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WORLD REFUGEE ASSISTANCE:
THE ROLE OF INTERNATIONAL LAW AND INSTITUTIONS

Ved P. Nanda*

The existence of refugees and displaced persons is a crisis the world community can no longer ignore. Uprooted from their homes because of internal and international conflicts, natural disasters, oppressive regimes, or intolerable political, ideological, economic, religious, racial, or social conditions, refugees are estimated to number more than fifteen million worldwide.¹ This number continues to grow and, but for the period immediately following the Second World War, stands higher than at any other time in modern history.² Moreover, according to a July 1979 study by the Cong-

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* Professor of Law and Director of the International Legal Studies Program, University of Denver Law Center. I am indebted to Robert Shaklee and Sue Yoneda of the Denver Public Library for their assistance with the pertinent United Nations and United States documents, and to Peter Moore and Katharine Kunz, Managing Editor and Articles Editor, respectively, of the Denver Journal of International Law and Policy, for their research assistance.


<table>
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<td>Europe</td>
<td>229,750</td>
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<td>1,085,300</td>
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<td>3,312,500</td>
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<tr>
<td>Worldwide Total</td>
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</tbody>
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Id.; Christopher, Refugees: A Global Issue, DEP'T STATE BULL., Sept. 1980, at 53:

More than 15 million inhabitants of our planet have fled their homes in recent years because of wars, civil disturbances, persecution, or hostile government policies. They include more than 7 million Asians, 4 million Africans, 3 million from the Middle East, . . . 300,000 Europeans, [and] 1.2 million people [from Latin America].

Id.

2. CONGRESSIONAL RESEARCH SERVICE, SENATE COMMITTEE ON THE JUDICIARY, 96TH CONG., 1ST SESS., WORLD REFUGEE CRISIS: THE INTERNATIONAL COM-
gressional Research Service on the international refugee situation, the refugee crisis "shows no signs of abating." The study concludes that "the refugee flow around the world will continue and the number of refugees will probably rise markedly over the next few years." During the year following that report, in addition to the 150,000 Cubans and Haitians who escaped to the United States, "1.2 million Afghans, 1 million Somalis, and hundreds of thousands of Kampucheans and others" fled their countries. To illustrate the enormity of the problem in developing countries, especially those unable to cope with its devastating impact on their already crippled economies, consider the fact that every fifth inhabitant of Somalia and every tenth inhabitant of Djibouti is a refugee.

Some refugees, desperately struggling to find a safe haven, fail in their attempts, for many countries are not willing to grant them asylum even on a temporary basis. This was vividly illustrated by the dilemma of the "boat people" who in many instances "were turned away, sometimes in unseaworthy craft, to face the dangers of the high seas." More recently, 102 Haitian refugees were forced off the tiny island of Cayo Lobos, off the coast of Cuba in the Bahamas, to return to Haiti. Many others, fortunate in securing at least temporary refuge, often face formidable hurdles in finding a durable solution to their problems. State procedures for determining refugee status are often inadequate and, where repatriation is not a viable alternative, the difficulties in securing permanent asylum and a new nationality through naturalization are further compounded by a number of factors. These include: An inhospitable and even hostile environment endangering refugees'...
personal safety; systematic measures of harassment, including detention and persecution; the threat of deportation, expulsion, and return to a territory where a person has reason to fear persecution; an unwillingness of the governments concerned to provide refugees with identity and travel documents; and the deprivation of economic and social rights. Moreover, international protection measures are often ineffective, contributing to the refugees' plight. Thus, refugees are often "in orbit": A bonafide asylum-seeker might encounter difficulties in finding a country willing to examine his asylum request, or a refugee, having already found an asylum country but having lost her links with that country, might find herself without a country of asylum.

It is at least encouraging that during the last decade the international community and some states in particular have shown an increasing sensitivity to these problems. The concerted action by several countries has resulted in resettling a large number of refugees and providing hope to others. As Tanzanian President Nyerere remarked at the Conference on the Situation of Refugees in Africa, held at Arusha in the United Republic of Tanzania in May 1979: "All refugees are individuals with a right to life in Africa... I do not believe that dealing with the problems of 3.5 million people, and giving them a chance to rebuild their dignity and their lives, is an impossible task for 46 nations and their 350 million inhabitants."

Yet the task is immense, demanding continued vigilance and vision of the world community. Understanding the major legal and humanitarian issues of the global refugee problem is necessary to appreciate the nature of the task. This Article outlines, in an historical context, some of these issues, describes the existing remedies, and offers recommendations for accomplishing this critical task.

11. 1980 UNHCR Rep., supra note 9, at 4-10.
MEASURES OF INTERNATIONAL PROTECTION OF REFUGEES

International Legal Instruments

Instruments of Universal Application.—Following the Second World War, the United Nations General Assembly responded to the needs of the European refugees first by establishing the International Refugee Organization, then by adopting the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute) in 1951, and finally by initiating a conference to draft a convention regarding the status of refugees. The Conference considered it desirable “to revise and consolidate previous international agreements relating to the status of refugees [so as] to extend the scope of and the protection accorded by such instruments,” and adopted the 1951 Convention Relating to the Status of Refugees (the 1951 Convention), which came into force in 1954.

A “refugee” under the 1951 Convention—corresponding to the definition in the UNHCR Statute—is a person who has been considered a refugee under certain past agreements or 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, 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

15. For a discussion of the work of the International Refugee Organization which operated from 1946 to 1952, see L. Holborn, The International Refugee Organization (1956).


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.20

By declaration, state-parties to the 1951 Convention could limit the definition of refugees to those so situated due to “events occurring in Europe before 1 January 1951” or “events occurring in Europe or elsewhere . . . .”21 Subsequently, in 1967, the 1951 Convention was modified by the adoption of the Protocol Relating to the Status of Refugees (the 1967 Protocol),22 which eliminated the temporal and geographic limitations of the Convention’s definition23 and extended it to include all refugees on a basis of equality.

Several categories of people are excluded from the protection of the 1951 Convention and from the competence of the UNHCR. These include: (1) Persons who are presently receiving protection

20. 1951 Convention, supra note 18, art. I(A)(2), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 86. While the UNHCR Statute omits the phrase “membership of the particular social group” from its list of persecuted people, thus limiting the High Commissioner’s competence to persons afraid of “being persecuted for reasons of race, religion, nationality or political opinion,” it nonetheless extends the UNHCR competence to persons outside their countries “as a result of events occurring before 1 January 1951 . . . for reasons other than personal convenience.” UNHCR Statute, supra note 16, art. 6(A)(2), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 95. Also, it extends the competence without any time limit to those who for well-founded fear of persecution are unable or unwilling to return to their country. Id. art. 6(B); see Fragomen, The Refugee: A Problem of Definition, 3 CASE W. RES. J. INT’L L. 45 (1970); Weis, The Concept of the Refugee in International Law, 87 JOURNAL DU DROIT INTERNATIONAL 928, 938-42 (1960).


23. 1967 Protocol, supra note 22, art. I(2)(3), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 93. However, the Protocol left intact existing declarations by states defining their recognition to refugees from events in Europe unless extended under art. I(B)(2) of the 1951 Convention. Id. art. I(3).
or assistance as refugees from U.N. organs or agencies other than the UNHCR, such as the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA);24 (2) persons recognized by the competent authorities of the asylum country as having the rights and obligations attached to the possession of nationality of that state;25 and (3) persons who are war criminals or who have committed serious nonpolitical crimes before entering a country for asylum.26 Those deemed refugees under these instruments may, however, lose the protections afforded them if: They voluntarily reavail themselves of the protection of their country of nationality;27 having lost their nationality, they voluntarily reacquire it;28 having acquired a new nationality, they enjoy the protection of the country of that nationality;29 they voluntarily reestablish themselves in the country that they left or outside of which they remained owing to fear of persecution;30 or they are able to return to their country of nationality or former habitual residence because circumstances have changed.31

In addition to defining who is a refugee, the 1951 Convention, the 1967 Protocol, and the UNHCR Statute establish international standards for the treatment of refugees, confer certain rights and freedoms, and, under the Statute, list the world community's responsibilities toward refugees. The rights and assistance refugees receive are to guarantee them the minimum standards of treatment enjoyed by aliens generally in the country of asylum.32 These rights pertain to property,33 freedom of association,34 gainful employment,35

25. Id. art. 1(E).
26. Id. art. 1(F).
27. Id. art. 1(C)(1), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 86.
28. Id. art. 1(C)(2).
29. Id. art. 1(C)(3).
30. Id. art. 1(C)(4).
31. Id. art. 1(C)(5)-(6), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 87.
34. Id. art. 15.
welfare, freedom of movement, religion, and administrative assistance. States are not to impose penalties on refugees illegally entering their territory, provided the refugees present themselves without delay to the authorities and show good cause for their illegal entry or presence. No restrictions should apply to such refugees' movements "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." A reasonable period should be allowed for admission, and all the necessary facilities are to be provided for obtaining such admission.

A significant protection afforded under these instruments is that a refugee shall not be expelled or returned "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." This is known as the principle of "non-refoulement." Under the only exception to this provision, a refugee cannot claim the benefit of non-refoulement if there are "reasonable grounds" for regarding him or her as a danger to the security of the country of asylum or if the refugee, "having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country." Refugees also have privileges to not be expelled to countries of persecution. Under the 1951 Convention, the assimilation and naturalization of refugees is to be facilitated and expedited, and the UNHCR is obliged to ensure the protection of refugees through compliance with international arrangements on refugees.

37. Id. art. 26, reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 90.
38. Id. art. 4, reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 87.
40. Id. art. 31(1), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 90-91.
41. Id. art. 31(2).
42. Id.
43. Id. art. 33(1), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 91.
44. Id. art. 33(2).
45. Id. art. 32.
46. Id. art. 34.
47. Id. art. 35.
Although the effectiveness of the 1951 Convention, the 1967 Protocol, and the UNHCR's work will be studied in a later section, four primary concerns should be noted here. The narrow definition of the term "refugee" serves to exclude many refugees from the protections afforded by these instruments. The United Nations recognized the rights of these de facto refugees and, as early as 1959, adopted a resolution authorizing the UNHCR "to use his good offices in the transmission of contributions designed to provide assistance" to the refugees who do not come within the mandate of the Statute. Under the "good offices" authority, while the UNHCR provides relief and assistance to de facto refugees, they are nonetheless denied special rights and international protections accorded to persons who qualify under the agreements. The number of de facto refugees precluded from protection is perhaps as high as fifty percent of the total refugee population.

The second area of major concern stems from the unqualified acceptance in these instruments of the traditional rule of international law by which each state has the exclusive authority to grant or withhold asylum. That is, no individual has a right of asylum and states are not obliged to grant entry to any person.

48. See text accompanying notes 143-170 infra.
49. See Fragomen, supra note 20, at 56-58.
51. An observer has recently "inferred that the High Commissioner's competence extends to no more than about half" of the refugees in the world. Plender, Admission of Refugees: Draft Convention on Territorial Asylum, 15 SAN DIEGO L. REV. 45, 46 (1977) (footnote omitted).
seeking refuge. Thus, each state retains the sole discretion to determine who shall enter its territory—depending upon its application of the criteria of eligibility for refugees as established by the 1951 Convention and the 1967 Protocol or the UNHCR Statute, as incorporated into the state's national laws. This situation remains unchanged despite the 1967 U.N. General Assembly Declaration on Territorial Asylum, stipulating that the grant of asylum by a state is "a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State." Subsequently, the 1977 Geneva Convention of Plenipotentiaries to discuss the Draft Convention on Territorial Asylum did not recommend the adoption of the Draft Convention.

There are a number of other international legal instruments—although not overly effective—relating to refugees. These include: Protocol I to the 1949 Geneva Conventions of August 12, 1949, adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, containing significant, beneficial provisions


57. The Conference recommended that the U.N. General Assembly convene "at an appropriate time a further session of the Conference." U.N. Doc. A/CONF. 78/12, at 6 (1977). Professor Grahl-Madsen who was the Rapporteur of the Working Group which prepared the text of the draft convention has recently observed:

[t]he entire group was well aware of the fact that what we presented was not a well-considered, so to speak final draft convention, but merely a first draft, which definitely needed a refinement. It was probably naïve to set the costly machinery of the United Nations in motion on such a weak basis.

A. GRAHL-MADSEN, supra note 12, at 62.


relating to the status of refugees in armed conflict and to family reunification; the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, both providing protection to stateless persons, many of whom are also refugees; the 1957 Hague Agreement Relating to Refugee Seamen and the 1973 Protocol Relating to Refugee Seamen; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights; and the 1956 Convention on the Recovery Abroad of Maintenance, pertinent to the situation of split refugee families.

Among recent international efforts, two conferences and a round table have particularly achieved tangible results: The May 1979 Conference on the Situation of Refugees in Africa, held under the auspices of the UNHCR, the Organization of African Unity, and the Economic Commission for Africa at Arusha in the United Republic of Tanzania; the Meeting on Refugees and Displaced Persons in South-East Asia convened by the U.N. Secretary-General, which was held in Geneva in July, 1979; and a Round

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60. See arts. 73-74, 85(2) of Protocol I, Official Documents, supra note 58, at 490, 495.
63. Agreement Relating to Refugee Seamen, Nov. 23, 1957, 506 U.N.T.S. 125 (entered into force on Dec. 27, 1961). This instrument is designed to enable refugee seamen without a country of permanent residence to take up residence in the contracting state that has issued them a travel document.
68. For the High Commissioner’s comments on the conference, see 1979 Addendum to UNHCR Rep., supra note 8, at 36-37.
69. For the High Commissioner’s comments on the Geneva meeting, see id., at 37-38. For a discussion on the conference, see Recent Development, 21 HARV. INT’L
Table of Asian experts held in Manila in April, 1979, under the UNHCR auspices, to examine problems relating to the international protection of refugees and displaced persons in the Asian region. The Round Table adopted a number of conclusions, especially relating to asylum and non-refoulement. After the Arusha meeting, the OAU Council of Ministers was followed by a summit conference of Heads of State and Government. The High Commissioner reported that, at these meetings: "[T]he African leaders strongly demonstrated that they appreciate the gravity of the problem and their responsibility to do all in their power to assist refugees. The peoples of the continent are offering their support, generously and with understanding." The Geneva Conference resulted in increased offers by many countries to resettle refugees and to make large contributions in cash and in kind. Moreover, it significantly increased the number of refugees actually resettled.

Instruments of Regional Application.—Among the pertinent regional instruments, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is of special significance. It not only complements the 1951 Refugee Convention in a region where refugee problems have become particularly acute, but also broadens the definition of "refugee" to include every person who owing to external aggression [sic], occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The Convention specifically provides that "no persons shall be subjected by a Member State to measures such as rejection at the frontier, . . . which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be
threatened." It also provides detailed provisions regarding asylum and voluntary repatriation of refugees, stating specifically that granting asylum "shall not be regarded as an unfriendly act."

The 1969 American Convention on Human Rights, which became effective in July, 1978, contains, inter alia, significant provisions relevant to asylum and provides for the fundamental principle of non-refoulement. In Europe, the pertinent instruments include: The 1959 European Agreement on the Abolition of Visas for Refugees; the Protocol to the European Convention on Consular Functions concerning the Protection of Refugees; and several measures designed to meet the needs of migrant workers, which would also benefit the refugees among such workers. Since many states in these two regions have not yet acceded to the 1951 Convention and the 1967 Protocol, these Conventions are of special significance.

Measures of Implementation

International Intergovernmental Measures.—The international community ministers to refugees' needs primarily through UNHCR, which provides both international protection and material assistance. The importance of international protection was recently emphasized by the High Commissioner:

[I]t is the protection function of UNHCR that gives our work its essential character and uniqueness. All else flows from this. There can be no emergency assistance for refugees, still less durable solutions, unless we first protect life, save refugees from

76. Id. art II(3), reprinted in OAU Refugee Convention, supra note 74, at 1292.
77. Id. art. II, reprinted in OAU Refugee Convention, supra note 74, at 1391-92.
78. Id. art. V, reprinted in OAU Refugee Convention, supra note 74, at 1393-94.
79. Id. art. II(2), reprinted in OAU Refugee Convention, supra note 74, at 1292.
the perils of refoulement, the perils of the high seas, arbitrary detention and punishment. No function of our Office will therefore be more central to my concern: this Office stands for the rights of the refugee, the right above all to humane treatment and human dignity.\textsuperscript{86}

Furthermore, a recent UNHCR Report addressed the following principles of international protection and refugee rights: Asylum,\textsuperscript{87} rescue at sea,\textsuperscript{88} non-refoulement,\textsuperscript{89} expulsion,\textsuperscript{90} personal safety of refugees,\textsuperscript{91} detention,\textsuperscript{92} economic and social rights,\textsuperscript{93} travel and identity documents,\textsuperscript{94} and acquisition by refugees of a new nationality.\textsuperscript{95} The report also concerned the establishment of state procedures for determining refugee status, voluntary repatriation efforts,\textsuperscript{96} and efforts toward family reunification.\textsuperscript{97}

UNHCR material assistance, which varies depending on a refugee's needs, may consist of immediate relief assistance, usually in the form of food, medical supplies, and shelter. UNHCR's major concern, however, is to find durable solutions, whether relating to voluntary repatriation, local settlement, or resettlement in third countries. In attempting to meet these needs, UNHCR first tries to secure legal rights under international instruments for refugees in the country of asylum. It intervenes directly on behalf of individuals or groups where necessary,\textsuperscript{98} and promotes internal implementation of international agreements.\textsuperscript{99} As the High Commissioner recently noted: "It will remain a major task for UNHCR, in co-operation with Contracting States, to ensure that implementa-

\textsuperscript{87} 1980 UNHCR Rep., \textit{supra} note 9, at 4-5.
\textsuperscript{88} Id. at 5.
\textsuperscript{89} Id. at 6.
\textsuperscript{90} Id.
\textsuperscript{91} Id. at 7.
\textsuperscript{92} Id. at 7-8.
\textsuperscript{93} Id. at 8.
\textsuperscript{94} Id. at 8-9.
\textsuperscript{95} Id. at 9-10.
\textsuperscript{96} Id. at 10-12.
\textsuperscript{97} Id. at 12.
\textsuperscript{98} See, e.g., the High Commissioner's Statement of Oct. 9, 1978, in 1978 Addendum to UNHCR Rep., \textit{supra} note 86, at 41: "In all cases where asylum is in jeopardy, or when we learn of the threat of refoulement, or the arbitrary and prolonged detention of refugees without trial, I consider it the duty of UNHCR to intervene." Id.; see 1979 UNHCR Rep., \textit{supra} note 53, at 3.
\textsuperscript{99} 1979 UNHCR Rep., \textit{supra} note 53, at 3.
tion matches obligations under our instruments."

UNHCR actively seeks to further develop "refugee law," and considers its dissemination an important vehicle in effectuating international protection. Thus, it makes major efforts to publicize refugee law to create a favorable climate of receptiveness.

In addition to emergency relief assistance—provided at the invitation of a concerned country in cooperation with voluntary or governmental agencies that offer relief to the refugees in that country—UNHCR's other forms of help include: Counseling, education, resettlement, and treatment and rehabilitation of the handicapped. Its work also includes cooperative effort with several U.N. agencies and humanitarian assistance programs for refugees not falling within the UNHCR mandate. For example, at the request of the government of Zimbabwe, the U.N. Secretary-General asked the High Commissioner to coordinate a humanitarian assistance program for repatriates and displaced persons inside Zimbabwe.

Most UNHCR funds are provided on a voluntary basis annually by U.N. members, intergovernmental organizations, intergovernmental agencies, and nongovernmental organizations. Projects handled by the UNHCR under its Statute are budgeted under the heading, "General Programmes," and specific tasks that the UNHCR has been asked to perform, but which are outside the UNHCR's traditional activities, are budgeted as "Special Programmes." In 1979, for instance, the latter category of programs included those for "the Kampucheans in Thailand, the repatriation

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100. 1978 Addendum to UNHCR Rep., supra note 86, at 41.
103. See id. at 55-58.
104. See id. at 59-60.
of Burmese from Bangladesh and the humanitarian assistance to returning refugees and displaced persons in Uganda and Nicaragua.”

Special programs during the first quarter of 1980 included those for appeals launched for Afghan refugees in Pakistan, the repatriation of Zimbabwean refugees, and increased assistance for refugees in Somalia.

The growth of UNHCR's activities and functions is reflected by the contributions to its assistance programs, which more than tripled between 1977 and 1979. Contributions made or pledged during the quarter ending in March 1980 amounted to 256.9 million dollars. From January 1979 to March 1980, ninety-five countries either paid or pledged contributions to UNHCR assistance programs. Approximately 250 million dollars were invested in UNHCR program activities in just Africa during 1980, “which is well above the amount spent by UNHCR for the whole world in 1979.”

Another intergovernmental agency involved in assisting refugees is the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which was also created by the U.N. General Assembly, but which, unlike UNHCR, is an operational agency, dispensing services to a specific refugee population. Sixty-five countries and the European Economic Community contributed 152 million dollars to UNRWA in 1980, while contributions by U.N. agencies, the OPEC Fund, and nongovernmental services during the same period amounted to about 12 million dollars. Its assistance operations during the year ending June 1980 were reported to fall into the following major categories: Education and training services, health services, and relief services.

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109. Id. at 64.
110. Id.
111. Id. at 74-75; 1979 UNHCR Rep., supra note 53, at 59-60; 1978 UNHCR Rep., supra note 101, at 55-61.
112. 1990 UNHCR Rep., supra note 9, at 74-75.
113. Id.
114. UNHCR, supra note 105, at 12.
117. Id. at 77-82.
118. Id. at 13-20.
119. Id. at 20-25.
vices, including rations, camps and shelter, and welfare. Another agency is the Intergovernmental Committee for European Migration (ICEM), which assists in refugee migration and family reunification in Europe and provides language training. ICEM assisted 84,500 refugees from all regions of the world in 1978, for instance. Other international organizations include: The United Nations Children’s Fund (UNICEF); the United Nations Development Program (UNDP); the United Nations Industrial Development Organization (UNIDO); the International Labour Organization (ILO); the United Nations Educational, Scientific and Cultural Organization (UNESCO); the Inter-Governmental Maritime Consultative Organization (IMCO); the Office of the United Nations Disaster Relief Coordinator (OUNDRC); and the International Fund for Agricultural Development (IFAD).

The Role of Nongovernmental Relief Agencies.—According to a recent UNHCR Report, over 200 nongovernmental organizations are currently participating in humanitarian assistance programs undertaken by UNHCR. As a measure of their activities and contributions, a total of seventy-nine such agencies were represented at the Thirtieth Session of the Executive Committee of the High Commissioner’s Program, held in Geneva in October 1979. They included: Humanitarian organizations such as the International Committee of the Red Cross and the League of Red Cross Societies; agencies concerned primarily with basic human rights such as Amnesty International, the Inter-Parliamentary Union, and the International Commission of Jurists; and many other sectarian and church-related organizations that are active both in the fields of protection and resettlement. While these voluntary agencies contribute financially to the UNHCR’s various programs (about 17.6 million dollars in 1979), many assist refugee operations as UNHCR contractors or through their own privately run programs.

Domestic Implementation Measures—The 1980 Refugee Act of

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120. Id. at 26-33.
121. WORLD REFUGEE CRISIS, supra note 2, at 296-301 (summary report).
122. Id. at 297.
123. Id. at 298.
125. Id. at 62.
126. Id.
127. For a short discussion on the activities of some of these voluntary agencies, see WORLD REFUGEE CRISIS, supra note 2, at 303-33.
the United States.—Absent the individual's right to asylum, the foremost protection of refugees worldwide is the effective implementation by nation-states of international agreements, especially the 1951 Convention and the 1967 Protocol. However, as of March 1980, only eighty-one states or just half of the United Nations' membership had acceded to the Convention and/or the Protocol. It was in this context that the U.S. Refugee Act was enacted as the first comprehensive federal statute relating to the admission and resettlement of refugees.

The Refugee Act 128 is intended "to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted." 129 Prior to this enactment, under the revised version of the 1965 Immigration and Nationality Act, a refugee had to prove that he or she had fled from a Communist or Communist-dominated country or that he or she came from a country in "the general area of the Middle East" in order to be admitted. 130 The Act repeals the cold war definition of "refugee" and substitutes the generally accepted definition from the 1967 Protocol for the geographical and ideological limitations of the prior act. 131 That is, one who is outside his or her country and is unwilling or unable to return to it because of persecution or fear of persecution is a refugee. However, this definition is even broader, including people within their own country who are persecuted or have well-founded reasons to fear persecution in special circumstances as the President may specify after appropriate consultation. 132 Thus, it repeals the current immigration law's discriminatory treatment of refugees by providing a more flexible definition, recognizing the plight of uprooted people on the basis of equality—regardless of their national, regional, or political origins.

The Act further provides for a systematic, comprehensive, and uniform procedure for the admission of refugees on humanitarian

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129. Id., § 101(b).
131. Id., § 1153(a)(7).
grounds. It raises the annual limitation on admitting regular refugees ("normal flow refugees") from 17,400 to 50,000.\textsuperscript{133} Moreover, in emergency refugee situations,\textsuperscript{134} and where refugees are not firmly resettled in a foreign country and are of special humanitarian concern to the United States,\textsuperscript{135} these numerical limits may be exceeded. The Act is unique in establishing an asylum provision requiring the Attorney General to establish a procedure for asylum under the new section 208 of the Immigration and Nationality Act. The Attorney General is authorized to grant asylum to an alien physically present in the United States or at a land border or port of entry, irrespective of the alien's immigration status, if the alien applies for asylum and the Attorney General determines that the alien meets the definition of a refugee.\textsuperscript{136}

In addition, the Act amends section 209 of the Immigration and Nationality Act to provide for adjusting the status of refugees and asylees, and reduces the period between legal entry and eligibility for permanent status from two years to one (one year for an asylee after having been granted asylum and a year's physical presence in the United States for a refugee).\textsuperscript{137} Refugees are exempted from the Immigration and Nationality Act's exclusion provisions relating to labor certification, public charge, documentary requirement, literacy, and foreign medical graduate eligibility requirements.\textsuperscript{138} The Attorney General may waive, on an individual basis, some of the other bases for exclusion for humanitarian reasons to ensure family unity or for other reasons in the public interest.\textsuperscript{139}

The Act also creates under section 301 a United States Coordinator for Refugee Affairs, and establishes the office's responsibilities.\textsuperscript{140} Section 401 authorizes the Attorney General to issue work permits to applicants for asylum. Assistance is also authorized under the Act for effective resettlement of refugees in the United States,\textsuperscript{141} providing for federal support, including cash and medical benefits for a three-year period following admission.\textsuperscript{142}

\begin{itemize}
\item \textsuperscript{133} Id., § 207(a)(1).
\item \textsuperscript{134} Id., § 207(b).
\item \textsuperscript{135} Id., § 207(c)(1).
\item \textsuperscript{136} Id., § 208(a).
\item \textsuperscript{137} Id., §§ 209(a)(1)(B), 209(b)(2).
\item \textsuperscript{138} Id., § 209(a).
\item \textsuperscript{139} Id.\textsuperscript{140} The Coordinator is to have the rank of Ambassador-at-Large. Id., § 301(a).
\item \textsuperscript{141} Id., §§ 311-313, 401, 411-414.
\item \textsuperscript{142} Id., § 412(e).
\end{itemize}
APPRAISAL AND RECOMMENDATIONS

An appraisal of existing international agreements and machinery designed to meet world refugee needs must be made in the context of the problems faced by an individual who flees his or her country. The first problem obviously is for the individual to find a country of asylum, which depends on gaining refugee status, since only this determination assures him or her of international protection. Once a person finds temporary asylum, the need then is to find durable solutions. This involves repatriation possibilities, settlement in the country of asylum, or resettlement in a third country. Until the individual's permanent settlement, the issues of what his or her rights and freedoms are and how to secure them are crucial. The critical questions, therefore, continue to be those of asylum and non-refoulement so that a person is not forced back to a country where he or she fears persecution. As the UNHCR recently stated: "One hopes that this principle [of non-refoulement], which has repeatedly been breached during this decade, will no longer be subject to any derogations and will simply become an obvious necessity and a self-evident truth." Thus, the existing instruments and implementation mechanisms will be further appraised in light of these problems.

International Instruments

Because the situations of today's refugees are more diverse and complex that those of European refugees at the end of World War II, international instruments must be reexamined and revised. To illustrate some of the flaws and gaps under the current arrangements, consider that states, international intergovernmental organizations, and nongovernmental organizations use different criteria in defining the term "refugee" and in determining who will receive their assistance. Furthermore, nation-states implement these instruments differently, depending upon their varying interpretations, often causing conflicts between their obligations under these instruments and their domestic laws. Also limiting the scope and

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143. 1979 Addendum to UNHCR Rep., supra note 8, at 41.
144. See, e.g., WORLD REFUGEE CRISIS, supra note 2, at 6-12; Fragomen, supra note 20, at 50-61; Plender, supra note 51, at 52-56.
effectiveness of these instruments is their less than universal acceptance; only half the countries of the world have become parties. Thus, there is no consistency or uniformity in applying these instruments.

Specific problems include the rather restrictive definition of the term “refugee” for, in order to qualify as one, a person must have a well-founded fear of persecution in his or her country of nationality or former habitual residence. The burden of proof is on the person seeking asylum to prove that he or she qualifies as a refugee under that country's interpretation of these instruments. The terms “well-founded fear” and “persecution” are not defined in the instruments and are subject to varying interpretations by different countries. The Ad Hoc Committee on Refugees and Stateless Persons, which prepared the 1961 Convention, described “well-founded fear” to mean that a person “has either been actually a victim of persecution or can show good reason why he fears persecution.” However, as an observer recently remarked, the term “persecution” is generally given a strict interpretation, as it “is generally taken to exclude individuals who face discrimination or maltreatment other than of a very serious kind.” In the 1951 Convention, among the possible factors causing persecution are “race, religion, nationality, membership of a particular social group or political opinion. . . .” Not included in this list, however, are other factors, such as severe economic deprivations that render one unable to find means of livelihood, natural disasters, and breakdowns of public order due to either internal conflicts or domestic instability, causing fear of persecution although there may be no provable personal instances of persecution. Furthermore, it is uncertain whether the persecution must have occurred throughout the country or just in the part from which the person has fled.

A person must also be “outside the country of his nationality” to be considered a refugee; this raises complexities as well. In 1977, the High Commissioner acknowledged the problem of distinguishing between refugees and displaced persons:

146. Eighty-one States were parties to one or other or both the 1951 Convention and the 1967 Protocol. 1980 UNHCR Rep., supra note 9, at 13.
147. See note 20 supra.
149. Plender, supra note 51, at 53.
150. 1951 Convention, supra note 18, art. 1(a)(2), reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, supra note 16, at 86.
Judging from the relevant resolutions of the General Assembly, a displaced person would appear to be one who, while not fulfilling *strictu sensu* the refugee eligibility criteria, is in a situation analogous to that of a refugee. Additionally, it is felt by some that persons who do not cross an internationally recognized border should be treated as displaced persons. Here again, there is need for clarification. A beginning could be made in the Executive Committee if the member Governments so desire.  

The question of what constitutes legal presence within a country is also subject to a particular country’s interpretation. For example, in a 1977 case, the U.S. Court of Appeals for the Fifth Circuit passed upon the claims of asylum of 147 Haitian immigrants who came to the United States by boat. They argued that the 1967 Protocol gave refugees a “right” or “entitlement” under the due process clause of the Constitution. In holding that the 1967 Protocol did not entitle alien refugees to asylum in the United States, the court reasoned that “[t]he entire immigration scheme would be nullified if any alien desiring entry could demand the full process of the courts to adjudicate his refugee status, merely by appearing at our shores and proffering assertions of [refugee] status. . . .” The Supreme Court, however, vacated the judgment and remanded the case. Additionally, neither customary international law nor convention guarantees a right to asylum, and, as a result, many refugees go unaided.

To assure that refugees are treated according to established standards under international instruments and to eliminate *refoulement* and other violations of basic human rights, it is imperative that universal acceptance of the international instruments become a reality. It is equally essential that the United Nations General Assembly initiate a review of these instruments to fill the major gaps. This could be done by an international conference on refugees convened under an Assembly resolution in order to both heighten public awareness of the crisis and to amend the existing

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153. *Id.* at 1288.
155. See note 51 supra.
instruments in light of contemporary realities. The latter could take the form either of a new protocol or another convention.

**International Machinery**

The main international body designated to provide protection and assistance to refugees and displaced persons, UNHCR, is functioning under a mandate of thirty years ago. When created, it was anticipated that the Office would be of temporary duration. However, the end is still nowhere in sight. As the High Commissioner recently reported: "In today's world, refugees and displaced persons occupy a prominent place. . . . Their numbers are increasing, their tragedies burst upon the everyday scene and their sufferings reach new dimensions."\(^{156}\) Similarly, UNRWA's tasks are nowhere near completion, and its mandate has been periodically extended by the U.N. General Assembly.\(^{157}\)

Both these agencies rely heavily on voluntary contributions by governments.\(^{158}\) In his recent report to the General Assembly, the Commissioner-General of UNRWA presented a bleak picture:

> The threat which hangs over UNRWA today is that inadequate income to maintain its services to the refugee community will cause it to collapse and that, instead of an orderly transfer of responsibilities, turmoil will ensue. I assume that the international community would not wish to see the demise of UNRWA through financial collapse, but unless the financial prospects of the Agency improve greatly in 1981, this grim prospect may become a reality.\(^{159}\)

He further added:

> Should the General Assembly decide that, in the absence of a comprehensive settlement of the Palestine question, the mandate of UNRWA should extend beyond 30 June 1981, the level of the activities of the Agency, their nature and their geographical location must depend upon the income which is made available to the Agency in the course of 1981 and during the remaining period of the renewed mandate. Over 90 per cent of the UNRWA income is derived from voluntary contributions by gov-

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156. Addendum to 1979 UNHCR Rep., *supra* note 8, at 36.


158. See id. at 77-82.

159. Id. at 2.
ernments, who by the size of their contributions will set the lim-
its on UNRWA's programmes in 1981 and beyond.\textsuperscript{160}

UNRWA faces serious financial difficulties and needs substantial as-
sistance from the international community to maintain its services
to the Palestine refugees. However, since it deals with a special is-

issue and the solution lies in a comprehensive settlement of the
Palestine question, a discussion of which is beyond the scope of
this paper, the rest of the comments here will be directed to the
UNHCR, which is designed to assist the refugees on a worldwide
basis.

UNHCR faces a formidable task in providing international pro-
tections as well as durable solutions to the refugee crisis, that is,
securing voluntary repatriation or integration in countries of first
asylum or resettlement in a third country. The task is further com-
plicated by states' inconsistent and flawed application and imple-
mentation of the 1951 Convention and the 1967 Protocol.\textsuperscript{161} Also,
restrictive admissions policies in many states make resettlement
difficult.\textsuperscript{162} Similarly, where economic problems beset already
crowded countries, permanent residence is difficult to achieve. Ad-
ditionally, the non-operational nature of UNHCR requires it to rely
on voluntary agencies and governments for the emergency care and
maintenance of refugees.\textsuperscript{163} This coordinating role cannot be ef-
ectively performed, however, because the voluntary nature of
UNHCR's financing prevents effective planning. As the High Com-
missioner stated in October 1978:

In January, soon after I took up my post, I was told that the to-
tal expenditures of the Office, in 1977, had been $111 million
and that similar expenditures might be required of us in 1978. I
was also told that the budget for the General Programmes in
1978, as approved by the Executive Committee, was only $35
million, against which Governments had pledged scarcely $13
million, of which only $5 million were available for commitment
on 1 January.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{160} Id. at 4.
\item \textsuperscript{161} See sources cited notes \textsuperscript{144-146} supra and the accompanying text.
\item \textsuperscript{162} See, e.g., Note on International Protection, U.N. Doc. A/AC.96/579, at 2
(1980).
\item \textsuperscript{163} For a detailed discussion on the assistance activities of UNHCR, see L.
HOLBORN, REFUGEES: A PROBLEM OF OUR TIME—THE WORK OF THE UNITED NA-
TIONS HIGH COMMISSIONER FOR REFUGEES 1951-72 (1975); see id. at 1447-87 (bibli-
ography).
\end{itemize}
\end{footnotesize}
I was concerned that orderly planning and implementation might be impossible in such circumstances. When I voiced my concern, I was told by my colleagues to have an abiding faith in the generosity and understanding of Governments.164

It seems essential that the UNHCR Statute be strengthened and that UNHCR be assured of adequate finances without having to rely so heavily on voluntarily financed budgets. The creation of a special UNHCR fund for durable solutions165 would provide some help to UNHCR operations and the developing countries in their efforts to aid refugees.166 But this action alone would not suffice. A recommendation made earlier by a United States Congressional Committee is worth exploring. It proposes that grants and loans from international financial institutions to developing countries, if they be the asylum states, be considered as part of the development programs of those states167—for their resources may not be able to withstand the costs associated with providing permanent residence, long-term settlement, or resettlement to large influxes of refugees.

This problem, created by a “source” country, is further exacerbated if the country induces or compels groups of people to leave that country because it wishes to get rid of what it perceives as undesirable elements. The Vietnamese “boat people” and the recent Cuban refugees fall into these categories. The UNHCR Statute might be strengthened by specifically designating the High Commissioner’s Office as the Agency to initiate all necessary steps, such as mediation, negotiation, good offices, etc. It is also important to address the conditions that cause persons to be refugees. If serious economic deprivations in a country such as Haiti or consistent violations of human rights as in Kampuchea and Vietnam cause a mass flow of refugees, it is essential that the international community take steps to ease or eliminate those conditions, for obviously there are limits to the number of refugees who can be assisted, integrated, or resettled. This is true not only in developing countries, but even in developed countries such as the United States. For example, at the recent hearings before the United

164. 1978 Addendum to UNHCR Rep., supra note 86, at 38.
167. Noted in WORLD REFUGEE CRISIS, supra note 2, at xxiv.
States Senate Judiciary Committee on "U.S. Refugee Programs," Senator Alan Simpson said:

One thing is absolutely clear. We must be selective. We cannot admit everyone who wants to enter the United States, even everyone in desperate condition. There comes a time when we simply must say no, or else we will be literally overwhelmed. There are billions of people all over the world whose lives would be significantly improved by coming to the United States.\textsuperscript{168}

He further added:

When the issue of selectivity is raised in this arena, it has always been zeroed in on as being a racist policy or a prejudicial policy. That is not what it is. . . . Yet it seems to me that we find this process being always tinged with that aspect. But evidence is that the American people—blacks, whites, various ethnic and racial groups in America—are very concerned about our policies about just opening the door and letting them in, out of compassion, fatigue, or some other description that I am not quite aware of. That is the problem.\textsuperscript{169}

Similarly, in an interview shortly after his loss in the Presidential election, President Carter stated that the refugee issue was one reason for his loss: "The refugee question has hurt us badly. It wasn't just in Florida, but it was throughout the country. It was a burning issue. It made us look impotent when we received these refugees from Cuba."\textsuperscript{170}

CONCLUSION

The preceding discussion has demonstrated the inadequacies of existing international instruments and institutions in providing the needed assistance to the world's refugees. It is imperative that these instruments and institutions be strengthened to ensure that refugees are provided temporary asylum, that they receive adequate care, maintenance, and legal protection during the period of temporary asylum, and that the search for durable solutions such as repatriation and permanent resettlement be successful. It is equally essential for the international community to explore the means to ease or eliminate conditions causing people to flee their countries. Special efforts are needed to persuade states that induce or force

\textsuperscript{168} U.S. REFUGEE PROGRAMS, \textit{supra} note 1, at 20.
\textsuperscript{169} Id.
\textsuperscript{170} U.S. NEWS \& WORLD REP., Nov. 17, 1980, at 92.
displacements to stop these practices and to permit the repatriation of their own citizens. UNHCR should be specifically authorized to undertake the necessary initiatives toward this end.

The world community can no longer ignore or underestimate the complexity, gravity, and magnitude of the refugee problem, which has reached a crisis proportion. As the problem cannot be solved on an ad hoc basis, permanent solutions are needed to assist the victims of war, political instability, brutality, intolerance, oppression, and economic deprivation. The responsibility lies with the international community to be prepared for emergency situations, while searching for durable solutions. In the context of the emerging norms of human rights, a few principles can be identified, which, if universally accepted, would contribute toward ameliorating the plight of refugees and displaced persons. They are: Temporary asylum, non-refoulement, legal protection of noncitizens, and equitable burden-sharing. The following statement of the first High Commissioner remains equally valid today:

The refugee problem has nothing to do with charity. It is not the problem of people to be pitied: far more of people to be admired. It is a problem of people who, somewhere, somehow, sometime, had the courage to give up the feeling of belonging which they possessed, rather than abandon the human freedom which they wanted more highly.

The world community has no choice but to accept both the challenge and the responsibility.


173. 1977 Addendum to UNHCR Rep., supra note 151, at 35.