

The State of The World's Refugees in search of solutions

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2 Protecting human rights



Displaced children in the Tuzla area, Bosnia and Herzegovina, December 1994.
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Today's human rights abuses are tomorrow's refugee movements. While most of the major population displacements of the 1990s have taken place in the context of armed conflicts, the immediate causes of flight are almost

invariably to be found in actual or anticipated human rights violations. When refugees abandon their own home, community and country, they do so because they are frightened of being murdered, tortured, raped, imprisoned, enslaved, robbed or starved.

Prompted by the widespread violence and refugee movements which have taken place in recent years, the United Nations, governments and other institutions have been obliged to take stock of the traditional methods used to defend and promote human rights. Although the question of individual political freedoms continues to be a source of controversy between governments of different ideological and cultural orientations, there is now a broad consensus on the need to find better ways of protecting people who have been displaced or threatened by violence. Responding to this changing environment, UNHCR and its partners are now formulating a variety of strategies intended to avert the need for people to leave their homes, to safeguard the security of displaced populations and to enable refugees to return to their homeland.

Human rights and the refugee problem

The concept of refugee protection is inseparable from the notion of human rights.

The question of human rights has occupied a prominent position on the international agenda ever since the UN General Assembly established the Universal Declaration of Human Rights in 1948. Today, it is no more possible to talk about international affairs without reference to human rights than it is to talk about chemistry without mentioning molecules, or economics without supply and demand. Respect for human rights is now rightly seen as one of the principal building blocks of peace, security and development.

Life, liberty and security

The issue of human rights is also so inextricably linked to the question of human displacement that it is impossible to examine one without referring to the other. This linkage takes a number of forms, each of which has important implications for the search for solutions to refugee problems.

Violations of human rights are a major - indeed, the major - cause of mass population displacement. This fundamental relationship is not always given adequate recognition. In recent years, it has become commonplace for politicians, the media and even humanitarian organizations to perceive uprooted people as the victims of armed conflict and even to describe them as 'war refugees'. In many ways, however, it would be more accurate to describe refugees as people whose human rights have been seriously violated or threatened.

According to the 1948 Universal Declaration of Human Rights, all human beings have a right to life, liberty and security of person. They have a right not to be subjected to torture, slavery or arbitrary exile, as well as a right to own property, to move freely within the borders of their country and to be protected against arbitrary interference in their privacy and family life.

In many instances, people's human rights are abused not only on the basis of their individual characteristics or activities, but also because of the social group to which they belong. In response to this problem, a body of international law has been established, recognizing that groups of people who wish to preserve a distinct identity should not be subjected to forced assimilation, segregation or discrimination.

The International Covenant on Civil and Political Rights, for example, states that such minorities 'shall not be denied the right... to enjoy their own culture, to profess and practice their own religion, or to use their own language.' Similarly, the International Convention on Genocide forbids any activities which are undertaken 'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.' As recent experience in former Yugoslavia has demonstrated, massive population displacements are almost certain to ensue when the rights identified in these treaties come under sustained attack.

The right to asylum

The concept of refugee protection is itself inseparable from the notion of human rights. The right to seek and enjoy asylum is enshrined in the Universal Declaration of Human Rights, while the 1951 UN Refugee Convention incorporates the fundamental protection principle that states must refrain from returning refugees to countries where they would be at risk of persecution. According to that Convention, the ultimate objective of international protection is to provide refugees with the 'fundamental rights and freedoms' which a state normally secures for its citizens.

Sadly, the human rights principle of admission to safety, without which there can be no effective protection for refugees, is now under increasing threat. Many countries of asylum, particularly those in the industrialized world, appear to have tired of the refugee problem and have erected a formidable variety of physical, legal and administrative barriers to obstruct or deter the arrival of people who wish to seek refuge on their territory. Increasingly, at both the rhetorical and practical levels, refugees and displaced people are coming under pressure to stay within or return to their countries of origin, even if conditions there are insecure.

In too many cases and in too many countries, people who have succeeded in fleeing from violations of human rights in their homeland are confronted with further threats to their security in the country where they have sought asylum. While refugees are technically the beneficiaries of international protection, they may in practice be at constant risk of intimidation or assault, either from members of the host community or from their own compatriots. As demonstrated by the recent experience of Rwandese refugees in Zaire and the earlier experience of Cambodians on the Thai border, a refugee camp can be one of the most dangerous places in the world, particularly when it falls under the control of people who have been responsible for massive human rights violations in their homeland.

Refugee women and girls are confronted with specific protection problems, especially in situations where established social structures and values have broken down, and where the local authorities lack the capacity to enforce law and order. Sexual violence and exploitation is a major problem, which has only recently started to attract systematic international attention (see [Box 2.1](#)).

While it is difficult to generalize, experience suggests that internally displaced people can find their human rights at even greater risk than refugees, even though they continue to live in their own country and amongst their fellow citizens.

Peru provides one little-known example. The conflict between rebel guerillas and counterinsurgency forces in that country uprooted some 500,000 people in the late 1980s and early 1990s, many of them poor farmers who sought refuge in and around Lima and other urban centres.

According to a recent UNHCR report, the situation of such people in Peru has been one of 'double victimization.' Dispossessed and marginalized in the process of displacement, their ability to establish a secure and productive life has been constrained by the discrimination they face from local residents, their lack of proper documentation, and the problems they encounter in getting fair treatment from the judicial system. Located primarily in the central areas of the country, a long way from Peru's international borders, relatively few have sought refuge in neighbouring states. And yet the assistance and protection received from local and international organizations has been minimal. 'Their only alternative,' the report concludes, 'is to remain entrapped in conflict zones or adjacent areas which are not prepared, both economically and socially, to accommodate them.'

The right to return

The international protection provided to refugees by countries of asylum and UNHCR must never be regarded as an adequate substitute for the protection that people should receive from their own government.

A further connection between human rights and the refugee problem is to be found in relation to the repatriation and reintegration of displaced populations. The right to return to one's own country is clearly stated in the Universal Declaration of Human Rights and is codified in the Covenant on Civil and Political Rights. 'No-one,' states the latter instrument, 'shall be arbitrarily deprived of the right to enter his own country.'

Refugees are most likely to exercise their right to repatriate voluntarily when they feel that their security can be assured, both during their journey home and once they have returned to their homeland. In recognition of this fact, in 1985, the governments which make up UNHCR's Executive Committee called for repatriation programmes 'to be carried out under conditions of absolute safety.'

In the period since that call was made, however, refugees have not always waited for such ideal conditions to be established before going back to their homes. Indeed, it is now quite common for mass repatriation movements to take place in countries which are still affected by armed conflict, where human rights violations continue to take place, and where the causes of the original exodus have not been fully resolved.

Refugees repatriate in such difficult circumstances for a variety of reasons. Sometimes, as in the case of Afghanistan, they decide to go home because an acceptable degree of peace and stability has returned to their own district or province, even though violent struggles for power are taking place in the capital city and other parts of the country. In other instances, as with the half a million Ethiopians who repatriated from Somalia in 1991-92, refugees go home because life has simply become too dangerous in their country of asylum.

In a third scenario, illustrated by the case of the Myanmar refugees in Bangladesh, refugees repatriate to countries where only limited changes have taken place because they cannot remain indefinitely in their country of asylum and because they have received assurances regarding their safety once they return to their homeland. As this example demonstrates, one of UNHCR's most important roles in the search for solutions is to negotiate such assurances with the governments concerned and to monitor their implementation (see [Box 2.2](#)).

Economic and social rights

A frequently neglected relationship between human rights and human displacement is to be seen in the effort to meet the material and social needs of uprooted populations. For many years, UNHCR maintained a sharp distinction between activities intended to safeguard the legal and physical security of refugees (which were described as 'protection'), and programmes designed to assist displaced populations with food, shelter, health care and income-generating opportunities (which were known as 'assistance'). While the organization recognized that there was a connection between its protection function and the broader task of safeguarding human rights, the provision of assistance itself was never regarded as a human rights activity.

The International Covenant on Economic, Social and Cultural Rights, however, makes it clear that questions of material welfare can also be regarded in human rights terms. Thus the Covenant recognizes that everyone, including refugees and other displaced people, has a right to be free from hunger, to be educated, to have adequate clothing and housing, and to enjoy a 'continuous improvement of living conditions.' In this sense, the reintegration and rehabilitation programmes implemented by UNHCR and other humanitarian organizations can also be regarded as a form of human rights protection - although this is not to suggest that material assistance can ever be a substitute for the legal and physical protection which refugees require.

Human rights are therefore much more than abstract principles. In one sense they contribute to the prevention of refugee movements by placing constraints on the actions of governments and by reinforcing the accountability of states for the treatment of their citizens. At the same time, they contribute to the resolution of refugee situations by providing a set of standards and objectives for the operational activities undertaken by UNHCR and its partners. One of the principal challenges now

confronting the international community is to ensure that the search for solutions to refugee problems is undertaken in a way which is fully consistent with the protection of human rights.

Institutional arrangements and relationships

Despite the intimate connection between the refugee problem and the protection of human rights, the international community has until recently maintained an artificial distinction between the two issues. This differentiation was to some extent an inevitable consequence of the reactive and exile-oriented nature of the traditional approach to the problem of human displacement. Refugee organizations only became involved with a person or population when they had escaped from a country where their life was at risk and sought asylum in another state. The causes of flight were considered to be a separate concern, falling outside UNHCR's humanitarian and non-political mandate.

UNHCR also had pragmatic reasons for minimizing the association between refugees and human rights. The organization recognized that some of the world's most hospitable countries of asylum were, paradoxically, also guilty of violating the rights of their own citizens. UNHCR was reluctant to be associated with any institutions responsible for exposing or criticizing such abuses, fearing that such a relationship might jeopardize the welfare of the refugees under its care. For the same reason, UNHCR insisted that it could not become actively involved in monitoring and reporting on the general human rights situation in countries where it had a presence. Its role in any country was strictly limited to the protection of refugees who had fled from other states.

During the Cold War, UNHCR and other refugee organizations had relatively little to gain from a closer involvement with human rights institutions. While only the western and non-aligned states took a direct interest in the work of UNHCR, both of the principal power blocs retained an active interest in human rights and made explicit use of the issue in their efforts to discredit each other. This East-West conflict, coupled with the reluctance of many authoritarian states in the less-developed world to have their human rights record scrutinized, placed serious constraints on the activities and authority of institutions such as the UN's Human Rights Commission and Centre for Human Rights.

As well as being limited in its ability to promote or enforce human rights standards, the UN's human rights institutions have traditionally been quite selective in their range of interests. Torture, disappearances, summary executions and arbitrary imprisonment were perceived as human rights issues and therefore attracted considerable attention. Questions relating to uprooted and war-affected populations, however, were generally perceived to come within the scope of international refugee law and international humanitarian law, supervised by UNHCR and the International Committee of the Red Cross (ICRC) respectively.

Human rights organizations have traditionally been strong advocates for the cause of individual and group freedoms, particularly in the world's more prosperous and pluralistic states. But they have generally lacked the field-level involvement and emergency orientation of operational agencies working with displaced people, such as UNHCR, the World Food Programme and the ICRC. Significantly, the UN's human

rights bodies had no substantive role in the planning of recent UN peace operations, even when (as in Cambodia and El Salvador) they included human rights structures and activities.

Despite these longstanding limitations, the UN's human rights institutions have in recent years been able to develop a more significant role in relation to both the causes and consequences of forced migration. In 1990, for example, the UN's Economic and Social Council authorized the Human Rights Commission to convene exceptional sessions to discuss urgent human rights situations, a resolution which has since been invoked with regard to Rwanda and former Yugoslavia. As described in the previous chapter, since 1991, the Commission has also been actively examining the protection needs of internally displaced people. More recently, the Centre for Human Rights has started to look more systematically at the neglected problem of statelessness, as has UNHCR (see [Box 2.3](#)).

Consensus and controversy

As the developments described above indicate, the events of the past five years have in some senses placed the issue of human rights in a more positive international context. With the collapse of the eastern bloc, human rights questions have been at least partially depoliticized, while there is a growing recognition that a state's treatment of its citizens is a legitimate international concern. As former UN Secretary-General Javier Perez de Cuellar observed in 1991, the international response to events in Kuwait and Iraq was indicative of 'what is probably an irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers.'

Since that comment was made, it has become increasingly evident that states have a strategic as well as an ethical interest in preventing gross violations of human rights. Even governments which are themselves responsible for human rights violations are now recognizing that if they wish to avoid massive refugee influxes onto their own territory, then they have an interest in curtailing human rights abuses in neighbouring countries.

Despite these welcome signs of progress, it would be wrong to suggest that there is now a universal consensus on questions relating to human rights. Amongst the permanent members of the UN Security Council - China, France, the Russian Federation, the USA and the United Kingdom - significant differences can still be found in relation to international and domestic human rights issues. Moreover, as in the past, there is a tendency amongst some of the less developed and newly industrialized countries to downplay the importance of individual freedoms, and to stress the broader benefits which can be gained from political stability, social order and rapid economic growth.

It would also be false to give the impression that the traditional limitations of the UN's human rights institutions have disappeared with the passing of the Cold War. As revealed by the discussions which preceded the recent appointment of a UN High Commissioner for Human Rights, many states remain fundamentally opposed to international human rights monitoring, while others appear reluctant to provide additional funding for such activities. Striking evidence of this problem was seen in the early days of the Rwandese crisis, when the UN's human rights machinery was

unable to mobilize the personnel and equipment required to establish a speedy presence within the country. While more than 100 UN human rights monitors were subsequently deployed in Rwanda, by mid-1995 the programme had a serious shortage of funds.

There is a need, therefore, to protect human rights more effectively in situations of mass displacement. A twin-track approach to this task is required, addressing both the abuses which force people to abandon their homes, as well as the circumstances which confront them in countries of asylum. The remaining sections of this chapter examine some of the principal questions raised by this task. What action can be taken, for example, to enable people to live safely within their own country and community and to encourage the repatriation of those who have already left? How can the institution of asylum, on a temporary or permanent basis, most effectively be linked to the search for solutions? And to what extent is the traditional solution of resettlement still relevant as a means of protecting the rights of refugees?

Realizing the right to live in safety

During the Cold War years, the determination of the eastern bloc states to prevent the departure of their citizens focused substantial international attention on the right to leave one's own country. Tragic stories of East Germans, shot while trying to cross the Berlin Wall, of Soviet Jews, banned from leaving their homeland, and of the boat people, risking their lives to flee from Viet Nam, aroused strong humanitarian and political emotions around the world.

People under communist rule were in some ways encouraged by the western states to exercise their right to leave, and those who succeeded acquired a heroic image which both reflected and conditioned the exile-oriented approach towards the refugee problem. In simple terms, it was normally perceived as a positive step to escape from (and to remain outside of) one's own country, if that state had a Marxist-Leninist government.

Since the collapse of the eastern bloc, the normative pendulum has swung in the other direction, with the result that there is now much discussion of the right to remain in one's own country and the right not to be displaced from one's habitual residence. An important landmark in this debate occurred in March 1993, when the UN High Commissioner for Refugees addressed the Human Rights Commission in Geneva. The High Commissioner underlined the need to protect the basic right of the individual not to be forced into exile, and observed that such a notion was linked to a range of other fundamental rights, such as the right to life, liberty and security of the person, non-discrimination, the right not to be subjected to torture or degrading treatment, the right to privacy and family life. The 'right to remain', the High Commissioner observed, is inherent in Article 9 of the Universal Declaration of Human Rights, which states that no-one shall be subjected to arbitrary exile.

The right to remain

The right to remain is a striking expression, which has a particular resonance in a world beset with the evils of ethnic cleansing and other forms of mass expulsion. It also draws attention to a neglected notion: that the international protection provided to refugees by countries of asylum and UNHCR must never be regarded as an adequate substitute for the protection that people should receive from their own

government. No-one, in other words, should have to become a refugee in order to survive and feel safe.

The notion of a right to remain also supports a central feature of the homeland-oriented approach to refugee problems which has emerged in recent years: the responsibility of governments to refrain from any actions which might force citizens to leave their own country. As the High Commissioner observed in her March 1993 address, 'the basic right not to be forced into exile implies the concomitant duty of the state to protect people against coerced displacement.'

Since that statement was made, a number of experts have sought to develop the concept of the right to remain. According to one school of thought, the principle could be referred to as 'the right not to be displaced', thereby reinforcing the accountability of those responsible for provoking refugee movements. According to another, the concept could usefully be extended to 'the right to remain in safety' or 'the right to remain in peace', thereby placing less emphasis on physical immobility and focusing greater attention on the conditions under which people can be expected to stay in their country of origin. The latter formulation was used in a resolution adopted by the UN's Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994.

Such expressions have been proposed because the right to remain concept could be (and to some extent already has been) used by states to justify the closure of borders to refugees and asylum seekers. As a recent publication observed, 'efforts to concentrate on the country of origin can also become a way to bottle up genuine refugees in their own country, rationalizing that they do not require asylum in other places because humanitarian agencies have been despatched to the source. This is a dangerous tendency, inherent in country of origin strategies...'

Such a tendency, exemplified by the increasingly common suggestion that displaced people should remain in 'safe havens' or 'security zones' within their own country, rather than being granted asylum in another state, also threatens to violate international law. Thus the Universal Declaration of Human Rights affirms that 'everyone has the right to seek and to enjoy in other countries asylum from persecution,' while the 1951 UN Refugee Convention includes the provision that 'no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened'.

In more practical terms, there is a need to recognize that encouraging people to remain in their own country or community can in some instances put them in greater danger than allowing them to leave and find safety elsewhere. In the context of former Yugoslavia, this issue has been of particular concern. For as parties to the conflict quickly realized, if UNHCR could be induced to organize the evacuation of threatened populations, the process of ethnic cleansing could be completed under humanitarian auspices. Despite UNHCR's unwillingness to be exploited in this manner, the organization was ultimately obliged to concede that evacuation was in some cases the lesser of two evils. As UNHCR's senior official in the region observed, 'we chose to have more displaced persons and refugees, rather than more dead bodies.'

While the right to remain concept identifies an important objective - enabling people to live in safety in their own country - there is also a need to focus more systematically on the means whereby this goal might be achieved. What exactly can be done within countries of origin to avert forced migrations, to protect populations which are at risk and to help refugees return to their homes?

The following sections examine some of the principal strategies which can be used to pursue these objectives. A number of these strategies are designed to curtail immediate human rights violations, whereas others are intended to address longer-term problems which may give rise to abuses. Some can be undertaken by UNHCR and its partners, while others fall more clearly within the mandate of the UN's human rights bodies, states, regional organizations and the political elements of the UN system. Some work on the principle of deterrence or enforcement, while others are more persuasive or educational in nature. If they are to be effective, all must be adapted to local circumstances and combined with complementary activities in the political, economic and social domains.

Supporting national protection

As the right to remain concept suggests, people who are living within their own country, whether they are internally displaced, returnees, or members of the resident population, depend ultimately on the willingness and ability of the state to protect their human rights. A primary objective, therefore, must be to ensure that government authorities, both at national and local level, are able to discharge this responsibility.

Achieving this objective is never easy. In some countries, important civil institutions have been destroyed by years of armed conflict. In others, the central government controls only a part of the state, does not command the confidence of every minority group, or does not exist at all. And despite the process of democratization which has taken place throughout much of the world in recent years, there are still certain states - including those with freely elected governments - which wilfully violate the rights of their citizens.

Despite these very real constraints, a wide range of measures can be taken to support national protection capacities. Governments can be encouraged to establish amnesties and other formal guarantees for returning refugees - a traditional feature of UNHCR's voluntary repatriation programmes. International organizations can help national authorities to draft equitable laws on issues such as nationality and citizenship, to address the problem of statelessness, to recognize minority rights in their constitutional arrangements and to promote equitable participation in their political systems. In addition, resources and technical assistance can be provided to depoliticize and strengthen judicial systems, establish courts, train police and prison officials, and provide returnees and displaced people with proper identity documents (see [Box 2.4](#)).

Government structures, of course, do not function in a social or cultural vacuum. As can be demonstrated by the discrimination which the Roma people (gypsies) are encountering in Eastern and Central Europe, official hostility towards minority groups both feeds - and feeds upon - broader public prejudices. Similar comments could be

made about the ethnic Vietnamese population in Cambodia, the Muslim minority in Myanmar, and the Tuaregs of Mali and Mauritania, significant numbers of whom have been displaced in recent years.

Efforts to defend human rights within countries of origin must therefore incorporate initiatives designed to enlighten public opinion, promote social tolerance and combat notions of racial or ethnic supremacy. The institutions of what has become known as 'civil society' - voluntary associations, community groups, non-governmental organizations, churches and the independent media - have a particularly important role to play in this area.

Many practical steps can also be taken to establish a degree of trust between different communities, especially at the local level. They include, for example, establishing cultural exchange programmes; launching publicity campaigns; ensuring media coverage of positive interactions between ethnic and social groups; promoting tolerance through education, especially in schools; encouraging religious and community leaders to make public appeals for social harmony; and assisting the activities of multi-ethnic peace movements.

Such activities should not focus simply on the rights of minority groups. It is no coincidence that some of the most virulent forms of ethnic and national hatred have emerged in former communist countries which are experiencing a process of rapid political change and drastic economic transformation. In such circumstances, the oppression and expulsion of particular communities and minority groups stems at least in part from the sense of insecurity felt by the whole of the population. If minorities are to be effectively protected, therefore, it is essential to ensure that all members of a society feel sure that their rights are and will be properly respected.

Establishing and enforcing human rights standards

No amount of diplomacy will succeed in preventing population displacements if a state is determined to violate the rights of its own or other citizens.

Much has been written in recent years about the absence of a legal framework for the protection of people who have been displaced and who remain within their homeland. As this literature has often pointed out, there are three principal weaknesses in the existing body of international law. First, the strong protection given to exiled populations under the 1951 UN Refugee Convention cannot be directly applied to internally displaced people. Second, while people who have been displaced by fully-fledged civil war receive protection under international humanitarian law (the Geneva Conventions and Protocols) those affected by other forms of conflict and violence do not enjoy the same treatment. And third, many of the human rights identified in international law are subject to derogation by governments.

The development of laws and norms which are directly applicable to internally displaced or threatened populations would clearly be of value in establishing standards which governments and other actors could be urged to respect. At the same time, however, it must be recognized that in a world of sovereign states, international law is limited in its capacity to protect the human rights of people who remain within their own country.

In practice, meeting the protection needs of the internally displaced and those at risk of displacement is not only or even primarily a question of legal norms and remedies. Internal displacement is frequently a characteristic of weak and divided states in which government authority is at best ineffective or at worst hostile. In many situations, practical protection is provided first of all by the local community, through a complex social network including families, clans, villages and ethnic groups. The role of the state and its legal institutions is often secondary.

In such situations, protection and solutions for the internally displaced, as well as for refugees, require the reconciliation of different groups within the society. Promoting respect for human rights in such circumstances is a task that must be accomplished primarily at the grassroots level. In some locations, UNHCR field staff and other humanitarian personnel have been able to play such a grassroots protection role by helping to mediate disputes and dispel distrust amongst individuals and communities.

International laws and norms, however carefully worded to meet the protection needs of displaced populations, are also of very limited value if they are not adhered to by governments and other entities. As recent events in Bosnia and Herzegovina have demonstrated, no amount of persuasion, diplomacy and negotiation will succeed in preventing population displacements if a state or military force is determined to pursue a course of action which violates the rights of its own or other citizens. Moreover, in situations where states implode and a central government is replaced by a multitude of competing armed factions - Liberia and Somalia provide two obvious examples - there may also come a point where external intervention is required to protect human life, prevent population displacements and enable refugees to go home.

There are, of course, other forms of persuasion and leverage which can be used to discourage abuses of human rights. The imposition of trade, aid and transport sanctions, for example, appears to have had some impact on official policy in the cases of South Africa and former Yugoslavia. The withholding of development assistance and other forms of economic aid from countries with poor records of governance and human rights observance has also played a useful part in the democratization process in sub-Saharan Africa.

Incentives, rather than sanctions, represent another means of encouraging states to accept their responsibility for the kind of problems which lead to conflict, violence and mass population movements. Thus in March 1995, for example, the states of the European Union agreed that the countries of Eastern and Central Europe should only be considered for membership if they could demonstrate that they had taken steps to resolve border disputes, establish good relations with their neighbours and address the question of ethnic minorities.

Individual accountability

The question of individual accountability for human rights violations is more problematic. In societies where grave abuses have taken place, a potential conflict exists between the need for justice on one hand, and the need for reconciliation on the other. Would the final stages of the transition to majority rule in South Africa, for example, have been accomplished so smoothly if the many agents of apartheid - defined by the international community as a crime against humanity and a denial of human rights - had been threatened with punishment for their wrongdoings? And who of the many thousands of people (both white and black) who played a part in sustaining the apartheid state would be held to account for their past?

Moreover, as experience in countries such as Cambodia, Mozambique and former Yugoslavia has demonstrated, it is practically impossible for the United Nations and other members of the international community to assist in bringing peace to war-torn societies without establishing close diplomatic relationships with individuals who have been directly or indirectly implicated in serious human rights violations. The imposition of individual accountability is therefore always likely to be selective.

The establishment of 'truth commissions' in a number of newly democratic countries, charged with the task of establishing the full facts about past human rights abuses, provide an interesting means of resolving some of these dilemmas and of imposing accountability on a non-retributive basis. In general, however, there is an emerging international consensus that prosecution and punishment is a fundamental component of effective preventive action. When crimes against humanity are carried out with total impunity by known individuals, potential human rights violators are sent a strong message that they can indulge in such behaviour without any fear of retribution. The Security Council's decision to establish a war crimes tribunal for both former Yugoslavia and Rwanda therefore represents a particularly significant development in this area, the results of which could set an important precedent for the trial of individuals responsible for human rights abuses.

There is, however, an evident need to ensure that a clear delineation exists - and is seen to exist - between the international community's efforts to restore, maintain and promote human rights in countries which have experienced large-scale violence, and those initiatives pertaining to the investigation and prosecution of human rights violations. The latter, moreover, should not become a substitute for the former. The imposition of individual accountability, in other words, must be combined with action designed to restore effective justice to societies where grave human rights violations have been committed. The early rehabilitation of the judicial system and civilian police force in Rwanda and other war-torn states must therefore be made an integral part of the international community's response to such crises.

Establishing an international presence

One of the most effective means of providing protection to people who are threatened or displaced within their homeland is the establishment of an international civilian presence. This approach has now been used in a number of different countries, although the precise form it has taken has varied considerably from place to place.

In Sri Lanka, for example, UNHCR staff have been stationed in a number of locations known as 'Open Relief Centres', which are situated in areas inhabited by large numbers of returnees and internally displaced people, and which provide a temporary refuge to those who do not feel safe or secure. In Somalia, UNHCR has established a cross-border programme from Kenya, which enables its own personnel as well as NGO staff to provide both assistance and protection to returnees, displaced people and the resident population. In former Yugoslavia, the organization has not only maintained a substantial on-the-ground presence in areas of population displacement, but has also played an important role in the dissemination of information about ethnic cleansing and other atrocities. And finally, in Tajikistan, UNHCR's presence has been assured by mobile protection teams, working primarily in areas of the country where refugees returning from Afghanistan have settled (see [Box 2.5](#)).

Elsewhere, particularly in the context of UN peace settlement operations, human rights monitoring and protection functions have been assumed by specially created civilian structures. During the process which led to the Cambodian election of 1993, for example, human rights monitoring, investigation, training and public education were all undertaken by the UNTAC Human Rights Component, a professionally staffed body with a mandate that was spelt out in the country's comprehensive peace agreement. In El Salvador, the United Nations Observer Mission (ONUSAL) was established to monitor human rights and to support a political settlement between the government and rebels. In other instances, non-governmental organizations and the media have played a primary role in investigating and exposing human rights violations.

From the experience gained from all of these and other situations, it is evident that international personnel can pursue a wide variety of valuable tasks in countries where there is a risk of human rights abuse and population displacement. These functions have included, for example:

- intervening with local and national authorities when human rights violations take place;
- providing the international community and the media with information concerning actual and potential human rights violations and population displacements;
- bringing security problems to the attention of international peacekeepers and police forces if they are present in the country;
- assuring the safe passage of affected populations out of conflict areas;
- encouraging warring parties to establish codes of conduct regarding the treatment of civilian populations; and,
- assessing whether it is safe for returnees and displaced people to settle in certain areas.

By undertaking these and other tasks within countries of origin, international personnel can help to prevent human rights violations and avert population displacements. At the same time, such activities can help to increase the level of protection available to internally displaced people and provide refugees with the confidence to return to their homes.

Support for these assertions can be found in evaluations of several UNHCR field operations. A 1993 review of the organization's activities in former Yugoslavia, for example, noted that 'the presence of UNHCR and other international personnel has placed obstacles in the path of violence, discouraging ethnic cleansing and the harassment of minorities. Furthermore, by focusing international attention on forced displacements and other human rights abuses, UNHCR has had some success in moderating the worst excesses of the warring parties.' Unfortunately, of course, the situation has deteriorated significantly in the past two years, demonstrating the limitations of such a presence in an escalating conflict. In Sri Lanka, an independent evaluation observed that 'the unanimous opinion of everyone consulted, including the inhabitants of the Open Relief Centres, is that if the UNHCR presence had not been established, the majority of those benefiting from it would have gone to India.'

Ideally, international personnel should be deployed at a very early stage of a human rights or refugee problem, before attitudes have become intractable, battle-lines have been drawn and armed conflict has broken out. As UNHCR's former Representative in Sri Lanka has observed, 'international field staff outposted in conflict areas are essential... and the sooner they are in place, the more protection-effective they can be.'

In an attempt to implement this principle, UNHCR has recently developed a plan for the 'preventive deployment' of staff in four of the former Soviet republics of Central Asia, all of which are experiencing serious tensions resulting from independence, democratization and the transition to market-oriented economies. Another innovative attempt to identify and resolve human rights problems before they begin to provoke violence and population displacements is to be seen in the work of the High Commissioner for National Minorities, appointed by the Organization for Security and Cooperation in Europe (see [Box 2.6](#)).

Constraints and limitations

The positive assessments presented above should not, however, obscure the many difficulties associated with the 'protection by presence' strategy. Three particular constraints can be identified.

First, the establishment of an international presence in a country of origin normally requires the consent of the government concerned - something which may not be forthcoming if that government is conducting an all-out war against a rebel movement or particular social group. Even in less extreme circumstances, states tend to be particularly sensitive about their national sovereignty when the question of human rights arises. Interestingly, governments have found it relatively easy to agree to an international presence when the personnel concerned are employed by aid agencies or when they arrive in the context of comprehensive peace settlements. They are much less comfortable with the deployment of observers or monitors who formally represent the UN's human rights bodies. It is for this amongst other reasons that UNHCR has in many senses assumed some of the functions of an operational human rights agency.

Second, a meaningful presence in the field requires access to populations whose human rights are at risk. That cannot always be guaranteed, particularly in situations of armed conflict. In some cases, government authorities and other warring parties may explicitly ban the presence of international personnel from combat zones and

other areas. In others, it may simply be too dangerous for expatriates to remain in locations where human rights violations and population displacements are taking place. UNHCR has recently encountered such circumstances in Azerbaijan, Georgia, Liberia and Sierra Leone, to give just four examples.

Third, international civilian personnel are limited in the type of protection they can provide. Normally, for example, they can provide little or no physical protection to communities which are under direct attack. Moreover, many of the protection activities undertaken by international personnel - mediation, negotiation and dispute resolution, for example - can only have a useful impact if there is some basis of trust and goodwill amongst local leaders and communities. Sadly, that is not always the case. As a UNHCR review of operations in former Yugoslavia observed, at certain times and in certain places, 'the ferocity of the fighting and the logic of the war were so strong, that even a substantial reinforcement of the organization's presence would have made little difference to the pattern of conflict and population displacement.'

Providing humanitarian assistance

The most basic human right is the right to life. And life depends not only on physical and legal security, but also on a few basic resources: food, clean water, shelter and medical care. Providing assistance to displaced and distressed populations can therefore be considered as a protective and preventive activity.

Providing humanitarian assistance serves a wider range of purposes than simply keeping people alive. In former Yugoslavia, for example, UNHCR's large relief distribution programme has enabled the organization to establish a strong and legitimate presence in the field and has provided the organization with access to war-affected populations. UNHCR's role in the food distribution process, coupled with its consistent efforts to treat all communities on the basis of needs, has also given UNHCR some bargaining power in its relationship with combatants and local authorities. This again has sometimes enabled the organization to moderate the behaviour of the warring parties - although it has also made the organization a target of their hostility.

In other parts of the world, humanitarian assistance has played a useful role in the process of post-conflict reconciliation, thereby encouraging refugees to repatriate and to re-establish themselves within their country of origin. In Nicaragua, for example, UNHCR's substantial rehabilitation programme obliged supporters of the Contras and Sandinistas to work together if they wanted to take advantage of the international resources which the organization had at its disposal. Humanitarian assistance alone, however, cannot put an end to conflicts, prevent human rights abuses or provide effective protection when national or local authorities are unable or unwilling to discharge that responsibility. Nor can it prevent forced displacement when, as in former Yugoslavia, mass expulsions are a key objective of one or more parties to the conflict.

Defending the right of asylum

The right to live in safety is ultimately more important than the right to remain in one's own community or country. When preventive strategies have failed, and when people have developed a well-founded fear of being killed, injured or abused, they must have the option to escape from the danger which is threatening them. And

humanitarian organizations, one might add, have an obligation to facilitate the departure of such people if that is the only way in which they can find an acceptable degree of security.

Finding safety will often entail crossing a border and seeking sanctuary in another state, for the simple reason that becoming a refugee is frequently a more effective survival strategy than becoming an internally displaced person. In-country protection is an important and hitherto neglected element of the search for solutions to refugee problems. But it must never undermine the institution of asylum or limit an individual's ability to seek safety elsewhere.

Protection, integration and repatriation

It is now widely acknowledged that voluntary repatriation and reintegration represents the most appropriate solution for a large proportion of the world's refugees. It is the solution that most exiled populations appear to prefer. As suggested already, many refugees go back to their homeland as soon as they can, even if conditions there are not completely safe. It is also the favoured solution of host governments, many of whom would like to avoid the indefinite presence of refugees on their territory, and of donor states, who would be pleased if the resources which they commit to long-term refugee relief programmes could be used more productively.

Past efforts to protect the human rights of refugees have in some senses obstructed the goal of repatriation and reintegration. For many years, when a large proportion of the world's asylum seekers were escaping from communist countries, it was assumed (with some justification) that they would not want or be able to go home. For this reason, and in order to discredit the eastern bloc, substantial efforts were made by the western states to ensure that refugees could either settle in their country of asylum or move on to another country and integrate with the local population there.

This emphasis on settlement outside the country of origin was institutionalized in the 1951 UN Refugee Convention, which set out in considerable detail the various economic, social and civil rights to which exiled populations are entitled. In a whole range of areas - housing, education, social security and employment, for example - the Convention stipulates that refugees should be treated on a basis 'not less favourable' than that accorded to other foreigners. By treating refugees in this manner, it was felt, refugees would become assimilated in their new countries, and would avoid the kind of social marginalization that might result if they were given only a second-class status.

Economic and social benefits

Refugees in the less developed regions of the world have gained relatively few material benefits from the economic and social provisions of the Refugee Convention, for the simple reason that the countries to which they flee are typically very poor and lacking in basic amenities. While refugees living in organized camps have often benefited from services which are as good as (if not better than) those available to the surrounding population, exiled populations in the less developed countries generally find themselves in more difficult socio-economic circumstances than those they experienced in their homeland.

The situation of refugees who have made their way to the industrialized states of Western Europe, North America and Australasia is quite different. Many of these exiles have found that their standard of living, although poor by local standards, is considerably better than they could expect at home. If they cannot find work, they are at least entitled to social security payments. Normally, refugees in the industrialized states are entitled to free education and medical treatment. At the same time, the organized integration programmes usually provided in such societies - language classes, special housing programmes, counselling services, as well as training and employment initiatives - have enabled many refugees and, more significantly, their children, to adapt successfully to life in the western world. As a result, they have generally been less inclined to repatriate than refugees who have found asylum in less affluent countries.

This inclination has been reinforced by the presence of supportive national and ethnic communities in most of the industrialized states. Iranians granted asylum in France, for example, or Zairians who have found refuge in Belgium, or Sri Lankan Tamils offered protection in Britain have been able to draw upon the help, advice and resources of thousands of compatriots who have already settled in those countries, whether as refugees or under some other immigration status. When such supportive communities exist, the desire for a refugee to go home and to reclaim his or her own culture and identity may be considerably weakened.

Rights of residence

Repatriation is a sensitive issue in industrialized states with large immigrant populations.

The tendency of refugees to remain in the industrialized states indefinitely has been reinforced by two additional factors: the reluctance of host countries to withdraw the right of residence from people once they have been granted asylum, and the general absence of organized repatriation programmes in such societies.

Under the terms of the 1951 UN Refugee Convention, a state has the right to withdraw refugee status from any individual once it is safe for that person to return to their homeland. In practice, however, the industrialized states have not invoked this provision, even in relation to refugees from countries where the persecuting regime has been replaced by a democratically elected government which maintains high human rights standards.

In the less developed countries, it is common practice for UNHCR to organize voluntary repatriation programmes for exiles who wish to return to their homeland. In situations where it is evidently safe for refugees to go home, UNHCR actively encourages them to take advantage of such arrangements.

Although organized voluntary repatriation programmes have been established for certain groups of refugees in the industrialized states - Argentinians, Chileans, Namibians and South Africans, for example - such initiatives tend to be the exception rather than the rule. In general, refugees who wish to go home have been expected to organize their own repatriation from their country of asylum and their own reintegration in their country of origin. Given the expense, complexities and risks involved in this process, it is hardly surprising that many choose not to do so. Moreover, given the chronic instability of many countries of origin, refugees who want to return to their homeland often wait until they have become naturalized citizens of their asylum country. In that way, they are able to keep their future options open.

Governments in the developed world have generally been reluctant to promote the return of refugees, largely because the issue of repatriation - even on a voluntary basis - has become extremely sensitive in countries with substantial immigrant and ethnic minority populations.

While most of the industrialized states still subscribe to this philosophy of non-repatriation in relation to settled foreign residents, governments are now undertaking a serious reappraisal of the kind of protection which they provide to newly-arrived refugees. Is it possible, they are asking, to provide such people with the safety and security which they need and to which they are entitled, while simultaneously encouraging them to consider voluntary repatriation and reintegration as the ultimate solution to their plight? That is the subject of the following discussion.

Temporary protection or permanent asylum?

Whether asylum should lead to integration, or whether it should be a means of providing protection until repatriation is possible, has become a particularly pertinent issue in relation to former Yugoslavia, where, it was initially assumed, the international community would succeed in finding a speedy solution to the war. On the basis of this assumption, and in the context of a broader range of measures intended to address the humanitarian crisis in the region, the concept of 'temporary protection' was devised.

This notion is not an entirely new one. It was used by the states of South-East Asia when they agreed to admit the Vietnamese boat people on a provisional basis, pending their resettlement in third countries. Pakistan has always insisted that the many Afghan refugees living on its territory have been granted only temporary asylum, and will be expected to go home once conditions have improved in their homeland. A related concept is also referred to in the 1990 US Immigration Act, which offers the possibility of granting 'temporary protected status' to citizens of countries experiencing armed conflict and other extraordinary conditions.

It is in the context of former Yugoslavia, however, that the notion of temporary protection has been developed most systematically as a means of resolving refugee problems. On 29 July 1992, at the first UNHCR-sponsored conference on former Yugoslavia, the High Commissioner for Refugees formally requested governments to give temporary protection to people fleeing from the conflict and associated human rights violations in former Yugoslavia.

There were three key elements to this proposal. First, former Yugoslavs were to be admitted to countries of refuge and guaranteed protection against a forcible return to any country where their life or liberty would be at risk. Second, in relation to their rights and entitlements while in the country of refuge, the beneficiaries of this arrangement were to be treated 'in accordance with internationally recognized humanitarian standards.' And third, the former Yugoslavs would be allowed to remain in the country which had admitted them until the time when a safe return to their country of origin became possible. At that point, they would generally be expected to repatriate with assistance from the international community. Some 700,000 people from former Yugoslavia had been granted temporary protection in Europe by the first quarter of 1995, the largest number of them in Germany.

Figure 2.1  **Former Yugoslav citizens with temporary protection in Europe, 1995**

As the following paragraphs indicate, the temporary protection arrangement has a number of actual and potential advantages, both for the beneficiaries themselves and for the countries which have admitted them.

Providing immediate security. The former Yugoslavs who have been granted temporary protection in Western Europe have generally not been obliged to go through the lengthy procedures which European governments normally use to approve or reject individual applications for asylum. As a result of this dispensation, the beneficiaries have enjoyed an immediate guarantee of security and have been spared the anxiety of waiting to find out whether their request for refugee status has been successful.

Recognizing protection needs. Faced with a steady increase in the number of people seeking asylum on their territory, the world's more prosperous countries have in recent years tended to adopt increasingly restrictive interpretations of the criteria for refugee status. In many instances, people fleeing from armed conflict have been refused refugee status on the grounds that they cannot demonstrate an individual fear of persecution in their country of origin. The temporary protection approach has circumvented this difficulty, and has helped to establish a consensus that international protection should be given to people whose safety is at risk, whether or not they fall within a particular interpretation of the refugee definition.

Simplifying procedures. The procedures employed to assess individual asylum applications in the industrialized states have in recent years been overwhelmed by the number of people claiming refugee status. By granting temporary protection to the many former Yugoslavs seeking refuge on their territory, governments have been spared the task of dealing with a potentially unmanageable number of individual applications.

Encouraging generosity. As suggested already, one of the principal reasons why politicians and the public in the industrialized states have hardened their attitude towards asylum seekers is the perception that refugees have no real desire to return to their homeland, even if conditions become safe there, but would rather remain

and enjoy the material benefits of life in the western world. By limiting asylum to the period when a safe refuge is actually required, the temporary protection approach promises to allay such fears. As experience with the former Yugoslavs has demonstrated, governments may feel that they can afford to be more generous to a group of asylum seekers if their presence will not become a permanent one.

Facilitating repatriation. Temporary protection, or 'return-focused protection', as one European government has called it, obliges all of the parties concerned to give serious consideration to the question of an eventual repatriation. Knowing from the beginning that they will be expected to return to their homeland when conditions have improved, beneficiaries of temporary protection can prepare themselves psychologically and in more practical ways for the day when safe return becomes possible. At the same time, the temporary protection approach will oblige host governments and UNHCR alike to consider the neglected question of how repatriation from the industrialized states can most effectively be facilitated.

Resolving the conflict. The temporary protection approach provides host governments with a tangible incentive to address refugee problems at their source, in the country of origin. Expressed more simply, if states want to see the speedy return of the people they have temporarily admitted to their territory, then they must use all of the means which they have at their disposal to create the conditions necessary in the country of origin for safe repatriation to take place.

The question of entitlements

Given the relatively short period of time since the introduction of temporary protection for former Yugoslav citizens, it is difficult to say whether all of the potential advantages identified above will be realized, particularly those relating to the longer-term future of the beneficiaries. Nevertheless, it is possible to identify some of the key questions which have been raised by the introduction of temporary protection in Europe, and which must be addressed more systematically if similar approaches are to be introduced elsewhere.

First, what entitlements should be accorded to the beneficiaries of temporary protection? As indicated already, one of the reasons why refugees tend to stay indefinitely in the industrialized states is because they very quickly develop social connections there, adapt to the way of life and become accustomed to the standard of living which such societies have to offer. Should people with temporary protection be prevented or discouraged from establishing such ties to their country of refuge? And if so, can that objective be achieved without violating their human rights?

If social and economic integration really is a disincentive to voluntary repatriation, as some governments appear to believe, then the most rational means of ensuring the eventual repatriation of people granted temporary protection would be to accommodate them in isolated camps, to bar them from seeking employment, to discourage them from learning the local language and to prevent their family members from joining them. While such measures have already been employed in a number of states, these strategies are likely to prove politically unacceptable if maintained over an extended period of time.

Some of the measures which can be taken to discourage integration can also be challenged on legal and ethical grounds. Given that at least some of the people who

are granted temporary protection would qualify for refugee status if their request for asylum was to be considered on an individual basis, they cannot be arbitrarily deprived of the rights to which they are entitled under the UN Refugee Convention. And as they have already been recognized as people who are in need of international protection, it seems perverse to treat them in a less generous manner than asylum seekers from other countries, many of whom will ultimately be refused refugee status.

How temporary is temporary?

What will happen to people who lose their temporary protection but who do not want to go home?

Second, in view of the fact that conditions in a country of origin may not improve as quickly as initially anticipated, at what point should the beneficiaries of temporary protection have their asylum claims examined on an individual basis, or, alternatively, be offered the full range of rights and entitlements enjoyed by people who are recognized as refugees under the 1951 Convention?

When the temporary protection approach was introduced in 1992, there were hopes that the war in former Yugoslavia might not be prolonged. Now, however, three years later, there is still no certain prospect that conditions will improve sufficiently to permit the safe return of many people who have fled from the war, especially those originating from areas where their ethnic or religious group was not, or is no longer, in the majority.

At some stage, therefore, host governments will have to recognize that people with temporary protection must be offered greater certainty about their future and offered a standard of treatment which may make them less inclined to repatriate, even if it becomes safe for them to do so. Clearly, conditions which are appropriate for a period of several weeks cannot be prolonged for months or years without prejudicing the human rights of the people concerned. Moreover, in some cases, beneficiaries of temporary protection may have suffered such grievous abuses in their country of origin that the prospect of voluntary repatriation should not be entertained at all.

Safe return

A third set of issues relates to the withdrawal of temporary protection and the notion of safe return. With regard to these topics, it may simply suffice to list some of the questions which arise in connection with the future of the former Yugoslavs, and to which there are currently no definitive answers. Who, for example, will determine whether it is safe for these people to go home? How much time must elapse after the hostilities and associated human rights violations have ceased before it can be deemed safe for people to return? What will happen to people who lose their temporary protection but who do not want to go home? And what solution will be found for those whose homes lie in areas which have been occupied by members of

another ethnic group, or which have come under the control of another government as a result of a negotiated settlement to the conflict?

Fourth, to what extent will temporary protection - like the right to remain - be misused by states who wish to limit their obligations to refugees? When the temporary protection proposal was introduced in 1992, it was as part of a broader package of measures which was intended to provide asylum seekers with both the immediate protection they required and an eventual solution to their plight. One important element of this package was that receiving countries should maintain open borders for new arrivals from former Yugoslavia. That principle has not been fully respected.

People escaping from war-affected areas of former Yugoslavia, particularly Bosnia and Herzegovina, have encountered serious difficulties in gaining access to countries of refuge over the past three years. This situation has arisen partially because of the persistence of the war and the limitations which this has imposed on freedom of movement. But as a paper by UNHCR's Division of International Protection has pointed out, it also derives from the actions taken by other governments in Europe. 'Even when departure is not blocked by fighting or hostile local elements, entry into neighbouring states is often refused for lack of required documentation,' it states. 'Most of the countries that provide temporary protection,' the paper continues, 'have imposed visa requirements or similar restrictions on Bosnians.'

Resolving root causes

Fifth and finally, certain questions arise with regard to the claim that the temporary protection approach will provide countries of refuge with an incentive to address the root causes of refugee movements in the country of origin. It could now be regarded as somewhat fanciful to suggest that the states of Western Europe have tried any harder to resolve the war in former Yugoslavia, simply because of their desire to witness the return of people to whom they have granted temporary protection.

The governments of Western Europe have many reasons - economic, political, military and diplomatic - to bring the war in former Yugoslavia to an end, all of which loom far larger in the mind of key decision-makers than the refugee question. And yet even these important strategic interests have not motivated the governments concerned to take the kind of decisive action that might have halted the fighting and human rights abuses which have provoked such massive displacements, and which are now preventing those refugees from returning to their homes.

Protecting refugees through resettlement

As concepts such as 'sanctuary' and 'refuge' imply, a country of asylum should be a welcoming place, offering safety and security to people whose human rights are at risk and whose physical and psychological well-being is threatened. Sadly, a substantial number of the world's refugees find that the state to which they have fled is not able or willing to protect their human rights in this way. In a minority of cases, refugees may even find themselves at greater risk in their country of asylum than they were in their country of origin.

Those refugees who cannot find a safe refuge in their country of asylum fall into three basic categories. In some circumstances, refugees may be refused entry to the

country to which they have fled or may be threatened with expulsion. Such a scenario is most likely to occur when the potential country of asylum feels that the refugees concerned would threaten its political, social or economic stability if they were allowed to remain. The consistent refusal of the South-East Asian states to offer anything except a strictly temporary asylum to the Vietnamese boat people provides a good example. Refugees may also be under threat of deportation or prolonged detention in situations where the governments of country of origin and country of asylum enjoy a close political relationship and a mutual antagonism towards the exiles concerned.

In other situations, refugees who have been admitted to a country of asylum may be threatened not by the authorities of that state, but by other hostile groups or governments. In the 1980s, for example, South African refugees who had fled to neighbouring countries such as Botswana, Lesotho and Mozambique were regularly killed and injured in operations undertaken by the apartheid state and its agents. Members of certain exiled South African liberation movements who fell into dispute with their leaders were subjected to the same kind of human rights violations in their countries of asylum.

A third group of refugees who are confronted with particular difficulties are those who have special humanitarian needs which cannot be met in the country where they have been granted asylum. Typically, these include people who have been subjected to torture or sexual violence and who require specialized care and counselling; other refugees who have serious physical and mental disabilities for which treatment is not available locally; and refugees who have been separated from close family members.

A well-established procedure exists to protect and assist people who find themselves in such difficult circumstances. Known as third country resettlement, it involves transferring a refugee from his or her country of asylum to another state which has agreed to admit that person, to grant them long-term residence rights and the opportunity to become naturalized citizens. For that reason, resettlement is often referred to as one of the permanent or durable solutions available to refugees.

Figure 2.2 ► **Refugees resettled by UNHCR, 1979-1994**

Figure 2.3 ► **UNHCR resettlement cases by region of origin, 1990-1994**

Figure 2.4 ► **UNHCR resettlement cases by receiving country, 1991-1994**

Negative perceptions

Over the past decade, the international community has reached a broad consensus that third country resettlement is the least preferred solution to a refugee problem.

As one UNHCR Executive Committee document states, it is 'the solution of last resort.'

The limited emphasis which is now being placed on third country resettlement as a means of protecting refugees and finding a solution to their plight has a number of different origins. Resettlement is in some senses the antithesis of the proactive, preventive and homeland-oriented approach to the refugee issue which the international community has started to adopt in recent years.

Traditionally, as in the case of the million and more Indo-Chinese who have been resettled in Australia, Canada, France and the USA, third country resettlement has entailed taking refugees from their country of first asylum, transporting them thousands of miles across the world, and helping them to adapt to societies where the culture, climate, language and social structure are almost completely unfamiliar. Many of these people, particularly younger family members, have made an astonishing success of their new lives. Nevertheless, resettlement is undoubtedly a complicated and expensive process, which does not always have happy results for the refugees concerned.

The Vietnamese programme has in many ways cast a long shadow over the role of resettlement as a solution and a means of protection. There is now general agreement that the decision taken in 1979 to offer resettlement to the boat people arriving in South-East Asia acted as a 'pull factor', helping to create an unmanageable exodus of people, an increasing number of whom left their homeland for economic and social reasons, rather than to escape from persecution. As a result of this experience, one can assume that the industrialized states will be wary about making an open-ended commitment to the resettlement of an entire refugee population in the foreseeable future.

While there is a valid critique to be made of earlier resettlement programmes, the somewhat negative image gained by this solution has obscured the important role which it can play and has played in protecting refugees whose human rights are at risk in their country of asylum. It is now sometimes forgotten, for example, that the Vietnamese resettlement effort itself began not as a politically motivated immigration programme from a communist state but as a response to the policy of certain South-East Asian states, whereby vessels carrying Vietnamese boat people were refused permission to land and were towed back out to the high seas. This draconian practice (as well as the problem of piracy) which led to the loss of thousands of lives, only subsided when the governments of the region received assurances that most if not all of the boat people required only temporary asylum, as they would be resettled in third countries.

For some of the world's refugees, therefore, resettlement represents not 'the solution of last resort', but the only certain means of protecting their human rights. As such, it must continue to play a role in the search for solutions to refugee problems.

This will not necessarily be a simple process. No country has an obligation to accept resettlement cases, and only 10 of the world's 180 states do so on a regular basis. This figure seems unlikely to grow in the immediate future. In many instances, moreover, countries have given priority not to the refugees with the most urgent needs, but to those who have the best potential for integration, who have some

strategic value, and who come from communities with strong domestic constituencies lobbying on their behalf.

Despite the difficulties involved, there are several grounds for optimism about the future of resettlement. Long-established and large-scale resettlement programmes for groups such as the Vietnamese and former Soviet citizens are now winding down and opening the way for the countries concerned to undertake a serious reappraisal of their resettlement priorities. The end of the Cold War has significantly reduced the strategic value of resettlement to the western countries, and could encourage more governments to accept UNHCR's recommendations in identifying appropriate resettlement cases. Thus while the quantity of refugees accepted by the industrialized states seems unlikely to grow, the quality of resettlement as a means of protection could be enhanced.

Re-examining assumptions and approaches

The notion that resettlement always constitutes a permanent solution for refugees may need to be revised.

In order to capitalize upon the new environment of the mid-1990s, it will be necessary to re-examine some established assumptions and approaches in relation to third country resettlement.

First, the notion that resettlement always constitutes a permanent solution for the refugee concerned may need to be revised. Successful integration in a resettlement country does not necessarily preclude (and in some circumstances may even facilitate) an eventual return to the country of origin. People who have been able to support themselves and accumulate some resources in their country of asylum might in some situations find it easier to repatriate than those who have become dependent on state benefits and who have lost the confidence required to start life again at home. Moreover, if temporary protection proves to be an effective and equitable means of managing refugee movements, there may be some scope for the introduction of programmes designed to resettle refugees on a temporary basis, pending their voluntary repatriation. Thus in August 1995, UNHCR called on governments to provide up to 50,000 places for Bosnians, given the resumption of ethnic cleansing and the massive number of displaced people already in Croatia.

Second, it would appear prudent to avoid the type of programme established for the Vietnamese - and more recently for Iraqis in Saudi Arabia - whereby efforts are made to resettle every person in a particular refugee group. This approach not only encourages countries of first asylum to offer very restricted forms of refuge, but may also have the effect of relocating people to places which are socially and culturally alien to them. As some resettlement countries have already suggested, it may represent a better use of scarce humanitarian resources to establish targeted development assistance programmes in countries of first asylum, with the intention

of encouraging and enabling those states to grant longer-term asylum to refugees who wish to remain in their own region.

Third and finally, there is a need to re-examine the assumption that resettlement should invariably involve the transfer of refugees from less-developed to more affluent states. For many refugees, moving to a country with a more familiar culture, climate or language could make social adjustment and integration much easier. It is for this reason that the notion of intra-regional resettlement should be explored more systematically.

Admittedly, the scope for this activity does not appear to be very great. Less developed countries are generally unwilling to resettle refugees who have been granted asylum in neighbouring and nearby countries unless they have particularly close social and historical links with their own population. Even educated refugees with valuable skills now find it difficult to resettle within their own region, given the scale of the professional unemployment problem in many poorer countries. Nevertheless, there may again be circumstances in which development aid provided by the traditional resettlement countries and other industrialized states could be used to promote resettlement within regions of origin.



Box 2.1 Refugee women and girls: surviving violence and neglect

The world's conscience was shocked when it became known that rape had been used as an instrument of war in Bosnia and Herzegovina. But the atrocities perpetrated against women and girls in former Yugoslavia are not by any means unique. Rape and other forms of sexual violence, employed as a means of humiliating females and terrorizing whole communities, have also been reported in Haiti, Myanmar, Rwanda and Sri Lanka, to give just a few recent examples. In a much larger number of countries, police and prison guards routinely inflict sexual abuse upon their female captives in order to extract information from them and to intimidate the families, social groups and political movements with which they are associated.

As experience in Bosnia and Herzegovina has shown, when sexual violence is committed in a systematic manner, it can play an important role in prompting whole communities to abandon their homes and to seek safety elsewhere. Tragically, however, female refugees may find that in fleeing from persecution and violence, they have actually increased their exposure to the threat of sexual abuse. All too frequently, border guards, police officers, military personnel and camp officials in countries of asylum have been known to exploit their positions of power by demanding sex from refugee women and girls and by forcing them into prostitution. At the same time, refugees (both female and male) may find themselves at risk of sexual violence from members of their own community, particularly in situations where established social structures and values have been undermined by conflict and displacement.

The problem of sexual violence was highlighted in 1993 by the very large number of rapes reported in the Somali refugee camps of north-east Kenya, apparently committed by both Somali bandits and local security personnel. Responding to the gravity and widespread nature of such incidents, UNHCR is now attempting to address the problem of sexual violence in a more systematic manner. One result of this process has been the production of a comprehensive set of guidelines for UNHCR staff and other field workers, suggesting ways in which sexual violence can be combated and its victims assisted.

Survival strategies

The use of rape as a weapon of persecution and war has found its way into the media headlines. But the protection problems of displaced females are to be found predominantly in the less dramatic and day-to-day struggle for survival.

Refugees originate primarily from countries which are characterized by high infant and maternal mortality, low life expectancy, rampant illiteracy, rapid rates of population growth and static or declining standards of living. Families and communities normally cope in such adverse circumstances by pooling their assets and by employing survival strategies which make optimal use of limited local resources. But when a crisis occurs and people are forced to move away from their usual place of residence, these life-sustaining techniques may no longer be feasible or relevant.

The loss of a spouse or partner represents a particularly serious but all too common blow to the physical safety and material security of female refugees. Although comprehensive statistics on female-headed households are lacking, the trend is well documented: refugee movements tend to split up nuclear families, thereby increasing (often dramatically) the percentage of women who must care for children and elderly relatives without the assistance of a partner. Surveys show that in some refugee situations more than 30 per cent of all households are headed by females.

When a husband is dead or absent, a wife can no longer rely on the usual division of labour between males and females, however inequitable that may be. The multiple demands made upon female heads of household can be overwhelming, jeopardizing their physical and emotional welfare, and exposing them and their family members to the risk of exploitation. Painful sacrifices often have to be made. By standing in a queue to collect basic needs such as food or water, for example, a woman may have to forfeit the chance to receive medical attention. And to get some help with domestic chores, some children may have to be kept out of school - a practice which helps to explain the three-to-one ratio of attendance between refugee boys and girls.

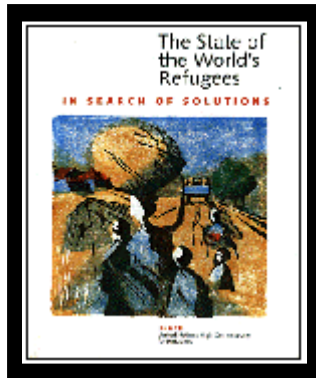
Specific needs and interests

The protection that female refugees receive from the international community often fails to recognize their identity as women. Gender-specific forms of persecution are often given insufficient attention in refugee status determination procedures. If a female refugee is registered in the name of her male partner, and if only the husband's situation is considered during a family's request for asylum, then the specific needs, interests and opinions of the women will almost inevitably be ignored. Similarly, if the design and management of a refugee camp does not take into account the practical requirements of those women who are pregnant, those who have young children to care for and those who are at risk of sexual violence, then their marginalized status is certain to be reinforced.

The protection needs of refugee women cannot, however, be properly understood or addressed by making a simple distinction between males and females. Women within the same refugee population may differ markedly in terms of their age, education, social status and wealth, not to mention family size and composition. If they are to be effective, assistance and protection strategies must take due account of these differences. The mere establishment of a women's committee in a refugee camp, for

example, may do little to empower the majority of females if it consists of females with similar characteristics, values and interests.

At the same time, there is a need to recognize that many of the problems confronting refugee women must also be addressed by means of complementary activities targeted at refugee men. The reproductive health of refugee women, for example, which in many countries is jeopardized by high birth rates, a high incidence of teenage pregnancies and sexually transmitted diseases, provides an obvious case in point.



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Box 2.2 Repatriation to Myanmar

Between late 1991 and the middle of 1992, more than 250,000 people fled from the Rakhine State of Myanmar (formerly Burma) to neighbouring Bangladesh. Almost all of the refugees were Rohingyas, a Muslim minority group living in a predominantly Buddhist country. Although accurate statistics are not available, the Rohingyas are thought to constitute just under half of Rakhine State's population, which is estimated to be some 4.5 million.

When the refugee exodus took place, the new arrivals in Bangladesh said that they had been subjected to a variety of human rights violations by the Myanmar security forces. According to refugee accounts, these abuses took place amidst efforts to conscript military porters, to recruit unpaid labour for public works projects and to relocate some of the Muslim population within Rakhine State. The Myanmar government has denied these accusations.

From the early days of the exodus, it became apparent that voluntary repatriation represented the only viable solution for the vast majority of the refugees. But before UNHCR could participate in the repatriation process, the organization had to be sure that the refugees were willing to return and that their safety and welfare could be monitored once they had gone back to their homes.

Proactive role

For many years, the timing of UNHCR's involvement in voluntary repatriation programmes was determined largely by refugees themselves. They decided when to return, and received protection and assistance from the international community until the day when they chose to return. During the 1980s, however, UNHCR began to play a more proactive role in the search for solutions, actively assisting refugees to return to and reintegrate in their homeland once conditions there had substantially improved.

More recently, the implementation of comprehensive peace settlements in a number of war-torn countries, supervised by UN peacekeeping forces and civilian personnel,

has enabled UNHCR to go one step further in the repatriation process. Thus in countries such as Cambodia and Mozambique, the organization's repatriation programmes have been based on the premise that the vast majority of refugees will be able to - and want to - return to their own country and participate in the election of a new government.

The questions of safety and voluntariness have been more problematic in relation to the Rohingya refugee situation. On the Bangladesh side of the border, UNHCR did not initially have full access to the camps where the refugees were accommodated. And in Myanmar, unlike Cambodia and Mozambique, the political situation remained unchanged at the national level. Furthermore, UNHCR did not have a presence in the country and was therefore unable to monitor the situation within the refugees' area of origin.

The repatriation of the Myanmar refugees was further complicated by social, economic and legal factors. The people who fled to Bangladesh were predominantly landless day labourers, with very limited income-generating opportunities available to them in Rakhine State. As a result of the country's nationality laws, the Rohingyas were generally not recognized as citizens of Myanmar, nor did they have the right to move freely around the country.

The majority population of Myanmar generally regard the Rohingyas as aliens, a view which has been coloured by a variety of different factors: the ancient Arab and Persian origins of the Rohingyas; their loyalty to the Britain during the colonial period; fears of illegal immigration from the overcrowded and overwhelmingly Muslim country of Bangladesh; and concern over the security threat posed by two groups of armed Rohingya rebels, which are said to be supported by foreign governments. The integration of this group after their return therefore promised to be a difficult undertaking.

Despite all of these uncertainties, in April 1994, UNHCR initiated an organized repatriation programme for the refugees, which has allowed many thousands to go home under the organization's auspices. At current rates of return, the vast majority of the refugees will have returned to Myanmar before the end of 1995.

Long-term options

UNHCR's readiness to organize this repatriation programme - and the refugees' willingness to participate in it - is the result of several considerations. Bangladesh is one of the poorest and most densely populated countries in the world, and has neither the land nor the resources to absorb so many people. Local settlement in Bangladesh does not represent a realistic long-term option.

A number of safeguards have been built into the repatriation programme. Under the current arrangements, the refugees indicate their willingness to return to Myanmar by registering for repatriation. Once registered, they are free to change their minds for any reason and at any point before they cross the border - a right which many refugees have exercised, usually for a temporary reason such as an illness in the family.

Within Myanmar, the government has invited UNHCR to establish a presence, both in the capital city of Yangon and in Rakhine State itself. As a result, the organization is

now in a position to monitor the welfare of the returnees. At the same time, the organization is providing the refugees with food, a cash grant and other forms of individual assistance upon their return to Myanmar, as well as implementing community-based rehabilitation projects in their home areas. According to UNHCR staff in the region, these initiatives have played a major part in the refugees' willingness to return to Myanmar. While their situation in Rakhine State may not be an easy one, the refugees appear to have recognized that it is better to go home now and to benefit from UNHCR's presence and programme, rather to remain in refugee camps which can offer them no future.

Coerced returns

UNHCR's involvement in the refugees' return to Myanmar has assumed a particular significance in view of the events which preceded the launch of the organization's repatriation programme. In April 1992, the governments of Bangladesh and Myanmar signed a bilateral repatriation agreement, without the participation of UNHCR. Refugees began to repatriate to Myanmar five months later, and in October 1992, UNHCR was formally given permission to interview the refugees and to ascertain the voluntariness of their return. The organization quickly withdrew from this role, however, because of difficulties in gaining access to the refugees as well as widespread reports that they were being subjected to abuses by camp officials and forced to go back to Myanmar.

UNHCR and other members of the international community protested vigorously against these developments, with the result that the violations were subsequently halted and the camp officials concerned were removed from their posts. At the same time, UNHCR negotiated new agreements with the Bangladesh authorities, which provided the organization with better access to the camps and which enabled UNHCR staff to interview potential returnees.

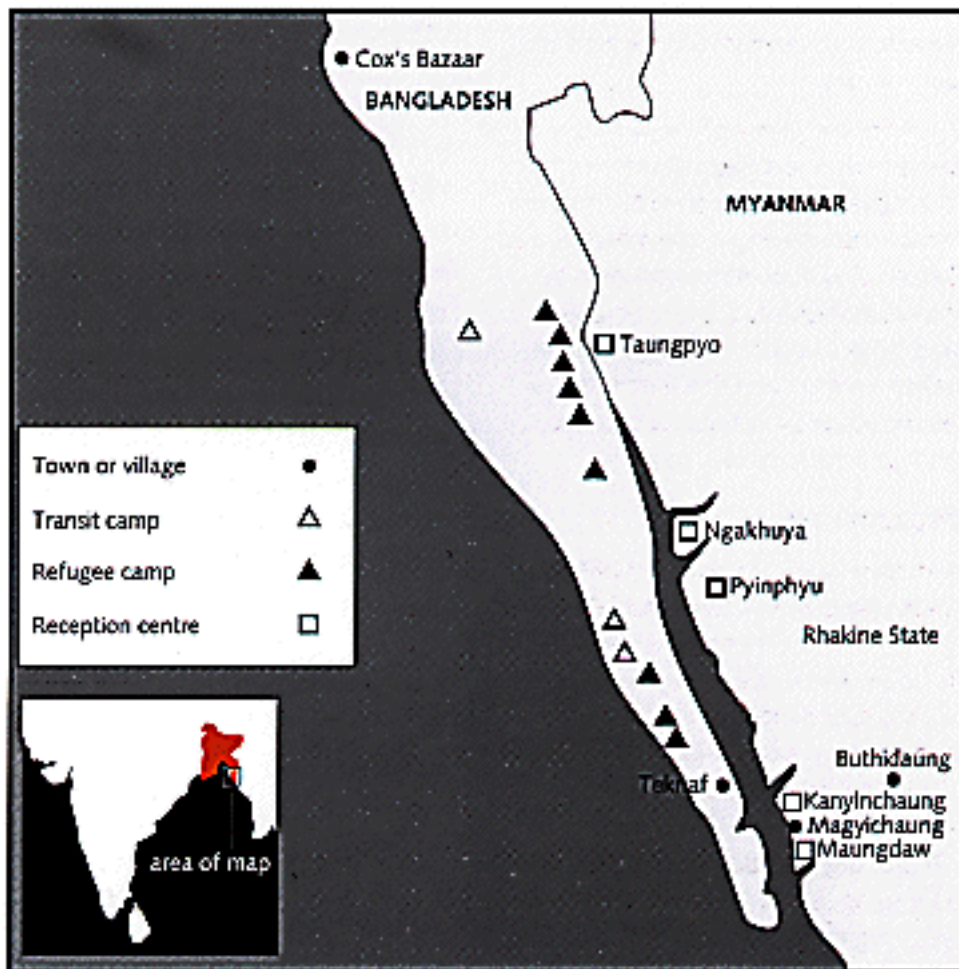
In November 1993, after nearly 50,000 refugees had returned under the bilateral repatriation programme, UNHCR was also granted access to Rakhine State by the Myanmar authorities. The organization was subsequently given permission to travel freely throughout the area (although logistically this can be difficult) and to monitor the situation of the returnees. UNHCR's efforts to help the returnees re-establish themselves in Myanmar by means of water, health, education and income-generating projects provide an additional means of promoting and monitoring the welfare of former refugees. By mid-1995, UNHCR had found no evidence to suggest that the returnees were being subjected to persecution or discrimination, although some incidents have taken place involving the detention and relocation of former refugees.

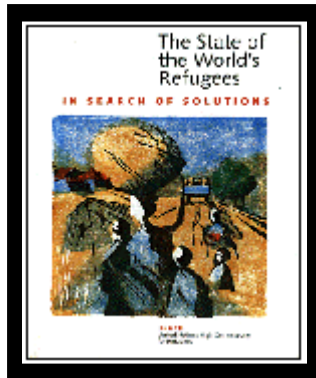
Despite these encouraging results, two important issues remain to be resolved. First, an unknown but in all likelihood relatively small number of the remaining refugees may choose not to go back to Myanmar because of their political activities and allegiances. Another category of 'residual cases' whose future will have to be determined consists of refugee camp residents who migrated illegally from Bangladesh to Myanmar prior to 1991, and who consequently have no right to return to Rakhine State.

A second and perhaps more significant issue concerns the prevention of any further exoduses or expulsions from Myanmar to Bangladesh. To avert any further occurrences of this type, efforts will evidently be needed to provide Myanmar's

Muslim minority with greater security, by protecting their human rights, by improving their legal and social status and by providing them with greater income-earning opportunities. While UNHCR is currently attempting to address these concerns, ultimate responsibility for such issues must be assumed by the country of origin.

Map D
The Bangladesh/Myanmar repatriation programme





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Box 2.3 The problem of statelessness

On 10 March 1993, a group of Khmer Rouge soldiers marched into the Cambodian fishing village of Chong Kneas and opened fire, killing and injuring more than 60 people of ethnic Vietnamese background. In the panic which followed, more than 30,000 people from this minority group fled into Viet Nam, while 5,000 more found themselves stranded on the Cambodian side of the border. These displaced people and their ancestors have lived in Cambodia for generations. They speak fluent Khmer and consider themselves to be Cambodian citizens. But they are not recognized as such by the Cambodian authorities, and have consequently been prevented from returning to their villages. By mid-1995, there was still no solution in sight for them.

The situation of Cambodia's ethnic Vietnamese population provides a graphic example of an important but sometimes forgotten humanitarian issue: the problem of statelessness. One consequence of an international system based on the nation-state is the vital importance of citizenship. To be able to reside in a country, to work, to vote, to carry a passport, and hence to be able to leave or enter that state, citizenship is required. Both substantively and symbolically, citizenship enables an individual to belong to a society. It is for this reason that nationality has been recognized as a human right, and the arbitrary deprivation of citizenship is prohibited under international law.

Despite these legal provisions, a substantial but unknown number of people are living in circumstances similar to those of the ethnic Vietnamese in Cambodia, lacking citizenship and the rights associated with that status. Significantly, while international human rights law acknowledges the right to a nationality, it does not spell out the circumstances under which a state must grant citizenship; each country remains sovereign in its ability to establish nationality laws and to determine whether individuals are recognized as citizens.

An obstacle to solutions

The problem of statelessness is related to the issue of human displacement in two principal ways. First, statelessness can act as an obstacle in the search for solutions to refugee problems. In a number of different situations, countries of origin have refused to allow the return and reintegration of refugees whose claim to citizenship has been rejected, even if, like Cambodia's ethnic Vietnamese population, they were born and bred in that state. Refugees who are prevented from repatriating in this way may, of course, encounter even greater difficulties if no other country is prepared to offer them long-term residence rights and the opportunity to apply for citizenship.

Controversies over citizenship are currently impeding the search for solutions in a number of countries around the world. In addition to the Cambodian situation, difficulties have arisen with regard to the ethnic Nepali refugees who have fled from Bhutan to Nepal, members of Kuwait's Bidoon minority living in other Arab states, and a small number of ethnic Chinese boat people who remain in Hong Kong. The details of these cases differ substantially, and in each instance they are surrounded by complex legal, factual and political disputes. What these situations have in common is that the country of origin will not allow the people concerned to return, citing lack of citizenship as the reason for their exclusion.

The threat of displacement

A second and perhaps even more important connection between statelessness and the refugee problem is to be found in the threat of displacement and expulsion which hangs over many people who are not recognized as citizens of the countries to which they essentially belong. This threat derives less from the simple absence of citizenship, however, and more from the policies and prejudices which often motivate a state's decision to withhold citizenship from a particular group of people.

When it occurs on a collective basis, statelessness is almost always an indicator of underlying social and political tensions, involving minority groups which are perceived by the majority community and the authorities as different, disloyal or dangerous. Contemporary examples of this syndrome include the Roma (gypsy) minority in the Czech Republic, Myanmar's Muslim minority, commonly known as Rohingyas, and the large population of ethnic Russians in Estonia and Latvia. In the former Soviet states generally, there is a particular risk that the resurgence of ethnic nationalism and the introduction of new nationality laws might lead to large-scale statelessness and mass population movements.

Recent developments in the former Soviet Union and the countries of Eastern Europe, coupled with the simultaneous emergence of a proactive, preventive and solution-oriented approach to the problem of human displacement, have generated a new awareness of the plight of stateless people. It is now widely accepted that the question of statelessness goes beyond the domestic jurisdiction of states, given its important human rights implications, its potentially damaging impact on inter-state relations and its propensity to create refugee problems.

In most situations, people become stateless not as a result of some historical or legal quirk, but because a state has not learned to live with or tolerate its minorities. Respecting the full spectrum of human rights - which includes the right to a nationality - is essential if a society is to live at peace with itself and in harmony with its neighbours.



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Box 2.4 El Salvador: protection through documentation

Over the past five years, some 32,000 refugees have returned to El Salvador, responding to the positive outcome of the peace process in their homeland. In the course of the repatriation programme, it became apparent that many returnees had lost their birth certificates and identity cards during the 16-year war between government and opposition forces. Replacing these documents was often impossible, given the damage and destruction which had taken place in many municipal archives, and the limited resources available to the government.

Without the necessary papers, the returnees were at risk of becoming politically and socially marginalized. They could not register as voters and participate in elections. They found it difficult to travel freely around their own country. And because they could not prove their date and place of birth, they encountered difficulties when enrolling for school, seeking employment and getting married. Moreover, without accurate demographic data, national and local authorities were unable to make effective plans for the rehabilitation of the country's health and education services.

In 1992, when the magnitude and consequences of this problem were realized, UNHCR and the Salvadorian government launched a documentation programme which was able to issue over 1.1 million birth certificates and half million identity cards. At the same time, nearly 3,500 civil registry books were restored in over 200 municipalities. This initiative was not limited to returnees; all Salvadorian citizens who needed such documents were able to benefit from the programme.

The documentation campaign itself was carried out by Salvadorians from different walks of life, of different political persuasions and from every region of the country. To reach the public, television, radio, loudspeakers, flyers and banners were all used. In addition, NGOs were contracted to take the message to the countryside, using hundreds of paid and volunteer workers. Transport was provided to bring rural residents to registration points, and to take registration officials to remote communities. All of these activities were coordinated by a committee composed of representatives from the government, UNHCR, other UN organizations and donor states. Nearly all the costs of the programme were met by the international community.

As well as safeguarding a number of fundamental human rights, the documentation campaign has made a valuable contribution to the Salvadorian peace process. Reconciliation requires a change of orientation amongst all of the people concerned: government officials who distrust certain segments of the population; civil servants who look down on people from a different social class or ethnic group; and citizens who distrust the government and who have no faith in democratic elections.

The cooperative effort required by the documentation programme, supported by an international presence, helped to break down these barriers. What is true in El Salvador holds true for all societies: peace, justice and human rights are built on an infrastructure of attitudes.



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Box 2.5 Restoring stability in Tajikistan



A returnee arrives in the Kolkhozabad area of Tajikistan, May 1995
© UNHCR/A. Hollmann

Tajikistan's civil war aroused barely a flicker of international interest when fighting broke out in May 1992. The country had existed as an independent state for only nine months, and prior to that it had been almost completely closed to the outside world. With Afghanistan to the south, China to the east, and the vast expanse of the former Soviet Union to the north and west, Tajikistan was - and still is - difficult to reach and easy to ignore.

Since the tentative conclusion of the conflict in January 1993, Tajikistan has been the scene of a particularly innovative UNHCR programme. Unfortunately, the organization's efforts have been plagued by persistent funding difficulties. Nevertheless, with the firm support of a small group of donor states, UNHCR has been able to implement a strategy which combines the search for solutions with the protection of returnees and displaced people and the prevention of further population displacements.

A brutal war

The civil war in Tajikistan - a complex conflict with ethnic, ideological and religious dimensions - was short but extremely brutal. Between 20,000 and 40,000 people were killed. Half a million were displaced inside the country and 60,000 fled across the Amu river to Afghanistan. In the south-western province of Khatlon, which bore the brunt of the fighting, dozens of villages were razed. Many other villages, and most of the towns, bore the hallmarks of persecution. While certain houses were burned down or reduced to a pile of mud bricks, others were left intact.

The people displaced by the conflict were mainly ethnic Tajiks, who constitute just under 60 per cent of the country's five million inhabitants. Between the 1930s and the early 1970s, thousands of people were moved from the Garm valley in central Tajikistan to the south-west of the country, where the communist regime was seeking to boost the production of cotton. The descendants of these settlers, known as Garmis and Pamiris, were the principal group to be forced out of Khatlon during the civil war.

Many thousands of ethnic minority members, including Russians, Kyrgyz, Uzbeks, Turkmen, Jews and Germans, have also left Tajikistan since the country gained independence in 1991. Although for the most part not directly involved in the civil war, they moved to other countries in the Commonwealth of Independent States because they were afraid of being caught in the crossfire, or because they wanted to look for new economic opportunities. Tajikistan's economy - the poorest in the former Soviet Union - is in a disastrous state. During the winters of 1993 and 1994, for example, the situation became so bad that some people were reportedly reduced to eating grass.

Despite the deep-rooted problems which still affect Tajikistan, including continued clashes between the government and its opponents, by mid-1995 all but 18,000 of the refugees and 12,500 of the internally displaced people had returned to their homes, mainly in Khatlon. Some 14,500 houses have been repaired with roofing materials paid for, imported and delivered by UNHCR. Villages which only a year earlier were devastated and abandoned have now sprung back to life.

But it takes more than a new roof to convince a refugee that it is safe to go back home, particularly in the circumstances of Tajikistan's civil war. For in many cases, the returnees are once again living next door to the people who forced them out of their homes, stole their possessions and killed their relatives. Important though UNHCR's shelter programme has been, the key to the refugees' return lies in the dramatic improvement in the security situation in Khatlon, a development which in turn owes much to the strong protection role assumed by UNHCR staff in the area.

Early repatriation

The Tajik influx into northern Afghanistan occurred in December 1992, during the last few weeks of the civil war. By January 1993, UNHCR had deployed a mobile team on the Tajik side of the border, so that the organization could prepare for an early repatriation programme and help the International Committee of the Red Cross (ICRC) to provide emergency assistance to large numbers of internally displaced people.

The reason why some people became refugees while others were displaced within Tajikistan was quite arbitrary. Those who could tend to flee to the capital city of Dushanbe. But those who found themselves on the wrong side of a front-line were forced south and into Afghanistan. Since the beginning of the UNHCR programme in Tajikistan, the organization has provided protection and assistance to both groups on an equal basis.

Establishing conditions that were conducive to the return of the refugees and displaced people was far from easy. Initially, the rule of law in post-war Khatlon was negligible. The first returnees were vulnerable not only to victorious neighbours, who were intent on keeping any property they had stolen, but also to a formidable array of armed groups that were roaming around with virtual impunity. These included some of the semi-official militias which had helped the government to fight and win the war, and who were now (often literally) drunk on victory. The extent of this problem became clear during June and July 1993, when a number of returnees were murdered, robbed or beaten up by armed gangs.

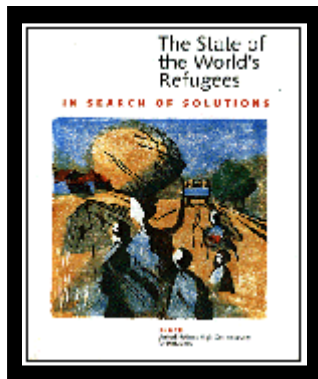
UNHCR's mobile teams, operating from bases in the most devastated areas of Khatlon, followed up such incidents and drew the attention of the local authorities to potentially dangerous developments.

If the response to such representations was inadequate, the matter was taken up with the relevant ministries in Dushanbe.

In some particularly tense situations, the prompt deployment of UNHCR staff helped to ensure that the local authorities provided protection to the returnees. In addition, UNHCR encouraged the authorities and local leaders to ensure that disputes were settled through negotiation, rather than the use of violence. In criminal cases involving organized gangs or armed individuals, UNHCR staff monitored the judicial process to ensure that attacks on returnees did not go unpunished. By 1994, more and more such cases were coming to court and the problem of the rogue militias was subsiding, enabling UNHCR to establish an organized repatriation programme from Afghanistan.

In addition to these activities, UNHCR has been working in close cooperation with the government of Tajikistan to establish legislation relating to refugees and returnees. Thus in April 1993, Tajikistan passed the first in a series of amnesty laws. In November 1993 the country acceded to the UN Convention relating to the Status of Refugees. And in 1994 the Tajik parliament passed a special law concerning house occupancy. These legal instruments have to a large extent been respected, with the result that returnees are now rarely subject to any kind of official harassment.

Tajikistan as a whole is still plagued by political instability and a dangerously debilitated economy. A further collapse into armed conflict cannot be entirely discounted. Nevertheless, by mid-1995, the returnee areas of Khatlon Province were generally recognized to be safer than the streets of Dushanbe. With its task approaching completion, UNHCR is now planning to hand over some of the activities which it has initiated to the Organization for Security and Cooperation in Europe, and the UN Development Programme.



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Box 2.6 Protecting Europe's minorities: preventing refugee movements

'Capital invested in conflict prevention is capital well spent. In humanitarian, financial and political terms, conflict prevention is much cheaper than peacekeeping or rebuilding societies after a violent conflict.' Those are the words of the High Commissioner for National Minorities, who was appointed in January 1993 by the Organization for Cooperation and Security in Europe (OSCE).

The primary function of the High Commissioner, Mr. Max van der Stoel, is to resolve or reduce tensions arising from minority issues before they reach crisis proportions. In appointing the High Commissioner, the OSCE hoped not to impose solutions upon unwilling states, but to promote greater dialogue and cooperation between governments and their minorities. Thus when tensions arise within one of the organization's member states, the High Commissioner meets directly with the most senior government officials and with representatives of the minority or minorities concerned.

By giving these different parties an opportunity to air their grievances and exchange their opinions on a confidential basis, tensions can be eased. At the same time, as a neutral and unthreatening mediator, the High Commissioner is well placed to offer practical suggestions about the steps that might be taken to avert conflict and to enable both majority and minority communities to feel more secure.

The High Commissioner's services have been in constant demand since his appointment. After a mission to Albania, for example, Mr. van der Stoel recommended that the government establish a special office to deal with minority issues and that it open a number of Greek-language elementary schools. In the Former Yugoslav Republic of Macedonia, he recommended that a census be conducted and that a teacher training facility be established for speakers of the Albanian language. The High Commissioner has also given advice to the Estonian government about the amendment of its new constitution, which was creating

serious tensions between the government and its Russian minority, as well as the government of Russia.

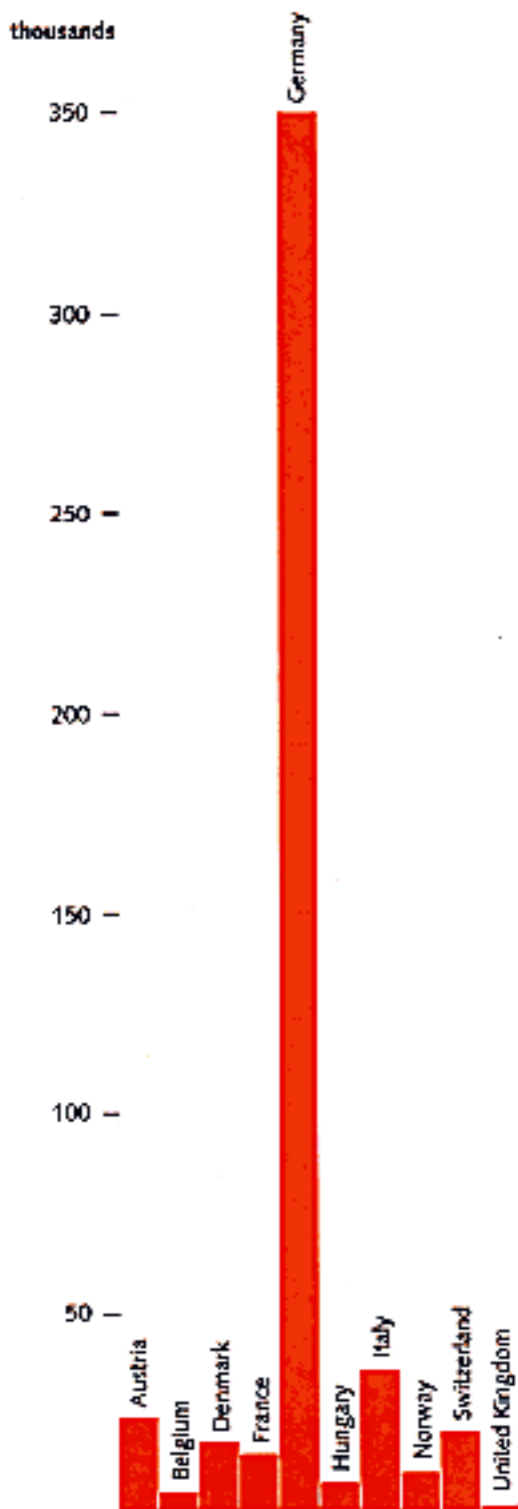
Amongst a range of other initiatives, the High Commissioner has also prepared a report on the social and economic problems confronting the Roma (gypsy) population, which constitutes an important minority in several East and Central European countries, a significant number of whom have already sought asylum in other states. In these and other situations, the High Commissioner has stressed that it is the interests of governments to protect minorities, and that without such protection, peace, stability and development are bound to prove elusive.

Another element of the High Commissioner's mandate is to provide accurate information to the OCSE on minority conflicts within member states. Armed with this information, governments are in a better position to determine what action they might take to prevent such conflicts from assuming a violent form. This early warning function is of particular importance, because few of Europe's ethnic, religious and linguistic minorities are confined to a single state. Any form of violence, therefore, is likely to spill across national borders and to draw in other governments, with the risk of creating uncontrollable regional conflicts and refugee movements.

The appointment of the High Commissioner for National Minorities exemplifies the now widely accepted principle that a state's treatment of its citizens is a legitimate subject of international concern, particularly when such action can assist in the prevention of violence, civil war and population displacements. At the same time, the High Commissioner's work is based on the premise that armed conflicts are avoidable, and can be prevented through timely action. As Mr van der Stoel has commented, 'the earlier a problem is identified and an appropriate response applied, the more likely it is that the problem will be solved effectively and peacefully.'

Fig. 2.1

Former Yugoslav citizens with temporary protection in Europe, 1995



Statistics dated 1 January 1995. Only former Yugoslav citizens admitted under temporary protection arrangements are indicated. Countries with fewer than 2,000 beneficiaries of temporary protection are not shown.

Fig.2.2
Refugees resettled by UNHCR, 1979-1994

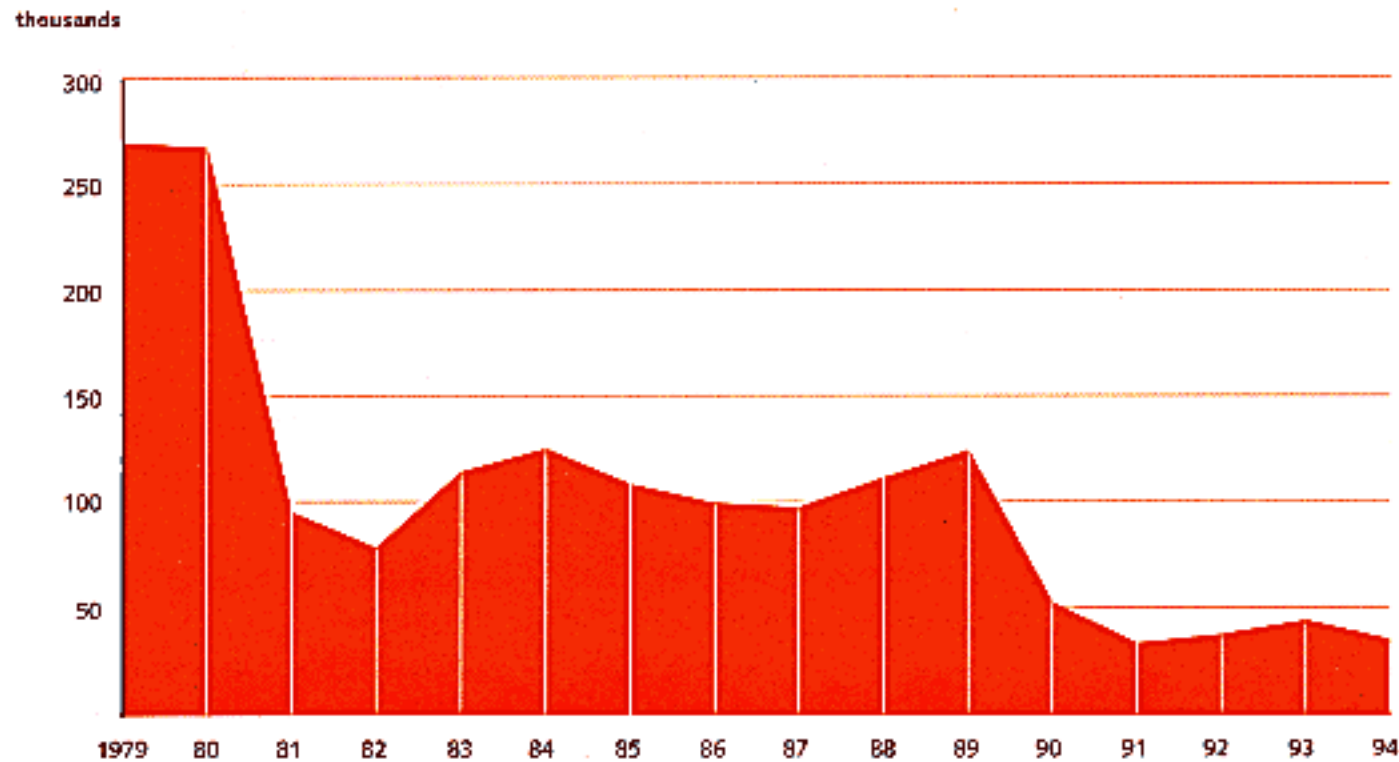


Fig 2.3
UNHCR resettlement cases by region of origin, 1990-1994

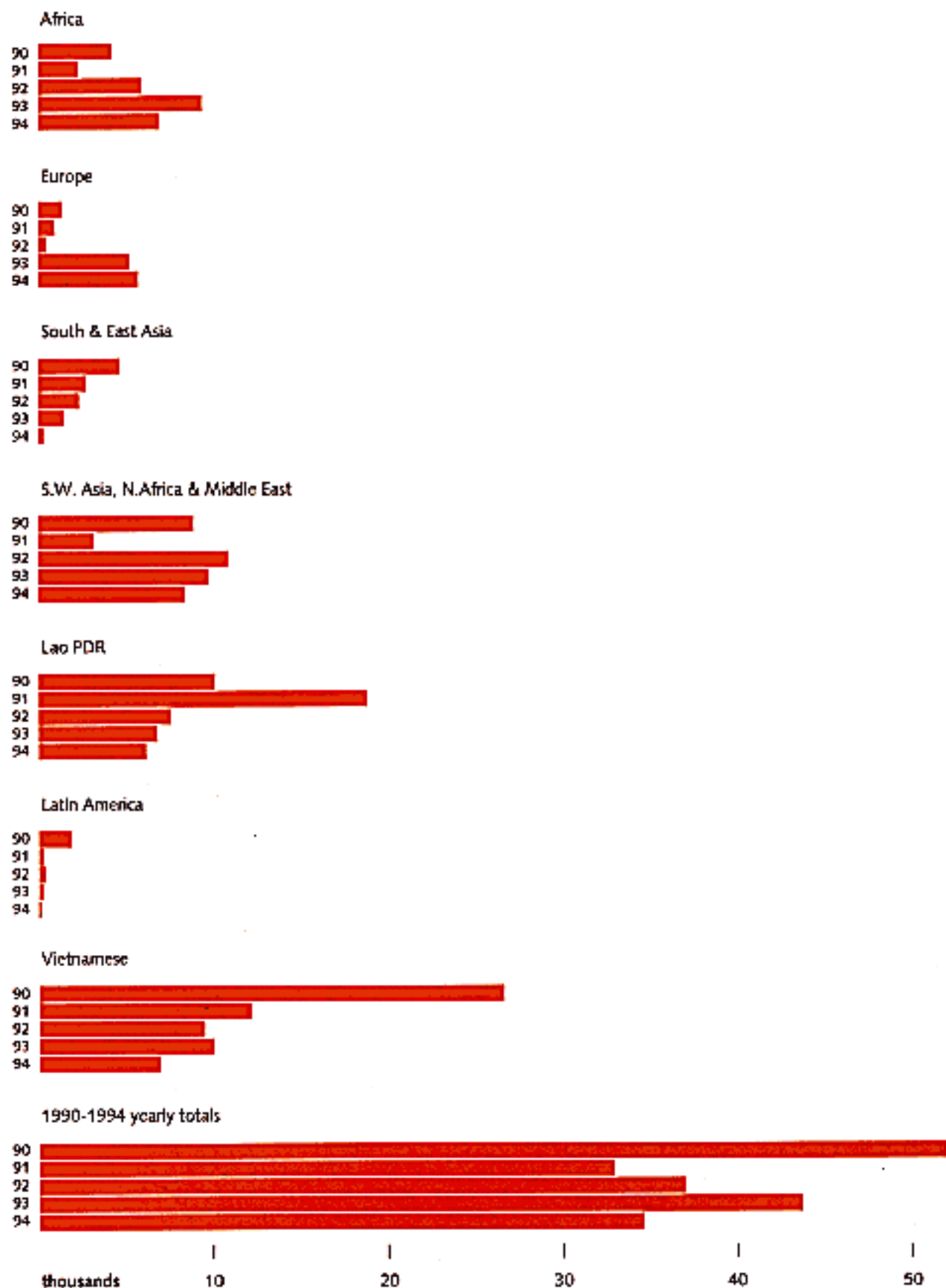


Fig 2.4
UNHCR resettlement cases by receiving country, 1991-1994

