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Refugees in contemporary international relations: reconciling state and individual sovereignty

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Introduction

Today, when the forces of globalization at one level, and those of ethnic conflict, nationalist secessionism, and communal violence at another level contribute to instability in many parts of the world, the concepts of good governance, civil society, the protection of human rights/security, individual sovereignty and humanitarian intervention are gaining currency in policy discourse. The prominence these concepts enjoy, at least rhetorically, is tied in no small way to two related but distinct phenomena: migratory movements and the forced displacement of peoples.

The former is attributable, generally, to glaring inequalities in wealth between industrialized and poorer countries, and the impact of market forces. The latter is directly attributable to massive human displacement as a consequence of armed conflict, persecution, if not attempts on the part of one group in a state to either annihilate or drive out another entire group of people.

The phenomenon of forced displacement has resulted in refugees becoming a defining characteristic of the post-Cold War era and contemporary international relations. Long regarded as a peripheral issue or a matter of discretionary charitable concern to policymakers, refugees now figure prominently on the international policy agenda. Liberal internationalists argue that in the name of basic values something should be done to address this issue. Realists largely driven by concern for national interests and the sentiment that conflict is a natural feature of international politics do acknowledge, however, that the sheer numbers involved often constitute a threat to regional security (Great Lakes, Africa) and at times international security (Balkans, Iraq).

Along with the impact of a globalizing economy, the refugee issue has forced many academics and policy-makers to recognize that the basic unit of analysis in international relations, i.e. “the state”, is no longer wholly adequate as an explanatory or predictive tool. By extension, traditional conceptions of dealing with security issues are inadequate in an increasingly post-Westphalian world.

The following pages focus on the causes of forced displacement and then the legal and normative framework of refugee protection. The section discusses developments in the post Cold War period and current challenges confronting the Office of the United Nations High Commissioner for Refugees (UNHCR), not least in the aftermath of September 11. It is argued that there is an increasingly solid basis for action which would significantly mitigate if not resolve the refugee issue if the political will can be marshaled to do so.

World disorder: concepts in conflict

While greed, ideological differences and religious tensions have always played a role in displacement, to understand the genesis of forced displacement, especially since the end of the Cold War, the continuing inability of the “international community” to coherently and consistently deal with this problem and the likelihood of future displacements, it is useful to look at the four underlying principles of world order – most of which are enshrined in the UN Charter and all of which, as Stanley Hoffman

has observed, “are flawed and in conflict with one another.”¹ These principles are state sovereignty, the right to national self-determination, democracy (based on constitutional government), and respect for human rights. While limits of space preclude a full discussion of these principles, the contradictions rather than complementarity of these concepts can briefly be outlined as follows.

Although the UN Charter enjoins the members via the principle of state sovereignty to respect the territorial integrity of other members, the concept has little relevance in a rapidly globalizing economy given the nexus of financial, industrial and commercial relations that consistently breach traditional notions of state sovereignty.

However, the principle does tend to shield smaller states from more overt forms of imperialist or military aggression, which explains why the Group of 77, among other state actors, (including the U.S.), so fiercely uphold this principle. Unfortunately, it also provides states an excuse to carry out domestic atrocities against their own citizens whose televised plight and requests for assistance in the information age, come to the attention of an increasing number of people around the world. This, having offended our sense of basic justice, results in pressure for intervention.

The second principle is that of the right to national self-determination. From the late 19th century, liberals from Mazzini to Woodrow Wilson believed that a world of sovereign nation-states, each having achieved their destiny by obtaining a state of their own, would live in harmony. The problem is that no one has ever adequately defined what the “national self” is. Moreover, if one takes the concept of “nation” or ethnic group and language as the principle determinants of what constitutes a nation, there are an estimated 5,000 nations and 6,000 distinct languages in the world.²

The possibilities for further challenges to state sovereignty and international order in terms of an exponential increase in state formation may be imagined. To counteract the potential divisiveness of nation-states, Wilsonian liberals proposed a third principle, that of constitutional democracy, basing themselves on the Kantian assumption that democracies with their respect for citizens’ rights and rational discussion would not resort to war. However, as Hoffman has noted, the UN Charter unlike the European Community does not require that all UN members be democracies. In essence, sovereignty and self-determination have more legitimacy than self-government. When it comes to how states govern themselves, as a counterbalance to sovereignty the Charter mentions the fourth principle of respect for human rights and fundamental freedoms via international cooperation. In terms of world order, the gulf between domestic affairs and interstate relations remains distinct.

The problem is further compounded by the fact that not all democracies are liberal in nature, ensuring respect for individual and minority rights. Indeed only a few democracies are democratic in name only if not Jacobin in nature, allowing nothing to stand in the way of the majority or dominant ethnic group. In many new democracies

¹ S. Hoffmann, “Delusions of World Order”, New York Review of Books, April 9, 1992 p. 37. Hereafter, Hoffmann.

² W. Welsh “Domestic Politics and Ethnic Conflict”, in Ethnic Conflict and International Security, ed. M.E. Brown (Princeton: Princeton University Press, 1993), p. 45 and D.P. Moynihan, Pandaemonium Ethnicity in International Politics, (Oxford: Oxford University Press, 1993), p. 89.

voting blocks are largely reflections of ethnic constituencies. In countries lacking a long democratic tradition, the absence of developed mediating institutions means that elections tend to follow ethnic lines. Even liberal democracies may reserve rights and benefits for nationals with other fundamental rights denied to foreigners and immigrants.

In light of these problems, it is understandable that the fourth principle – universal human rights, which would protect people irrespective of the regime they lived under – has gained prominence over the past decades. Given the countervailing tendencies of these basic principles of international order it will be clear that it is difficult for most states to pursue all four simultaneously.

The normative and legal framework of refugee protection

Isaiah Berlin has called the 20th century the “dreadful century”³ where an estimated 100 million people have died in armed conflict and an additional 170 million perished as a consequence of political violence. Reliable statistics on refugee numbers over the past 100 years do not exist. However, if figures were available they would no doubt be as compelling as the aforementioned numbers of fatalities from armed conflict or political violence. In the aftermath of the Second World War, the UN was established to promote world peace.

At roughly the same time, impelled by the horrors of the Holocaust, the human rights movement not only gathered momentum but shifted emphasis from a less than auspicious record in protecting minority rights in the 1930’s and 1940’s to a focus on individual human rights. Between 1948 and the present, 24 international human rights instruments have been established and one, the Convention Against Slavery, reaffirmed.⁴

These international instruments include both the benchmark Universal Declaration on Human Rights which addresses many rights crucial to refugee protection such as the right to life, liberty, security of the person; the right not to be subjected to cruel, inhuman or degrading treatment; the right to freedom of movement and the right to leave and return to one’s country; the right not to be subjected to arbitrary arrest, detention or exile; and the right to nationality. The 1951 Convention Relating to the Status of Refugees was the first in a series of human rights treaties which transcribed the ideals of the Universal Declaration into legally binding obligations. The legal link between human rights and refugee protection is found in Article 14 of the Universal Declaration which affirms the “right to seek and enjoy in other countries asylum from persecution”.

The 1951 Convention remains the most specific and comprehensive treaty for any vulnerable group and sets out a “bill of rights” for refugees, paramount of which is the prohibition of refoulement or return of asylum seekers at borders. The 1951 Convention has been ratified by approximately two-thirds of the member states of the

³ N. Gordels, “Two Concepts of Nationalism, An Interview with Isaiah Berlin”, New York Review of Books, November 21, 1991, p. 19.

⁴ Carnegie Commission on Preventing Deadly Conflict, Preventing Deadly Conflict, Final Report (Washington DC: Carnegie Commission on Preventing Deadly Conflict, 1997) p. 11. Hereafter Carnegie Commission.

UN. While the Convention provides an impressive array of rights for refugees, it does not define, inter alia “persecution” or proper levels of reception of refugees and asylum seekers. Standards in this connection are, however, developed in three other legal instruments known collectively as “the UN Bill of Rights”: the Universal Declaration, the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.

Particular categories of refugees and displaced peoples receive specific attention in such treaties as the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of the Child (CRC). In the CRC the principle of the “best interests of the child” has special meaning for displaced children as the norm runs through all procedures and decisions concerning a child irrespective of migration status. Other important instruments are the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and the 1950 European Convention for the Protection of Human Rights.⁵

While the Cold War forestalled much progress on the human rights front in a practical sense, given the absence of firm enforcement mechanisms for the overwhelming majority of instruments, the advance of the human rights movement did represent a significant development in the formation of an ethical counterweight to power-based national interest reinforced by emphasis on state sovereignty. Moreover during the Cold War the 1951 Convention, supplemented by regional instruments such as the OAU Convention in Africa and the Cartagena Declaration in Latin America which address displacement as a result of generalized violence or breakdown in public order, enabled some 35 million refugees to be granted asylum and ultimately to be able to return home in safety and dignity or to find a new homes in other countries.

Despite the resilience of the refugee protection regime since its inception in the early days of the Cold War there have been worrying developments especially since the mid 80s which threaten the 3,500 year old tradition of asylum and call into question the applicability of the international protection framework. Perceived problems in this connection originated with the increasing number of non- European asylum seekers from all over the world arriving directly in Europe. These newcomers, eg. Iranians, Iraqis, Turks, Sri Lankans among others, did not conform to the Cold War stereotype of refugees. Unlike the massive, organized resettlement for Indochinese in the 70s and 80s these movements were spontaneous. They resulted from a series of internal conflicts and human rights violations in Asia, Africa, Latin America, and the Middle East.⁶

This phenomenon coincided with the economic recession of the 80s precipitated by the oil crisis of the early 70s which severely reduced Europe’s need for migrant labour, and was further driven by easier access to air travel and the spread of television and video to even the most remote parts of the world whose images of the good life in the industrialized world accentuated the chasm between rich and poor. In the absence of migration possibilities a certain percentage of persons seeking better

⁵ Brian Gorlick, “Human Rights and Refugees: Enhancing Protection through International Law”, *Nordic Journal of International Law*, Vol. 69, 2000, pp. 119-122. Cf. Dennis McNamara, “Linkages between human rights, values and refugees”, *Symposium commemorating the 50th Anniversary of the Universal Declaration of Human Rights*, Chulalongkorn University, Bangkok, May 25, 1998.

⁶ UNHCR, *The State of the World’s Refugees, Fifty Years of Humanitarian Experience* (Oxford: Oxford University Press, 2000) pp. 156, 157. Hereafter UNHCR.

economic and social conditions entered the asylum channel. The change in the Cold War European mould of asylum seeker and the phenomenon of mixed flows of peoples seeking asylum including economic migrants tended to blur the distinction between legitimate asylum seekers and those seeking better opportunities and led to a sentiment that the overwhelming majority of asylum seekers were bogus.

Between 1983 and 1989 the number of asylum seekers in Western Europe increased from 70,000 to 200,000.⁷ Western European government's asylum determination mechanisms were increasingly strained and the annual cost of determining status and providing social benefits soared. According to one estimate the combined cost of administering the asylum process and providing benefits to asylum seekers in the 13 major industrialized countries increased from approximately \$ 500 million in 1983 to \$7 billion in 1990.⁸ By 1992 asylum applications in Europe peaked at some 700,000, with the disintegration of Yugoslavia. During this period in addition to genuine asylum seekers many poor residents of former Communist states in Europe, particularly, Romanians and Bulgarians exercising their new found freedom of movement, entered the asylum channel looking for better opportunities.⁹

The post Cold War balance sheet

With the end of the Cold War there was a short-lived optimism that with the triumph of liberal democracy and market forces we would enter a new era that would be characterized by less conflict. There was also an outburst of renewed faith in the UN and optimism was further exemplified by Boutros Ghali's Agenda for Peace in 1992. Between 1988 and 1994, 21 new peace keeping or peace building operations were mounted, compared to 13 UN peace-keeping operations during the previous 40 years. This optimism gave further impetus to the human rights movement. However as is well known hopes for a New World Order quickly faded with the upsurge in what are popularly described as ethnic conflict and the related phenomenon of nationalist secession movements. The increase in intrastate conflict also led to massive forced displacement and further pressures on asylum countries.

Since the end of the Cold War over 50 states have undergone major transformations, approximately 100 armed conflicts have been fought, over 4 million persons have died as result of armed conflict or political violence¹⁰ and UNHCR has seen the number of persons under its care rise from 15 million in 1990 to a high of 27.4 million in 1995. The magnitude of the latter figure is better appreciated when one considers that in 1970 UNHCR was responsible for two million refugees. While civilians have always suffered in conflicts there is a difference between the nature of warfare at the beginning of the last century and contemporary conflicts. At the turn of the 20th century civilians accounted for approximately 5 per cent of casualties in armed conflicts. In contemporary conflicts, 90 per cent of the casualties are civilian.¹¹ Those fortunate enough to survive are refugees.

⁷ Ibid., p. 156.

⁸ Ibid., p. 158.

⁹ Ibid.

¹⁰ Carnegie Commission, p. 3.

¹¹ The figure on civilian casualties at the turn of the 20th century is taken from UNDP, Human Rights Development Report, 1998 (Oxford: Oxford University Press, 1998) p. 35. The figure on armed

The processes of national self-determination, democratization, and new state formation, the latter usually involving the breakup of existing states, normally entail violence. Since the fall of the Berlin Wall 30 new states have gained independence bringing the membership of the UN from 159 in 1989 to its current level of 189. These countervailing forces coupled with the related phenomenon of ethnic and communal strife account for much of the conflict and forced displacement of peoples that has been the hallmark of the Post Cold War period.

Unfortunately the inclination of the major players to resort to UN sponsored peace-keeping and peace-building missions has receded with the perceived failure of the UN to handle Somalia and former Yugoslavia satisfactorily. Over the past few years peace-enforcement missions have been taken over by regional groups (US led force in Haiti; ECOMOG in West Africa and NATO in Kosovo). Regarding NATO's intervention in Kosovo under the banner of "humanitarian intervention", while the alliance's strategy, tactics and deployment without Security Council authorization continues to be debated, its actions have intensified discussions on the issue of a "just war" and the unacceptability of gross human rights violations carried out behind the shield of sovereignty and the importance of respecting minority rights.

It is true to say that the human rights movement has gathered renewed force over the past decade. Moreover there is an incontestable increase in public awareness regarding the moral imperative "to do something". However given the pattern of the past few years it is not certain whether the growing discussion of multilateral intervention (humanitarian intervention properly understood) defined as a comprehensive approach to intervention sanctioned by the UN, whether to prevent outright hostilities or at least in post-conflict situations to avoid a recurrence of the same problems, via, as appropriate, the timely involvement of humanitarian, financial, development institutions, NGOs and international troop or police contingents, will be translated into practice. The likelihood is that such intervention will continue to be selective in application, at least for the foreseeable future.

Some conflicts attract more attention than others. The absence of timely and effective action to stem gross human rights violations in Africa, particularly in Rwanda and Sierra Leone where terrible atrocities have been committed are prime examples. Kosovo and East Timor offer more recent examples of the same trend. Memories of ineffective intervention in Somalia and Bosnia have reinforced those Realists in policy-making circles who characterize such interventions as foreign policy as social work.¹²

In the absence of an over-arching foreign policy framework and the political will to further develop and apply mechanisms to resolve intra-state conflict, multilateral intervention, involving both political will and the requisite deployment of force if necessary, is likely to be timely and relatively effective only when there is a

conflicts since the end of the Cold War is mentioned in J. T. Matthews, "Power Shift," *Foreign Affairs*, January/February 1997, p. 51. The percentage of civilian casualties in contemporary conflicts is cited in G. Loescher, *Beyond Charity, International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993) p. 13.

¹² Parts of this section draw the author's "Refugees, Human Rights and the Issue of Human Security", in *The UN and Human Security*, Eds. O. Richmond and E. Newman (London: Palgrave/Macmillan, 2001)

convergence of political interests of the key players involved as was demonstrated in Iraq in 1991

In view of the tumult which has characterised the political landscape during the last decade, the 90s saw a major transformation in UNHCR's operations. From a reactive, exile-oriented and refugee-specific, UNHCR adopted a pro-active, homeland-oriented and holistic approach. Proactive in the sense that the office is more involved in activities aimed at preventing human rights abuses and situations which give rise to forced displacement. Homeland-oriented because UNHCR has increasingly emphasized not only the duties of asylum countries but also the responsibilities of countries of origin. Holistic because the organization has endeavoured to pursue a more comprehensive, long term approach to the problem of forced displacement emphasizing the needs of not only refugees but also internally displaced, returnees, asylum seekers, stateless persons and other of concern. The organization has also stressed the nexus between relief, rehabilitation, and reconstruction and development, especially in post-conflict situations in order to prevent secondary exoduses.¹³

UNHCR has forged links with peace-keeping units, vastly expanded its assistance activities and operations in conflict zones, strengthened its role as the lead, coordinating agency in emergency operations and is currently present in over 120 countries. It has also deepened its links with development institutions including the World Bank and UNDP as well as expanded the network of NGOs and human rights bodies with which it cooperates, inter alia, to address the issue of the relief to post conflict reconstruction continuum. The Office has also become more involved with the internally displaced. While the organisation's expertise has been sharpened as result of its involvement in, and lessons learned from, its major emergency operations Iraq, Former Yugoslavia, the Great Lakes region and Kosovo, UNHCR is hampered in carrying out its mandate owing to perennial funding problems and limited staff resources.

Given the unwillingness of concerned powers to undertake multilateral political intervention at the appropriate time, with the necessary deployment of force, to prevent or resolve armed conflicts at an early stage, the international community is likely to continue to rely on UNHCR and related agencies to fill the breach, via classical humanitarian intervention, i.e. leaving it to unarmed relief workers to deal with the consequences rather than taking a more comprehensive approach to resolving the causes leading to forced displacement.

The involvement of UNHCR to provide international legal protection to those who have lost state protection is necessary. No other UN agency or NGO can do this. It is not however sufficient. In other words UNHCR cannot provide physical protection in open conflict situations nor single-handedly resolve such conflicts. While non-political UNHCR does not work in a political vacuum. People do not flee by accident, but for reasons of persecution or generalized armed conflict. The issues that caused flight must be addressed in a comprehensive manner and this, given the dimensions of forced displacement, requires multilateral action. Humanitarian, political and security problems and their solutions are linked.

¹³ UNHCR. p. 4.

Unfortunately, a number of governments, rich and poor alike, do not share this view. The proliferation of conflict in the Post Cold War Era, related media coverage and the magnitude of persons fleeing human rights violations as well as poverty, has caused many countries, in a variation of the Secretary General's depiction of "identity politics," to perceive the pressure of emigration, and by extension asylum seekers, from distant and not so distant lands as a direct threat to their own identity.

Refugee protection at a crossroads

During the Cold War refugees were largely perceived as the direct or indirect result of the East-West standoff. Refugees figured prominently in foreign policy considerations of the US and many of its allies and thus enjoyed strategic importance in the context of Great Power rivalry. Hence industrialized countries were predisposed to accept asylum applications. This predisposition ended with the fall of the Berlin Wall and the dissolution of the Soviet Union and the upsurge in asylum applications particularly in Western Europe. While the majority of the world's refugees still reside poor third world countries, the heretofore warm welcome that industrialized countries showed to the asylum has decidedly cooled. Today the emphasis is on migration control rather than asylum rights.

The new defensiveness has resulted in the development of handling large-scale refugee flows such as those from former Yugoslavia and Kosovo through temporary protection regimes and attempts at "burden-sharing". Additionally many European Union governments have introduced restrictive measures based on the 1992 London resolutions which defined manifestly unfounded asylum applications, host or safe third countries which asylum seekers had transited and to which they could be returned and safe countries of origin. All were designed to expedite refugee determination and returns.

These measures have been reinforced by other policies established to combat mixed flows of refugees and illegal immigrants trying to access Europe entangling both groups in the same migration control net. These non-arrival policies range from carrier sanctions - fines for airlines transporting improperly documented asylum seekers - through extended visa requirements, to outposting immigration officers to intercept prospective asylum seekers without proper documentation to prevent them from reaching their destination.

With channels for legal entry increasingly blocked off - not least in the absence of a EU immigration policy - asylum seekers as well as economic migrants have turned to smugglers and traffickers which has not instilled public confidence in the integrity of asylum seekers. The debate around asylum has become polarized and alarmists whether in political parties or the media have resorted to xenophobic and at times racist rhetoric to advance their own agenda.

Against this background the 1951 Convention has come under attack. A large number of countries apply the refugee definition restrictively, for example in their reluctance to recognize as Convention refugees, persons fleeing from generalized conflicts of non-state agents of persecution. As a result the percentage of persons recognized under the 1951 Convention has dropped, with many given lesser status, such as humanitarian or "B" status or special leave to remain.

Frustrated by their inability to control illegal immigration, and mistakenly perceiving the Convention as a migration tool, several countries have resorted to drastic approaches such as the strategy proposal under the 1998 Austrian EU presidency which called for a defense line around Europe to secure the continent from asylum seekers and immigrants as well as the amendment or replacement of the Convention altogether. Similar calls for reopening the Convention or scrapping it altogether have been voiced in policy circles in other European countries and Australia.

As a counterweight to the above heads of state and government of the EU meeting in 1999 in Tampere Finland under the Finnish EU presidency have reaffirmed the rights of the individuals to seek asylum placing asylum rights ahead of migration controls and outlining a number guarantees for those in need of protection in or access to the EU "based on the full and inclusive application" of the 1951 Convention. The Tampere Conclusions included reference to comprehensive approach to migration and political, development and human rights issues in countries of origin and transit.¹⁴ It remains to be seen, however, the degree to which "the spirit of Tampere" will be translated into appropriate EU-wide asylum legislation.

Given repeated criticisms from various quarters that the 1951 Convention was no longer relevant and should be re-examined if not replaced, in 2000 UNHCR decided to launch Global Consultations process with the dual purpose of reaffirming the enduring integrity of the treaty and revitalizing the international refugee protection regime. The Consultations process involving governments, academics, and NGOs along with UNHCR examines legal issues pertaining to differing interpretations of the refugee definition under the Convention, for example with regard to "non state agents or persecution", gender based persecution, safe country. Additionally the Global Consultations looks at practical issues on which the Convention is silent such as mass flight situations, burden-sharing , and temporary protection.

The goal of this process is to reach common agreement on many issues which have been the subject of debate as well as common practice, and publish the results of deliberations on key issues as a guide to refugee status determination and set an Agenda for Protection. The centerpiece of the Global Consultations was the first ever meeting of state parties to the Convention on 12 December 2001 in Geneva where, in a demonstration of support for the enduring in importance of the Convention, more than 150 countries were represented and over 70 ministers attended. Another goal is to reach agreement on a more effective monitoring system regarding the implementation of the Convention.

The challenges inherent in sustaining the international protection regime have of course been made more difficult by the events of September 11 which has heightened feelings of insecurity among the general public and governments alike, and has reinforced the trend towards more immigration control and restrictive practices regarding "foreigners" at the expense of asylum rights.

¹⁴ For a further discussion of asylum restrictions briefly outlined here see [UNHCR](#), pp. 158-183.

The way forward

In a particularly courageous speech to the General Assembly on 20 September 1999, UN Secretary General Kofi Annan spoke of rights beyond borders, of “individual sovereignty” or the human rights and fundamental freedom of each individual under the UN Charter, further challenging the old consensus based on the Treaty of Westphalia.

The Secretary General said traditional definitions of national interest must be broadened in the new millennium to embrace common goals and values recognizing that in an increasingly interdependent world the collective interest is the national interest. In effect we need new models in international relations for the 21st Century. He has also underscored the problem of the readiness to intervene in some areas of conflict while “limiting ourselves to humanitarian palliatives in other crises that ought to shame us into action”.¹⁵

Against this background can we argue that the normative, legal, institutional and political framework through which we address human rights, refugees and conflict remains inadequate to the task? While the political consensus is still evolving and institutional mechanisms are still problematic, it should be clear that the growing body of human rights norms and laws referred to above provide an increasingly solid basis for action. Examples are the recent establishment of war crimes tribunals for the former Yugoslavia and Rwanda and the establishment of an international criminal court. The arrests of the former president of Chile, Augusto Pinochet as well as Slobodon Milosevic of Yugoslavia, and the extradition of the latter to the Hague to appear before the War Crimes Tribunal also mark a watershed in this context as does the recent conviction of three Serb soldiers for rape as a war crime. Moreover Canada, Japan and Norway have mainstreamed human security in their foreign policies.

As Alan Dowty, Gil Loescher and others have pointed out, international customary law has been advancing in the direction of humanitarian intervention, particularly in situations leading to transborder forced displacement of peoples based on the common dictum of *sic utere tuo ut alienum non laedes* (“use your own property in such a manner as not to injure that of another”). They cite Oppenheim who states that this maxim “is applicable to relations of States no less than to those of individuals” and is “of those general principles of law recognized by civilized States which (the International Court of Justice) is bound to apply by virtue of Article 38 of its Statute”.¹⁶

¹⁵ Jim Hoaglund, “It’s time to re-think the old notion of sovereignty”, International Herald Tribune, October 28, 1999, p. 8.

¹⁶ R.Y. Jennings, “Some International Law Aspects of the Refugee Question”, British Year Book of International Law, Vol. 20 (1939) p. 112; L. Oppenheim International Law Vol. 1, Peace, 8th edition, ed. H. Lauterpacht (London: Longmans, Green and Co., 1955), pp. 346-347; see also Ian Brownlie, Principles of Public International Law, 3rd edition (Oxford: Oxford University Press, 1979), pp. 443-445; and Guy S. Goodwin-Gill, The Refugee in International Law (Oxford: Oxford University Press, 1983), p. 228. Cited in Alan Dowty and Gil Loescher “Refugee Flows: Internationalization of Human Rights Violations”, Paper presented at a Joint Conference of the International Studies Association and the Japanese Association of International Relations on Globalism, Regionalism and Nationalism and Asia in Search of the 21st Century. Makuhari, Japan, September 20-22, 1996, p. 13. Hereafter Dowty and Loescher.

Along with these developments the UN has invoked Chapter VII of the Charter in situations of massive forced displacement whether the displacement was primarily internal as the UN characterized the dissolution of Somalia in the early 90s, when the UN first intervened in the domestic affairs of a member state when that “state did not pose a military threat to its neighbours”. The UN also intervened without the consent of the state concerned. Under Security Council Resolution 751 (April 24, 1993) the UN justified its intervention in Somalia on the basis of “the magnitude of human suffering” which constituted a threat to international peace and security.

The other major precedent for intervention was under Resolution 688 of April 5, 1991, when the UN invoked Chapter VII to intervene in Iraq to preserve international peace and security given the magnitude of the Kurdish exodus into neighbouring Turkey, and subsequently deployed forces inside northern Iraq to protect the Kurdish minority from its own central government.¹⁷

While other problems exist in international relations, by now it is commonly acknowledged that the core problem in terms of conflict is what Leslie Gelb, President of the US Council on Foreign Relations, has called uncivil civil wars which threaten the tenuous stability of many newer states and even chips away at the cohesion of many long functioning states. In addition to the actual or potential traditional transborder security implications of such conflicts, they also represent a grave threat to fundamental freedoms and human rights or essential human security as evidenced by the forced displacement of peoples.

Although limits of space preclude a full discussion of various methods for conflict resolution and without wishing to underplay the complexities of intra-state conflict and the reluctance of many states and most of the orthodox community of Realists involved in policy formulation to come to grips with the fact that we have already entered a post-Westphalian period, it should be noted that much of the modus operandi to deal with conflict resolution and human rights abuses already exist. It is a question of whether we wish to use the tools at hand and to develop new ones as necessary. It must also be acknowledged that any effective approach will entail a further erosion of sovereignty, which in any case is already being further eroded on a daily basis by interdependence and globalization.

While a number of authors have advanced blueprints for models and measures for containing conflict one of the most interesting and comprehensive recent exercises in this area has been the Carnegie Commission on the Prevention of Deadly Conflict whose final report published in 1997 set out an interesting array of preventive measures grouped under operational prevention, strategies in the face of crisis, and structural measures, or means to deal with the root causes of conflicts, which contrary to the assumptions of Realists, The Commission found neither inevitable nor insoluble.

These tools, in brief, involve not only early warning mechanisms --which although disparate already exist but continue to go unheeded -- but much stronger multilateral responses involving political, military, economic and humanitarian intervention including adequately equipped, standing rapid deployment peace-keeping and peace-making forces (already foreseen under the Charter in 1945 but never established)

¹⁷ *Ibid.*, pp. 22-24.

numbering 5-10,000 troops. The Danes and the Dutch have already offered to make such a force available to the UN.

The Brahimi Report outlines what should be done to invigorate UN peacekeeping capacity and in the wake of the Kosovo crisis and the EU is pursuing the establishment of a 60,000 strong rapid reaction force. Rather than creating a new agency(cies) for dealing with the internally displaced and humanitarian response, as some have called for, increasing cooperation between key UN agencies involved in the existing inter-agency group on humanitarian response under the auspices of the Office for the Coordination of Humanitarian Affairs should be sufficient to meet new challenges.

For those realists who argue that such conflicts either cannot be stopped or that it would be too costly to do so, it is worth mentioning that the Canadian UN commander in Kigali, Rwanda in 1994 Major-General Romeo Dallaire has said, and an independent panel of senior military officers generally agreed, that had he been provided with a mechanized, well trained and rapidly deployed force of 5,000 at the outset of the hostilities, much of the slaughter that culminated in up to 800,000 deaths within a three month period could have been averted. As to the argument that the costs of such an operation would have been too high, three years of humanitarian intervention cost the international community \$2 billion. It has been estimated that preventive intervention would have cost a third of that sum.¹⁸

The foregoing measures would have to be complemented by active regional institutions and the assistance of a variety of non-state actors, and above all the courageous and clear-sighted leadership at the national and international level, that is not captive to cheap “quick-fix” or early exit strategies which should belong to a bygone era. As the reasons behind many conflicts are complex and thus require a sustained and multifaceted approach, not least in combating poverty through mini-Marshall plans and putting an end to discriminatory practices.

Education is key element in any attempt to promote tolerance and prevent widespread violence. Most specialists in the field of ethnic conflict while acknowledging the force of ethnically-based identity do not subscribe to the thesis that ethnic conflict is inevitable or that some parts of the world are condemned to chaos. The evils of this type of conflict are embedded in the minds of individuals, not in their genes, religion or race.

Historical prejudices can be addressed through education. Measures can be taken to avoid situations developing which enable demagogues to exploit ancient animosities, demonize groups and orchestrate atrocities. In the “Information Age” it should be possible via positive information to counter negative information, distorted histories, or the perceptions some groups have of other groups. A culture of prevention must be created, and the ethos, and message of which must be mainstreamed into the curriculum of schools, religious institutions, supported by the media and reinforced by the UN and other regional and international organizations so as to become part of the global heritage.

¹⁸ Carnegie Commission, pp. 5, 6.

In an increasingly interdependent world, with instant information we no longer have the negative luxury of denial or averting our eyes, let alone maintaining that what happens in a far way country about whose people we know little does not concern us.

Given the often countervailing tendencies of sovereignty, the right to national self-determination and protection of human rights, the Carnegie Commission recommends that “ as a fundamental principle, claims by national or ethnic communities or national groups should not be pursued by force. The effort to help to avert deadly conflict is thus a matter not only of humanitarian obligation but also of enlightened self-interest”.¹⁹

The pattern of civil conflict and state fragmentation that has to a great extent characterized the last decade of the 20th century is likely to continue into the new millenium. The growing number of weak or failed states as a result of civil conflict is perhaps symptomatic of the contemporary international system. While a norm for multilateral, or popularly humanitarian, intervention has been evolving over the past decade such actions in the ‘90s have been at best ad hoc, selective and belated. Given the proliferation of states and the processes involved, the issue of forced displacement of peoples owing to human rights violations and conflict is likely to acquire even more political resonance in future.

As the Carnegie Commission’s Report demonstrates the blueprints and many of the tools necessary to address this challenge are already available. It is a question of the political will to establish a new regime to mobilize action. One positive element of the assault on the Westphalian system may be the gradual acceptance by the international community that human security or individual sovereignty, defined, at the very minimum, as security from forced displacement as a result of conflict, persecution and gross violations of human rights, should take precedence over the traditional emphasis on state sovereignty.

Recognition of the overriding value of human security coupled with the political will to act upon rather than turn away from the problems leading to forced displacement would be a fitting tribute to the recently celebrated 50th anniversaries of the Universal Declaration of Human Rights, as well as the 1951 Convention Relating to the Status of Refugees and an affirmation that recent history not repeat itself.

¹⁹ Ibid., p. xxv.