodies have established firm reputations for dynamic jurisprudence in the field of human rights and in the context of rights of specific interests of refugees. The supervisory bodies under the *European Convention on Human Rights* have set an exemplary record in this context.[331] The organs of this *European Convention* have concluded that to remove an alien to another country where he stands a risk of ill treatment is in breach of Article 3, which prohibits torture, inhuman and degrading treatment.

In this regime most civil rights of refugees are not subject to requirements of nationality. The *International Covenant on Civil and Political Rights* extends its protection to "everyone" or "all persons." Each contracting state undertakes in Article 2(1) to ensure the rights in the

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[330] In the United Kingdom context the decison to detain, detention conditions, the rights of due process, explusion and deportation are some of the rights for which refugees can expect better protection under the International Human Rights law.

[331] *Amekrane v. United Kingdom* Case, Application No. 5961/72, Vol. 16 *Yearbook of the ECHR* at 356; *Altun v. Federal Republic of Germany* Case, Application No. 10308/83, *Stocktaking on the ECHR*, Supplement 1984 (1985) at 45; *Kirkwood v. United Kingdom* Case, Application No. 10479/83, Vol. 6 (1984) *European Human Rights Report* at 373; and *Soering v. United Kingdom* Vol. 161 *European Court of Human Rights*, Series A (1989).

Covenant. "To all individuals within its territory and subject to jurisdiction... without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[332]

The fact that the Civil and Political Covenant applies to refugees is further established through contrast of its inclusive wording in Articles 12 and 26. Article 12 extends freedom of movement to persons "lawfully within the territory of [the Contracting State]...." Article 26 guarantees "all people equal and effective protection against discrimination...." Although the Covenant does not govern admission to or residence in a state, the United Nations Human Rights Committee has determined that an alien may enjoy its protection in relation to entry and residence when considerations of non-discrimination, prohibition of inhuman treatment, or respect for family life arise.[333]

The *International Covenant on Economic, Social and Cultural Rights* is, however, less generous to aliens. The most obvious limitation is Article 2(3),[334] which permits developing countries to determine, in light of their economic situation, the extent to which they guarantee the economic rights recognized in the 1951Covenant to non-nationals. As such, the economic rights guaranteed by the *1951 Convention* may be of greater practical importance than their civil rights counterparts. Whereas refugees would be entitled to benefit from civil rights in the majority of states that are parties to the ICCPR, the weakening of their economic rights authorized under the conventional human rights law is mitigated by the more categorical provisions of the *1951 Convention*.[335]

Given the relationship between the *1951 Convention* and contemporary human-rights law, what should be done to clarify and to consolidate the rights to which refugees are entitled?

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[332] *International Covenant on Civil and Political Rights*, *supra* note 33, Article 2(1).

[333] See *Human Rights General Committee* Comment 15, [Session 27] U.N. Doc. CCPR/C/21/Rev. 1/Add. 1(1989), at 17, as cited in B.S. Chimni, *supra* note 149, at 40.

[334] *International Covenant on Economic, Social and Cultural Rights*, *supra* note 34, at Article 2(3).

[335] Hathaway and Dent, *supra* note 144, at 45.

Should a refugee-specific regime be maintained and, if so, what form should it take, with what substantive focus? In appraising the utility of a refugee-specific rights regime in an era of widely applicable international human rights one might consider two factors:

First, whether the refugee-specific rights regime breaks new substantive ground compared with general human rights law, resulting in a more comprehensive enumeration of rights; second, whether the refugee-specific regime aids in the clarification or reinforcement of generally accepted rights so as more effectively to coincide with the real needs of refugees.

Generally speaking refugee-specific rights aspire to a lower standard of treatment.[336] For example, the socio-economic rights in the *Economic Covenant* appear to be superior to those of the *1951 Convention*'s Article 17, 18 and 19, in that they are not limited to a guarantee of treatment afforded aliens but arguably mandate treatment akin to that granted to nationals.[337] The entire *Economic Covenant* is enforceable only at the level of non-discriminatory progressive implementation, whereas the *1951 Convention* appears to set absolute, if less exigent, expectations of states.

A similar difficulty arises in comparing the differing formulations of the right to freedom of movement of recognized refugees. While Article 12 of the *Civil and Political Covenant* is open to limitations to accommodate, among other things, national security and public order concerns, Article 26 of the *Convention* subjects this right only to regulations applicable to aliens generally in the same circumstances, and arguably to the situation-specific limits suggested by the Conclusions of the Executive Committee.[338]

Evidently, human rights law has contributed to the protection of the rights of refugees norms, but can their protection be guaranteed in this broad framework? There is a real need to maintain focus on the specific needs, interests and aspirations of refugees. What is necessary

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[336] T. Einarsen, International Academy of Comparative Law, *National Report for Norway,* (1994) at 56-57, referring to treatment equal to other aliens.

[337] Hathaway and Dent, *supra* note 144, at 46.

[338] *Ibid.*

is an attempt to synchronize the *Convention* with other regional instruments, such as the OAU Convention[339] of 1969 and other regional norms for refugees. Refugee-specific documents should clearly read that they are an addition to the the standard of protection afforded to all people under international human rights law. That is bound to strengthen rather than weaken the system for refugee protection.[340]

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[339] OAU Convention, *supra* note 86.

[340] E. Khiddu-Makubuya, *supra* note 160, at 21.

APPENDIX A

Top Ten Refugee Countries of Origin in 1995

United States Committee for Refugees, 1995: World Refugee Survey (1996)

Country of Origin	No. of Refugees	Main Countries of Asylum
Afghanistan	2.600.000	Iran/Pakistan/India
Rwanda	1.800.000	Burundi/Tanzania/Uganda/Zaire
Liberia	785.300	Guinea/Cote d'Ivoire/Ghana/Nigeria
Somalia	526.000	Djibouti/Ethiopia/Kenya/Yemen
Sudan	525.000	Uganda/Zaire/Kenya/Ethiopia
Eritrea	426.000	Sudan
Bosnia & Herzegovina	320.000	Croatia/F.R. of Yugoslavia/Turkey
Azerbaiadian	299.000	Armenia
Angola	283.900	Zaire/Zambia/Congo/Namibia

APPENDIX B

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, The General Assembly, proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, withoutdistinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

Noone shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the

constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice,worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3.The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All

children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the

purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX C

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

Ratification Information

PREAMBLE

The States Parties to the present Covenant, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and

international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any

State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1.The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2.The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in theinterests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to

social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1.The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing

and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1.The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b)The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic

production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1.The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of

international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3.The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each

instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under Article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26.

APPENDIX D

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 entered into force Mar. 23, 1976.

Ratification Information

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international

economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language,religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person

during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and

with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes

incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1 . The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons.These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of

the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable eographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in Article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with Article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall

then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication. bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report: (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of

procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

> (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
>
> (b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
>
> (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
>
> (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the hirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the

event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

APPENDIX E

Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implemenation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article I

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communciation under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the

Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession. the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of

the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

APPENDIX F

Statute of the Office of the United Nations High Commissioner for Refugees United Nations General Assembly, 14 December 1950

Chapter I - GENERAL PROVISIONS

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities. In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees if it is created.

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

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

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

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

Chapter II - FUNCTIONS OF THE HIGH COMMISSIONER

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

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the constitution of the International Refugee Organization.

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of

that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

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

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

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

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

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

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

(e) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

(f) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

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

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

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

(b) Who is recognized by the competent authorities of the country in which he has taken

residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate,

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

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies. The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

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

Chapter III - ORGANIZATION AND FINANCES

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX G

Convention relating to the Status of Refugees of 28 July 1951
United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Geneva, 2-25 July 1951

Preamble

The High Contracting Parties

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

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

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

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

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

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

Have agreed as follows:

Chapter I, General Provisions

Article 1

Definition of the term "Refugee"

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

who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

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

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

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

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

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

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

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

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

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

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

country
of his nationality;

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

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

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

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

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

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

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

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

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

Article 2

General obligations

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

Article 3

Non-discrimination

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

Article 4

Religion

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

Article 5

Rights granted apart from this Convention

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

Article 6

The term "in the same circumstances"

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

Article 7

Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

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

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

Article 8

Exemption from exceptional measures

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

Article 9

Provisional measures

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

Article 10

Continuity of residence

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

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

Article 11

Refugee Seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II, Juridical Status

Article 12

Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

Movable and immovable property

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

Article 14

Artistic rights and industrial property

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

Article 15

Right of association

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

Article 16

Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from cautio judicatem solvi.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III, Gainful Employment

Article 17

Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions: (a) He has completed three years' residence in the country, (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse, (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration
schemes.

Article 18

Self-employment

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

Article 19

Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV, Welfare

Article 20

Rationing

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

Article 21

Housing.

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

Article 22

Public education.

(1) The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

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

Article 23

Public relief.

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

Article 24

Labour legislation and social security.

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

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

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

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

Chapter V, Administrative measures

Article 25

Administrative assistance.

(1) When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

(2) The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

(3) Documents or certifications so delivered shall stand in the stead of the official instruments
delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

(4) Subject to such exceptional treatment as may be granted to indigent persons, fees may be

charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

(5) The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26

Freedom of movement.

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

Article 27

Identity papers.

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

Article 28

Travel documents.

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

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

Article 29

Fiscal charges.

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

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

Article 30

Transfer of assets.

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

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

Article 31

Refugees unlawfully in the country of refuge.

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

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

Article 32

Expulsion.

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

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

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

Article 33

Prohibition of expulsion or return ("refoulement")

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

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

Article 34

Naturalization.

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

Chapter VI, Executory and transitory provisions

Article 35

Co-operation of the national authorities with the United Nations.

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

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

Article 36

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

Article 37

Relation to previous Conventions.

Without prejudice to Article 28, paragraph 2, of this Convention, this Convention replaces,

as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII, Final clauses

Article 38

Settlement of disputes.

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

Article 39

Signature, ratification and accession.

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

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

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

Article 40

Territorial application clause.

(1) Any state may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

(2) At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as

from the date of entry into force of the Convention for the State concerned, whichever is the later.

(3) With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

Article 41

Federal clause.

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

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

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

Article 42

Reservations.

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

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

Article 43

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

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

Article 44

Denunciation.

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

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

(3) Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the by the Secretary-General.

Article 45

Revision.

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

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

Article 46

Notifications by the Secretary-General of the United Nations.

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

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

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

APPENDIX H

PROTOCOL RELATING TO THE STATUSOF REFUGEES OF 31 JANUARY 1967

Date of entry into force: 22 April 1954 (Convention), 04 October 1967 (Protocol)

States Parties (Including Reservations & Declarations)

As of 18 October 1996

Total Number of States Parties to the 1951 Convention: 128

Total Number of States Parties to the 1967 Protocol: 128

States Parties to both the Convention and Protocol: 124

States Parties to one or both of these instruments: 132

States Parties to the 1951 Convention only:

Madagascar, Monaco, Saint Vincent and the Grenadines and Namibia

States Parties to the 1967 Protocol only:

Cape Verde, Swaziland, USA and Venezuela

Protocol relating to the Status of Refugees of 31 January 1967

United Nations General Assembly, 16 December 1966

4 October 1967

Preamble

The States Parties to the present Protocol,

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

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

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

Have agreed as follows:

Article 1

General provision 1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . . "and the words". . .a result of such events", in Article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1 B (1)(a) of the Convention, shall, unless extended under Article 1 B (2) thereof, apply also under the present Protocol.

Article 2

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

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning: (a) The condition of refugees; (b) The implementation of the present Protocol; (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 3

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

Article 4

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

Article 5
Accession The present Protocol shall be open for accession on behalf of all States Parties to

the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6

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

(a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

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

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

Article 7

Reservations and declarations

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

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

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

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

Article 8

Entry into force

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

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

Article 9

Denunciation

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

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

Article 10

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

Article 11

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

APPENDIX

GENERAL ASSEMBLY RESOLUTION 2198 (XXI)

Protocol relating to the Status of Refugees

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

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

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

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

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

1. Takes note of the Protocol relating to the Status of Refugees, the text of which is contained in the addendum to the report of the United Nations High Commissioner for Refugees;

2. Requests the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol.

1495th plenary meeting, 16 December 1966.

APPENDIX I

No. 74 (XLV) - 1994 - General Conclusion on International Protection

The Executive Committee,

(a) Expresses its deep concern over the immense human suffering and loss of life which have accompanied recent crises involving refugee flows and other forced displacement;

(b) Remains gravely preoccupied by the scale and complexity of current refugee problems, which have made more difficult the accomplishment of the High Commissioner's crucial functions of ensuring international protection for refugees and achieving timely and durable solutions to their plight;

(c) Reaffirms the importance of the 1951 Convention and 1967 Protocol relating to the Status of Refugees as the cornerstone of the international system for the protection of refugees, and underlines the role of the High Commissioner, pursuant to Articles 35 and II of these instruments, respectively, and to the Statute of her Office, in supervising their application;

(d) Welcomes the accession or succession to these instruments in the past year of Dominica, The Former Yugoslav Republic of Macedonia, and Tajikistan, bringing to 127 the number of States parties to one or both instruments, and, noting that the Member States of the United Nations now number 189, and in view of the global character of the refugee problem, urges States which are not yet parties to accede to these instruments, and all States to implement them fully;

(e) Warmly welcomes the demonstrated commitment of States to continue to receive and host refugees in cooperation with UNHCR, to provide them international protection;

(f) Deplores the fact that in certain situations refugees, as well as returnees and other persons of concern to UNHCR, have been subjected to armed attack, murder, rape and other violations of or threats to their personal security and other fundamental rights and that incidents of refoulement and denial of access to safety have occurred;

(g) Calls again upon States to uphold and strengthen asylum as an indispensable instrument for the international protection of refugees, to respect scrupulously the fundamental principle of non-refoulement, and to make every effort to ensure the safety and well-being of refugees within their jurisdiction;

(h) Stresses the importance of international solidarity and burden-sharing in reinforcing the protection of refugees, and calls upon all States to take an active part, in collaboration with UNHCR, in efforts to assist countries, in particular those with limited resources, that receive and care for large numbers of refugees and asylum-seekers;

(i) Reiterates the importance of ensuring access for all persons seeking international protection to fair and efficient procedures for the determination of refugee status or other mechanisms, as appropriate, to ensure that persons in need of international protection are identified and granted such protection;

(j) Recognizes that applications for asylum by large numbers of irregular migrants who are not in need of international protection continue to pose serious problems in certain regions, and reiterates in this connection its Conclusion No. 71 (XLIV) (1993), paragraphs j, k and l;

(k) Notes that a large number of those persons in need of international protection have been forced to flee or to remain outside their countries of origin as a result of danger to their life or freedom owing to situations of conflict;

(l) Recognizes that, while persons who are unable to return in safety to their countries of origin as a result of situations of conflict may or may not be considered refugees within the terms of the 1951 Convention and 1967 Protocol, depending on the particular circumstances, they nonetheless are often in need of international protection, humanitarian assistance and a solution to their plight;

(m) Recalls that UNHCR has often been requested by the United Nations General Assembly to extend protection and assistance to persons who have been forced to seek refuge outside their countries of origin as a result of situations of conflict, and encourages the High Commissioner to continue to provide international protection to such persons, and to seek solutions to the problems arising from their forced displacement, in accordance with relevant General Assembly resolutions, and calls upon all States to assist and support the High Commissioner's efforts in this regard;

(n) Recognizes that in Africa and Latin America, regional instruments provide for the protection of refugees fleeing armed conflict and civil strife, as well as those fearing persecution, and that in other regions, persons who require international protection, but who either are not considered refugees within the scope of the 1951 Convention and 1967 Protocol or are in countries that have not acceded to these instruments, have generally been provided protection and humanitarian assistance through specific measures adopted by States and in full cooperation with UNHCR;

(o) Recognizes the desirability of exploring further measures to ensure international protection to all who need it;

(p) Acknowledges the value of regional harmonization of national policies to ensure that persons who are in need of international protection actually receive it, and calls upon States to consult UNHCR at the regional level in achieving this objective;

(q) Encourages the High Commissioner to continue to promote international cooperation in providing international protection to all who require it, and to engage in further consultations and discussions concerning measures to achieve this objective, which might involve the elaboration of guiding principles, including for concerted action;

(r) Considers that temporary protection, which has been described by the High Commissioner in the context of the Comprehensive Response to the Humanitarian Crisis in the former Yugoslavia as including admission to safety, respect for basic human rights, protection against refoulement, and safe return when conditions permit to the country of origin, can be of value as a pragmatic and flexible method of affording international protection of a temporary nature in situations of conflict or persecution involving large scale outflows;

(s) Welcomes the further exploration by the High Commissioner, pursuant to Protection Conclusion (m) (1993), of temporary protection as an asylum strategy, in the context of addressing prevention, protection and solutions on a comprehensive regional basis, and looks forward to further discussions among interested Governments on this subject, including the duration of temporary protection;

(t) Notes that the beneficiaries of temporary protection may include both persons who qualify as refugees under the terms of the 1951 Convention and the 1967 Protocol and others who may not so qualify, and that in providing temporary protection States and UNHCR should not diminish the protection afforded to refugees under those instruments;

(u) Calls upon UNHCR, in close cooperation with the Governments concerned, to continue to coordinate and to provide guidance concerning the implementation of temporary protection and other forms of asylum oriented towards repatriation, in situations where return home is considered the most appropriate durable solution, including advice on voluntary repatriation and on safe return once the need for international protection has ceased;

(v) Reiterates that voluntary repatriation, when it is feasible, is the ideal solution to refugee problems, and calls upon countries of origin, countries of asylum, UNHCR and the international community as a whole to do everything possible to enable refugees to exercise freely their right to return home in safety and dignity;

(w) Notes that numerous obstacles to voluntary repatriation have been encountered, including threats to the safety of repatriating refugees both in countries of asylum and countries of origin and the persistence or recrudescence of conditions causing refugee flight;

(x) Stresses in this connection the responsibilities of States of origin to readmit their nationals and to ensure their safety and welfare, and of countries of asylum to provide for the security and safeguard the fundamental rights of refugees, and calls upon the international community to assist States to discharge these responsibilities with respect to refugees and returnees;

(y) Reaffirms its Conclusions Nos. 18(XXXI) (1980) and 40(XXXVI) of 1985 on voluntary repatriation, and underscores the leading role of UNHCR in promoting, facilitating, and coordinating voluntary repatriation of refugees, in cooperation with States concerned, including ensuring that international protection continues to be extended to those in need until such time as they can return in safety and dignity to their country of origin, assisting, where needed, the return and reintegration of repatriating refugees and monitoring their safety and well-being upon return;

(z) Acknowledges the usefulness, in appropriate circumstances, of visits by representatives of the countries of origin to refugee camps in countries of asylum within the framework of information campaigns to promote voluntary repatriation, and requests UNHCR, in cooperation with the countries of asylum concerned, to facilitate such visits;

(aa) Recognizes that for repatriation to be a sustainable and thus truly durable solution to refugee problems it is essential that the need for rehabilitation, reconstruction, and national reconciliation be addressed in a comprehensive and effective manner, and calls upon the international community to continue to support the High Commissioner's efforts to promote comprehensive and regional approaches to prevention, protection and solutions in consultation with States and the relevant international, regional and national governmental and non-governmental bodies, as appropriate;

(bb) Reaffirms the continued importance of resettlement as an instrument of protection and its use as a durable solution in specific circumstances;

(cc) Emphasizes the need, particularly in complex emergencies that include humanitarian and peace-keeping operations, to ensure respect for the High Commissioner's protection mandate and to preserve the impartial and purely humanitarian nature of UNHCR activities;

(dd) Reiterates its support for the High Commissioner's activities for internally displaced persons in accordance with General Assembly resolution 48/116 (1993) and expresses its appreciation for the detailed and productive discussions that have been held within the Sub-Committee of the Whole on International Protection and in other fora concerning ways in which the international community can better address the protection and assistance needs of the displaced;

(ee) Notes with concern the persistent problems of stateless persons in various regions and the emergence of new situations of statelessness, and, acknowledging the responsibilities already entrusted to the High Commissioner by the United Nations General Assembly with respect to the prevention of statelessness (General Assembly resolution 3274 (XXIX)), calls upon UNHCR to strengthen its efforts in this domain, including promoting accessions to the Convention relating to the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, training for UNHCR staff and government officials, and a systematic gathering of information on the dimension of the problem, and to keep the Executive Committee informed of these activities;

(ff) Calls on the High Commissioner to ensure UNHCR's active participation in the 1995 World Conference on Women and its Regional Preparatory Conferences in order that the situation of refugee women remain high on the international agenda of women's issues;

(gg) Urges UNHCR, in cooperation with Governments, other United Nations and international and non-governmental organizations, especially UNICEF and ICRC, to continue its efforts to give special attention to the needs of refugee children, ensuring, in particular, that arrangements are made for their immediate and long-term care, including health, nutrition and education, and, in the case of children who are separated from their families, for prompt registration, tracing and family reunion;

(hh) Calls upon States hosting refugees, in close collaboration with UNHCR and other relevant organizations, and consistent with the UNHCR Guidelines on Refugee Children, to safeguard the security of refugee children and to ensure that they are not recruited into the military or other armed groups;

(ii) Notes with distress the injury and loss of life caused to refugees and returnees, including women and children who are maimed and incapacitated in large numbers, by the indiscriminate use of land-mines, as well as the harmful and long-term impact of these weapons on the voluntary repatriation, rehabilitation, and resumption of normal lives of millions of refugees and displaced persons, and endorses the High Commissioner's efforts to further international efforts to reduce or eliminate the threat that land-mines pose to them;

(jj) Recognizes the importance of ensuring access to current and reliable information on involuntary displacements in the interests of promoting solutions at all levels of the refugee situation and reaffirms support for the High Commissioner's continuing effort in this regard to develop an information policy and databases capable of addressing new challenges with relevant information sources;

(kk) Notes with satisfaction UNHCR's activities with regard to the promotion and dissemination of refugee law and protection principles and calls upon the High Commissioner to continue to expand and strengthen the Office's promotion and training activities, with the active support of States and through increased cooperation with human rights organizations, academic institutions, including the International Institute of Humanitarian Law (San Remo), and other relevant organizations within and outside the United Nations system;

(ll) Welcomes the High Commissioner's growing cooperation with the High Commissioner for Human Rights and her continued cooperation with the Centre for Human Rights and calls on UNHCR to continue its active involvement and cooperation with the Commission on Human Rights;

(mm) Recognizes the continuing usefulness of inter-sessional meetings of the Sub-Committee of the Whole on International Protection and requests the High Commissioner to convene at least one such meeting to consider current protection issues and to report on progress in the deliberations of the Committee at its forty-sixth session.

APPENDIX J

No. 8 (XXVIII) - 1977 - Determination of Refugee Status

DETERMINATION OF REFUGEE STATUS

The Executive Committee,

(a) Noted the report of the High Commissioner concerning the importance of procedures for determining refugee status;

(b) Noted that only a limited number of States parties to the 1951 Convention and the 1967 Protocol had established procedures for the formal determination of refugee status under these instruments;

(c) Noted, however, with satisfaction that the establishment of such procedures was under active consideration by a number of Governments;

(d) Expressed the hope that all Governments parties to the 1951 Convention and the 1967 Protocol which had not yet done so would take steps to establish such procedures in the near future and give favourable consideration to UNHCR participation in such procedures in appropriate form;

(e) Recommended that procedures for the determination of refugee status should satisfy the following basic requirements:

(i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State, should have clear instructions for dealing with cases which might me within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

(ii) The applicant should receive the necessary guidance as to the procedure to be followed.

(iii) There should be a clearly identified authority -- wherever possible a single central authority -- with responsibility for examining requests for refugee status and taking a decision in the first instance.

(iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

(v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.

(vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing stem.

(vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

(f) Requested UNHCR to prepare, after due consideration of the opinions of States parties to the 1951 Convention and the 1967 Protocol, a detailed study on the question of the extra-territorial effect of determination of refugee status in order to enable the Committee to take a considered view on the matter at a subsequent session taking into account the opinion expressed by representatives that the acceptance by a Contracting State of refugee status as determined by other States parties to these instruments would be generally desirable;

(g) Requested the Office to consider the possibility of issuing-for the guidance of Governments-a handbook relating to procedures and criteria for determining refugee status and circulating -- with due regard to the confidential nature of individual requests and the particular situations involved -- significant decisions on the determination of refugee status.

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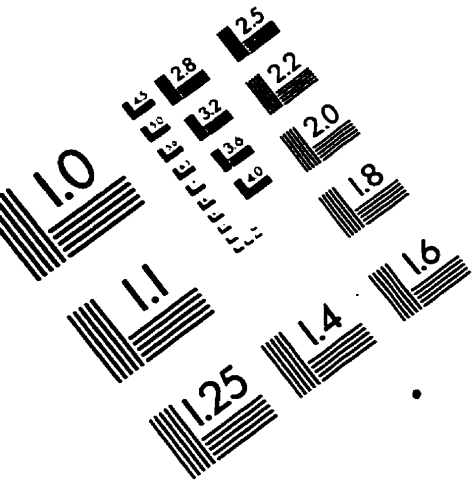

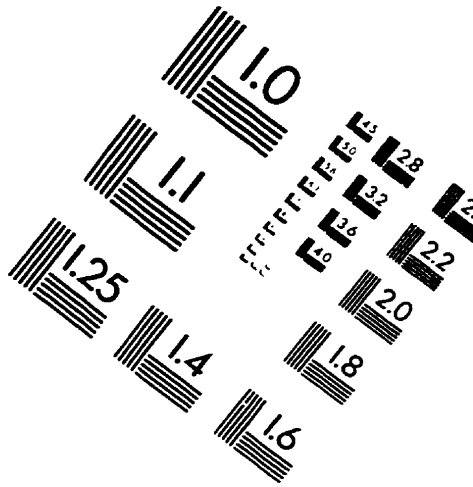

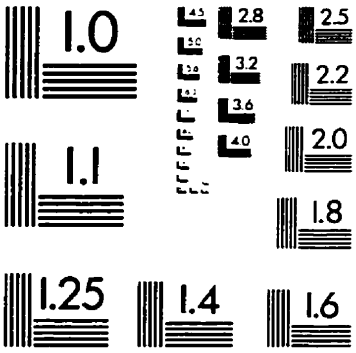

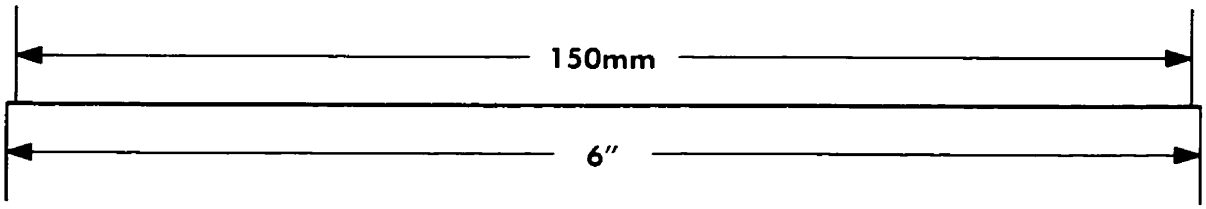

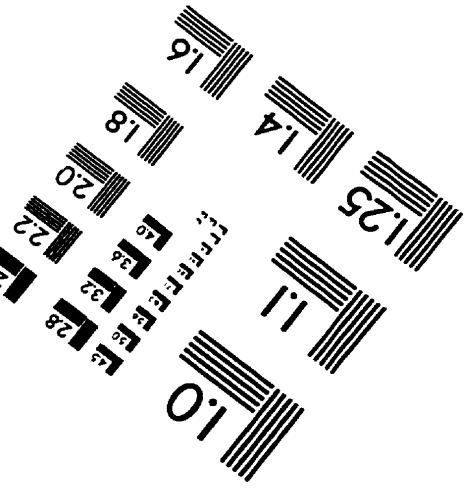

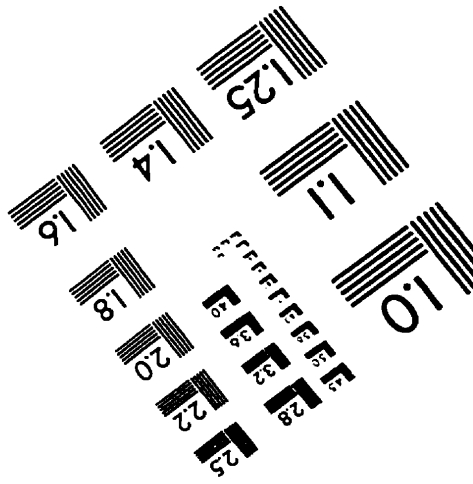

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