

The Mass Migration of Refugees and International Law

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Until the 1960s, international concern over "refugee" movements had essentially been restricted to conditions in Europe arising out of World War II. Since that time, mass migrations in other parts of the globe, particularly the Third World, have challenged the established definition of "refugee" in international law and made new demands upon the world community and international organizations. In this article, Margaret Chamberlain traces the history of mass migration in international law, highlights unresolved issues in the refugee debate and proposes new and more thorough world community actions.

The mass migration of peoples, particularly that of the movement of political refugees and persons fleeing war and starvation in the developing world, has been largely a twentieth century phenomenon, encompassing new and increasingly complex issues for the world community. The diversity and dimensions of the problem are tremendous; over 600,000 Indochinese refugees have been scattered throughout the world since 1975, six million refugees are displaced throughout Africa, about 1.5 million Afghans are camped in Pakistan, and 1.8 million Palestinians live in semi-permanent settlements in the Middle East. In addition, a million refugees have left Cuba since 1959, thousands of Haitians have fled their nation in the 1970s, refugees of the People's Republic of China continue to flow into Hong Kong, Soviet Jews and other minorities flee the Soviet Union by the thousands, and recent events in Latin America have stimulated yet other refugee movements.¹ These mass refugee migrations, occurring in the "Century of the Homeless Man," have challenged general principles and customs of international law and have forced international lawyers, as well as the world community, to reexamine and critique some of the basic tenets of refugee agreements, conventions and customs.

The most fundamental problem related to the issue of mass migration in international law is that international conventions, agreements and customs firmly proclaim the right of the individual to leave a country

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1. United States Committee for Refugees, *1981 World Refugee Survey* (New York: United States Committee for Refugees, 1980), p. 19.

but, at the same time, state no customary right of asylum. And, as James A.R. Nafziger wrote:

The right to leave a country cannot be fully exercised unless there is a right of entry into another country. If there is an obligation upon a state to let everyone leave it, there must be a corresponding obligation on other states to let people enter it without discrimination.²

The result of this asylum problem, then, is that state sovereignty becomes the primary issue in refugee matters. The rights of nations in dealing with the issue of refugees are problematic and a question of

how to harmonize the individual's freedom of movement with the necessity of the nation-state to regulate and control people because of its security, development, absorbing capacity, or other considerations, with due regard to the value consequences beyond the claimants immediately involved.³

In addition to the basic legal problems of asylum and sovereignty, the mass character of today's refugee movements tends to generate difficulties in itself. Although asylum might easily be granted to small numbers of refugees, asylum for thousands is quite another matter. Protocols and conventions designed for manageable numbers of refugees are difficult for states to uphold when huge numbers are involved. And, of course, the lack of many nations' adherence to international conventions poses threats to refugees' human rights in the world community. In addition, political conflict and security problems are heightened with mass refugee flows; nations feel rapid destabilization, hindrances to progress and development problems when these floods occur.

The world community has only begun to address the fact that mass refugee problems will tend to grow, rather than diminish, in the future. It has become clear that the pattern of Third World refugees facing poverty and repression and as a result fleeing to the wealthy nations of the "first world" is on the upswing. Future implications and international issues connected with this new pattern of migration have not been fully examined, but they are increasingly generating discussion. This article will attempt to augment such discussion by providing a historical view of mass migration in international law, as well as analyzing international refugee agreements, current developments and continuing problems. Suggestions for the future

2. James A.R. Nafziger, "The Right of Migration Under the Helsinki Accords," *Southern Illinois University Law Journal*, no. 4 (1980), p. 409.

3. American Society of International Law, *Proceedings of the 67th Annual Meeting* (Washington, D.C.: American Society of International Law, 1973), p. 128.

as well as possible goals of the world community will be forwarded in an effort to extend and expand current thinking, policy and action on the mass migration issue.

A History of World Community Views and Actions on Mass Migration

Until the 1960s, the concept of the "refugee" was primarily European in origin and scope as a result of turbulence and displacement in Europe dating from before World War II. As early as 1922, after the Russian Revolution, arrangements were made for refugees in agreements such as the "Issue of Identity Certificates to Russian and Armenian Refugees." Dr. Fridtjob Nansen, who was appointed the "High Commissioner on Behalf of the League of Nations in Connection with the Problem of Russian Refugees in Europe," and the International Labor Organization (ILO) worked on employment and resettlement for Russian refugees from 1924 to 1929. The first real international treaty, however, to deal with refugees as a general issue was the 1933 Convention Relating to the International Status of Refugees. This Convention issued the now famous "Nansen Passport" to refugees and required contracting states

not to remove or keep from its territory by application of policy measures such as expulsion or non-admittance at the frontier, refugees . . . unless the said measures are dictated by reasons of national security or public order.⁴

This League of Nations convention was followed by others dealing with the European situation, including the Convention Concerning the Status of Refugees Coming From Germany and several Protocols to it.

It was not until 1948, in the Universal Declaration of Human Rights established by the United Nations, that a general principle of international law concerning refugees was promulgated. Article 13(2) of the Universal Declaration declared that "everyone has the right to leave any country, including his own, and to return to his country."⁵ Article 14(1), however, was not so clear. It stated that, "everyone has the right to seek and to enjoy in other countries asylum from persecution."⁶ When the Declaration was adopted, Article 14 was the subject of great debate. Some factions of the General Assembly felt that the Article was much too weak and should be strengthened to state that persons have the right to be actually "granted" asylum, as opposed to the foggy right "to seek" asylum. Such

4. Yukio Shumida, "The Concept of the Political Refugee in International Law," *The Japanese Annual of International Law*, no. 19 (1975), p. 25.

5. Alice Henkin, *Human Dignity: The Internationalization of Human Rights* (New York: Aspen Institute for Humanistic Studies, 1978), p. 93.

6. *Ibid.*

moves to clarify Article 14 were, however, defeated by the UN drafting committee as interference in each state's sovereign right to regulate immigration and control borders.

The problem of a lack of an asylum right was also bound up in the fact that, from the beginning, debate existed on whether the UN Declaration on Human Rights was actually legally binding or was purely moral in nature. Although a number of states have acceded to the Convention since 1948, they have not been a vast majority of UN membership. And, while many states have asserted that they see asylum granting and the UN Declaration as moral or even legal obligations, many international lawyers and state governments have disagreed. Sir Hersch Lauterpacht, for example, wrote that in Article 14

there was no obligation to assume even a moral obligation to grant asylum. There was an explicit disclaimer of any such intention.⁷

Despite such confusion, the Universal Declaration on Human Rights paved the way for an international conference in 1951 to establish the UN Convention Relating to the Status of Refugees. The Convention, signed at Geneva in 1951 and enforced beginning in 1954, dealt primarily with World War II, defining refugees as all persons covered under previous conventions as well as all persons who

as a result of events occurring before January 1, 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or, owing to such fear, is unwilling to return to it.⁸

In addition, the Convention defined the "events occurring before January 1, 1951" as "events occurring in Europe or elsewhere," limiting the refugee definition geographically. The Convention provided guarantees of minimum standards of treatment for refugees which were to be equivalent to each state's general treatment of aliens. Rights of association, employment, property, welfare, movement, religion, access to courts, housing, education

7. Hersch Lauterpacht, "The Universal Declaration of Human Rights," *British Yearbook of International Law for 1948* (London: Oxford University Press, 1949), p. 373.

8. United Nations, Department of Economic and Social Affairs, *United Nations Yearbook on Human Rights for 1951* (New York: United Nations, 1953), p. 581.

and administrative assistance were enunciated. The very important principle of "non-refoulement" was drawn up in Article 33, stating that

no contracting state shall expell or return ("refouler") a refugee in any matter whatsoever to the frontiers of territories where his life or freedom would be threatened . . . The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is⁹

Thus, the Convention was the first to set out the rights and freedoms of refugees in the world as well as the responsibilities of the world community relating to refugees.

At about the same time, the Office of the United Nations High Commissioner For Refugees (UNHCR) was established. The UNHCR was designed to facilitate international protection for refugees, primarily because refugees were defined as persons who lacked the protection usually given by national governments. The mandate of the UNHCR was to do work of "an entirely non-political character" in "seeking permanent solutions for the problem of refugees" and "subject to the approval of the governments concerned . . . to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities."¹⁰ As a nonoperational agency, the UNHCR was seen as having a moral rather than a directly practical role. This has continued until today, as the High Commissioner stated recently:

It is the protection function of the UNHCR that gives our work its essential character and uniqueness . . . this office stands for the rights of the refugee, the right above all to humane treatment and human dignity.¹¹

In the 1954 Convention Relating to the Status of Stateless Persons and in the 1961 Convention on the Reduction of Statelessness, the United Nations further enunciated its definitions of statelessness and the responsibilities of the world community to stateless persons, including refugees. Regionally, the European nations came to an agreement on travel for refugees in the 1959 European Agreement on the Abolition of Visas for Refugees signed at Strasbourg. Other European agreements of the time also looked at refugee rights; Articles 2 and 3 of the European Convention

9. *Ibid.*, p. 586.

10. United Nations, Department of Economic and Social Affairs, *United Nations Yearbook on Human Rights for 1950* (New York: United Nations, 1952), p. 506.

11. Ved P. Nanda, "World Refugee Assistance: The Role of International Law and Institutions," *Hofstra Law Review* 9 (Winter 1981): 460-61.

for the Protection of Human Rights and Fundamental Freedoms gave the right to leave one's country and to reenter it. The Treaty of Rome, establishing the European Economic Community, provided for labor migration. By the mid 1960s, however, much confusion existed in the world community due to the restrictive 1951 definition of refugee. This time-bound and geographically limited definition did not fit the realities of the time; governments protested that homeless refugees of the world who were currently seeking asylum could not be subsumed within the 1951 UN definition of refugee. Refugee problems of the world were rapidly changing, mass migration was emerging as an issue and the problem was no longer strictly European. It was clear that amendments to the Convention were needed, and so, in 1967, a Protocol Relating To The Status Of Refugees was adopted. The Protocol amended the convention by simply stating that the refugee definition would no longer include the limitation of fleeing one's nation before January 1, 1951, and would be "applied by the stated parties hereto without any geographical limitation . . ."¹² However, even though the Protocol eliminated temporal and geographical boundaries, it still failed to classify up to 50 percent of the total number of homeless persons in the world as refugees. The most visible of these persons were the Palestinians, who were being cared for by the UN Relief and Works Agency (UNRWA). Other refugees, crossing borders for reasons other than persecution (such as starvation in Africa and Asia), were also ignored. The UNHCR, however, established a policy of recognizing such persons as *de facto* refugees, for whom it provided services but not international protection.

Principally because the broadened international Protocol of 1967 still did not cover all refugee groups, new agreements relating to refugee matters were increasingly formulated. In 1969, the African nations were spurred to a regional agreement because the continent was faced with new and massive refugee problems. This agreement, known as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, called upon member states to accede to the 1951 Convention and to the Protocol. It also delineated cooperative procedures for the African nations to follow in dealing with refugee problems. The most important part of the Convention dealt with asylum, stating that

member states of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees . . ."¹³

12. *British Yearbook of International Law for 1967* (London: Oxford University Press, 1969), p. 67.

13. American Society of International Law, *International Legal Materials*, vol. 8 (Washington, D.C.: American Society of International Law, 1969), p. 1288.

Also in 1969, the Organization of American States (OAS) adopted an agreement dealing with refugees — the OAS American Convention on Human Rights. Article 22 of the Convention, on freedom of movement and residence, was even stronger than the OAU Convention on the subject of asylum. It stated that

every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions In no case may an alien be deported or returned to a country The collective expulsion of aliens is prohibited.¹⁴

These regional agreements of the 1960s, particularly as they related to asylum, made clear to the world community that more adequate definitions and procedures of the actual granting of asylum to refugees were desperately needed. In 1967, the General Assembly adopted a Declaration on Territorial Asylum as an attempt to clarify the concept. The declaration began by stating that

. . . the grant of asylum by a State to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other state.¹⁵

This principle was designed to make it easier, particularly for political and security reasons, for states to grant asylum. Article 1(1) expanded on this by stating that “asylum granted by a state . . . shall be respected by all other states.”¹⁶ And Article 1(3) added that, “it shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.”¹⁷ Article 2(2) of the Declaration proposed a new idea, not yet present in any other than regional agreements and motivated by increasing numbers of refugees. The idea was that the world community should share the burden of asylum. It was enunciated by the following statement:

Where a state finds difficulty in granting or continuing to grant asylum, states individually or jointly or through the United Nations shall consider, in the spirit of international solidarity, appropriate measures to lighten the burden of that state.¹⁸

14. United Nations, Department of Economic and Social Affairs, *United Nations Yearbook on Human Rights for 1969* (New York: United Nations, 1971), p. 393.

15. United Nations, Department of Economic and Social Affairs, *United Nations Yearbook on Human Rights for 1967* (New York: United Nations, 1969), p. 383.

16. *Ibid.*

17. *Ibid.*

18. *Ibid.*

The Declaration on Territorial Asylum was, and has remained, highly controversial, and in 1977 a Draft Convention on Territorial Asylum based upon this declaration was proposed in the UN General Assembly. The Convention was overwhelmingly defeated even though the language of the draft was tentative, calling only for states to "endeavour in a humanitarian spirit to grant asylum."¹⁹ The draft also allowed "loopholes" for states, by stating that

asylum should not be refused by a contracting state solely on the ground that it could be sought from another state. However, where it appears that a person requesting asylum from a contracting state already has a connection or close links with another state, the contracting state may, if it appears fair and reasonable, require him first to request asylum from that state.²⁰

States in the Assembly opposed the proposal mostly as a means of guarding their right to almost complete discretion in granting or withholding asylum. They accepted the principle of "non-refoulement" and the refugees' right to international protection, but regarded the right of the individual to enter a new nation after escaping from his own as an entirely different question. The draft did state, in Article 2, that states shall facilitate the admission of persons in the interest of family reunification and Article 4 gave provisional stays in a nation pending asylum requests. The wording of Article 2, however, strongly reconfirmed the discretionary power of states as it said, "Each contracting state may grant the benefits of this convention to a person seeking asylum"²¹ There were also draft proposals to further limit the definition of refugee, a recurring subject of debate, and a provision was eventually made that no person may seek asylum for "purely economic reasons."²²

Since 1977, territorial asylum has become the major issue discussed with respect to mass migration but no agreement has emerged on the Territorial Asylum Draft and other international agreements have carefully avoided the issue. For example, the International Covenant on Civil and Political Rights carefully enunciated the rights to move within a state, to leave a state, to return to that state and to be expelled from another state only through due process of law, but conspicuously left out any right to asylum.²³ The 1966 International Convention on All Forms of Racial

19. United Nations, General Assembly Documents, UN 32nd session, *Convention on Territorial Asylum*, 8 December 1976 to 21 April 1977, p. 1.

20. *Ibid.*

21. *Ibid.*

22. *Ibid.*

23. Henkin, p. 114.

Discrimination similarly guaranteed rights only to leave any country, including one's own, and to return to one's own country.²⁴ It must be said, however, that some positive developments have occurred. An increased emphasis has been placed upon the granting of asylum for family reunification purposes; an example of this increased emphasis was the Final Act From the Helsinki Conference on Security and Cooperation in Europe of 1975. Although this may not immediately affect mass migration issues, it does signal an increased awareness of the issue and a measure of progress.

Problems of Mass Migration in International Law

Although more nations, in recent years, have acceded to the UN Convention of 1951 and the Protocol of 1967, universal approval of these mechanisms has not yet been reached. Nations most severely affected by mass refugee movements, most notably, many nations of Southeast Asia and Africa, have tended to not accept the agreements. These states do not accept that they have obligations to refugees simply because refugees happen to land in their countries. An international system that stresses obligations on this basis, they feel, is inequitable because it places unfair burdens on nations for no reason aside from the "bad luck" of geography and provides no real burden-sharing process.

A problem linked to a lack of universal approval for refugee conventions is that, even when such conventions are approved, they are implemented to varying degrees, if at all. The American treatment of Cubans and Haitians fleeing to the United States since 1972 is a perfect example of this; the rights of refugees to employment, free movement, non-discrimination and, many would argue, to legal process were not upheld. In fact, nearly all of about 13,000 Haitians who applied for asylum face deportation.²⁵ There have been other nations guilty of this and frequent complaints are made that the UNHCR has insufficient power, funding or permanency to ensure that these abrogations do not occur.

The underlying issue of the mass migration problem, however, is not really whether states agree on international agreements or uphold them, but, rather, how the world community can reconcile the rights of sovereign states with the rights of refugees. Do refugees ultimately have the right to be granted asylum in customary law? Should they have such a right, or should states maintain sovereignty? Does the issue change as mass numbers of refugees are involved?

As has been stated, the right to leave one's nation is clearly a basic human right in international law — by convention, custom and practice.

24. Nafziger, p. 402.

25. "Open Heart, Open Arms," *Time*, 19 May 1980, p. 17.

The right to enter another country and to be granted asylum, however, is not so clear. It has been said that "it is the right of a state to grant asylum, not the right of the individual to be granted asylum."²⁶ Put more strongly:

The so-called right of asylum is certainly not a right possessed by the alien to demand that the state into whose territory he has entered with the intention of escaping prosecution in some other state should grant protection and asylum At present it is probable that the so-called right of asylum is nothing but the competence of every state to allow a prosecuted alien to enter, and to remain on, its territory under protection, and thereby to grant asylum to him.²⁷

Although a few international lawyers might disagree, it seems quite clear that state practice, as well as international conventions, give no customary right to asylum for refugees. Instead, asylum is granted by states and is a matter of state policy, foreign policy and domestic law. It is a privilege given to refugees, not an automatic right possessed, and the nation has "an undoubted right to exclude all aliens, however deserving they may be."²⁸ This serves to curtail the rights of refugees nearly completely; for as Rosalyn Higgins wrote:

The rights of entry, sojourn and exit are indivisible: the denial of any one makes the assertion of the others a chimera rather than a reality.²⁹

Yet it would be incorrect to conclude that, due to this asylum authority, states have total sovereign control over mass migration. In situations of mass migration, the fact is that those states wishing to control their own borders are often those most completely unable to do so. Masses of refugees often cross national boundaries and land uninvited on foreign borders and shores, with "host" states unable to do anything at all about it; recent mass movements to Thailand, Malaysia, Pakistan, the United States and throughout Africa attest to this. Even though asylum is recognized in customary law as at the discretion of nation states, discretion can seldom be used when one is faced with thousands of people encamped on one's borders. The state's only recourse in a crisis situation is to try to guard

26. Nanda, p. 451.

27. D.H.N. Johnson, "Refugees, Departees and Illegal Migrants," *Sydney Law Review* 9 (January 1980): 40.

28. *Ibid.*, p. 24.

29. Rosalyn Higgins, "The Right in International Law of an Individual to Enter, Stay In and Leave a Country," *International Affairs* 49 (July 1973): 342.

its borders and refuse initial entry. This, however, is seldom possible; as soon as refugees enter a state they cannot be "refouled," so the state is forced to grant asylum. Because asylum is defined as a blanket privilege extending to the entire refugee group, states see their discretion as lost. A related issue, of course, is that the rights of the individual who happens to be a refugee are also lost, and are replaced by refugee group rights.

Migration issues are complicated by the fact that mass migration affects states in the world community with unequal force. This inequality makes it difficult for states to reach agreement upon the issue; those affected by mass refugee flows generally favor increased state sovereignty over the issue as a means of protecting their own interests and concerns. Those far away and unaffected tend, generally for human rights reasons, to support refugee rights, placing pressure upon the nations dealing more directly with asylum issues to open their borders. For example, when the nations of Southeast Asia began to "turn away" boat refugees in 1979, Western nations unaffected by the problem decried the action as inhumane, even though not one of the Southeast Asian states had acceded to the Convention or Protocol and would not have been bound to give asylum even if they had. World community pressure forced the Asian nations to allow the refugees in, with no assurance that the resulting burden would be shared. When the tables were turned and Cuban refugees landed on Florida's shores, the United States reacted almost exactly as the Southeast Asian nations had before, casting prior human rights arguments aside and trying in vain not to allow asylum.

Because no community burden-sharing processes have been developed, nations are forced to deal with refugee inflows in their own ways. Although the UNHCR absorbs much pressure and helps with funding, the nations involved in territorial asylum still face the actual presence of refugees and ambiguous future solutions. Many nations dealing with refugees have, in addition to trying to limit asylum rights, tried to limit the definition of "refugee." As a matter of customary international law, the UN Convention and Protocol's definition of refugee is accepted by nations, but it has extremely wide ranges of interpretation, based upon individual state interests and concerns. The most recent move by nations has been to distinguish between "economic" and "political" refugees. Practically speaking, it is nearly impossible for nations to interview individual refugees to determine economic or political motives, so refugees have been simply grouped into large categories by states, with no real room for individual rights. This can be seen in the stereotyped U.S. government view of Haitians and Kampuchians as "economic" refugees, while Vietnamese, Polish and Soviet refugees are "political." There are, quite obviously, many problems with this approach. As Austin J. Fragomen stated:

Generally, if a person moves for economic reasons, he is not considered to be a refugee. However, this distinction is frequently artificial. A person may be deprived of a minimally decent life through civil strife in his homeland and thus be compelled by circumstances to move.³⁰

The other dilemma with varied interpretations of "refugee" is that no one definition holds because no one nation can unilaterally provide criterion for the world community. Thus, definitions of refugee evolve according to individual national interests. United States policy, for example, has the effect of providing much easier entry and looser requirements for refugees fleeing communist regimes than it does for refugees fleeing regimes to which Washington is more sympathetic. Other nations, depending upon their individual diplomatic needs, evolve similar double standards and foreign policy-oriented refugee definitions.

Predictions For The Future

As the international community is slowly realizing, mass refugee movements are not temporary dislocations calling for ad hoc measures, but are enduring elements of the contemporary world system calling for productive solutions. Mass migration, in addition, has changed in composition; 97 to 98 percent of all refugees today are in developing countries; one-half are in Africa alone.³¹ Motives for leaving home countries and seeking asylum have changed from the standard persecution arguments of European refugees; motives have become increasingly complex and mixed, not always linked to persecution in the European sense. Some writers have felt that the Third World refugees of today should be called "quasi refugees."³² Many of the problems of such Third World refugee flows stem from inadequate overall development in the Third World, with its accompanying political instability, civil strife and inequality. In other words, the issue is increasingly a part of the North-South debate and it has been said that "if the new name for peace is development, refugees are a product of underdevelopment."³³

Western nations, in the face of mass migration, feel that they are being faced with impossible demands in a time of economic recession, xenophobia, tightened immigration and political uncertainty. They are at a loss when

30. Austin J. Fragomen, "The Refugee: A Problem of Definition," *Case Western Reserve Journal of International Law* 3 (Winter 1970): 58.

31. Charles B. Keely, *Global Refugee Policy: The Case for Development-Oriented Strategy* (New York: Population Council, 1981), p. 36.

32. *Ibid.*, p. 9.

33. *Ibid.*, p. 19.

dealing with the "new" refugees, as opposed to those refugees following the "European model." They feel that the refugee policies of the world community must balance the limitations of the nations involved, particularly those of resettlement nations. In fact, the world community has faced growing uncertainty concerning whether future resettlement of refugees will even continue to be feasible. Nations of the Third World, even more than the nations of the West, feel pressed and incapable of handling extensive refugee burdens.

All of this, of course, points to an extremely pessimistic outlook, darkened even further by a lack of community consensus over what should be done. Albert P. Blaustein, speculating on the future, said:

. . . I set the date 1984. I had a vision and still envision ships in the night, overloaded with people from India, Bangladesh and Indonesia stopping off the Australian shore . . . Morning after morning the people of Australia would find new thousands in their land. The little old ladies in tennis shoes would bring them tea and toast at first. But what about later? What will the Australians do when the number reaches one million or two or three?"³⁴

Blaustein's analogy is not so farfetched, particularly when the changing composition of twentieth century refugee flows, potential instabilities in the world and economic inequalities within the world community are considered.

It is clear that, unless the world community comes to an agreement of organized and farsighted policy with respect to mass migration, the entire international system, not to mention the human rights of individuals, could be seriously undermined. To begin with, the goals of the world community in the equal distribution of wealth and power cannot be served in a world where citizens of nations flee oppressive, coercive or underdeveloping nations because they have no role in amending them and because their basic survival is manipulated by elites and governments. Nor is it an aim of the world community to perpetuate conditions where the very flight of refugees to other nations causes violence, insecure borders and political backlash and where substantial economic and political burdens are placed upon particular asylum nations due to huge refugee numbers. In fact, it is not even in the interests of the world community to allow the negative aspects of underdevelopment to persist in the Third World: not only do they lead to confused and mass refugee movements, but they

34. American Society of International Law, *Proceedings of the 70th Annual Meeting* (Washington, D.C.: American Society of International Law, 1976), p. 63.

also generate overall imbalance, dissatisfaction and political inequality among nations.

Human rights goals espoused by the world community in granting freedom, respect and well being to each individual are also seriously threatened by mass refugee movements. When human beings are not free to enter a new country, when international agreements safeguarding the well-being of refugees are not followed, when refugees have no access to education, training or jobs in their nations of origin or asylum and when family units are split as a result of flight and resettlement, world community goals and ideals are themselves undermined. In much the same way, when individual rights are lost within the process of being classified as one or another "type" of refugee, whether economic, political or "quasi," international goals of the respect and protection of the individual are clearly not upheld. The result of such inroads upon basic community goals is, if not chaos and overall imbalance, at least widespread dissatisfaction and malaise. For refugees themselves, the result is much more immediate, with human rights tenuous and survival unsure.

Proposed World Community Actions

It is feasible that the dilemma of mass refugee movements in international law could be positively and creatively dealt with by the world community in three basic ways. First, agreement on general principles of state responsibilities in refugee flows taking into account the need for balance between international principles and national limitations could be carefully developed. Second, a method for equitable burden sharing could be formulated specifically for mass migration situations. Lastly, careful scrutiny of the root causes of refugee movements with the goal of improving world community responses and guiding world strategies could take place.

As early as January 1976, the Council of Europe's Committee on Population and Refugees suggested that

in order to overcome some of the present discrepancies between countries as to the interpretation and application of the Refugee Convention and Protocol, it was agreed that one should seek general acceptance of the principle that the concept of persecution should be interpreted and applied liberally and also adapted to the changed circumstances which may differ considerably from those existing when the convention was originally adopted.³⁵

Such a move toward general principles of defining persecution could be extended to the broader realm of state responsibilities in refugee flows.

35. *Ibid.*, p. 69.

In this way, basic principles of legal protection, temporary asylum guarantees, adequate living conditions and basic rights could be much more clearly enunciated. The territorial asylum guarantee is particularly important here. At the same time, the understandable limitations of nations would be considered, as would states' sovereign rights and extenuating circumstances such as economic problems and war. Regional agreements could prove helpful, and all agreements would have to operate upon the premise that agreement might never be complete but that fair compromise could be developed.

Such general principles would necessarily be based upon strict principles of equitable burden sharing. The best vehicle for this process would surely be the UNHCR. Although the UNHCR has been criticized as an unwieldy bureaucracy, it is a well established organization, and with creative and new ideas it could increase its own flexibility. Burden-sharing ideas would have to provide guarantees of aid for first asylum nations dealing with refugee flows in the long as well as in the short term. Resettlement, repatriation and integration schemes based upon much wider world participation than exists today would have to be developed. Creative solutions along the lines of the "Orderly Departure Program," an immigration agreement between the U.S. and Vietnam based on family reunification, could and should be further explored. Undoubtedly, all of this would imply shared authority of states as well as shared burdens. Although this shared authority represents perhaps the greatest incursion to state sovereignty, it need not be a threat to states, so long as authority is shared equitably.

Any examination of the root causes of mass migration is almost certainly bound to cause political quandries for the nations of the world. However, some starts have been made on this controversial issue. There is, for example, nearly a worldwide consensus on the basic idea that states have no customary right to order "mass expulsion of a group of people for discriminatory reasons."³⁶ World reaction to the Vietnamese expulsion of its ethnic Chinese population attests to this. At the same time, it is politically difficult and nearly always inconvenient for a nation to publicly berate another nation for conduct with regard to that country's own nationals. World pressure could prevail, however, through carefully defined limits on states' rights regarding the deprivation of nationality.

It would be even more effective if the world community could react to root causes of mass migration by working to actually eliminate the causes themselves. Careful development aid could perhaps work to accomplish this. In an era of increasing incidence of Third World refugees, such a step seems sensible. The problem, of course, would be that nations would

36. Higgins, p. 351.

have to "switch gears" from refugee resettlement and humanitarian motives to those of development. Although this would not be easy for the human rights-oriented Western nations, ultimately it would make more sense, particularly as the world community increasingly realizes that fewer and fewer refugees are actually resettlement-bound. Self-sufficiency of refugee populations would be the ultimate goal of such a scheme, together with the minimization of political imbalance and expense to host nations. It is interesting to speculate, for example, how the United States might have solved refugee problems of Vietnam, had diplomatic relations and development aid been offered after 1975 as part of a long-range policy.

It is difficult to evaluate the possibilities for success of any of these three ideas and it often seems that there is little cause for optimism. Refugee problems are generally so firmly enmeshed within difficult political and foreign relations issues that refugees become little more than "pawns"; not "important" enough to warrant stretching or amending foreign policy goals. At the same time, however, refugee issues are of such seriousness and extent that they cannot be ignored much longer. Perhaps one small first step has been made toward the solution of the problem: the realization by the world community that mass migration is an international dilemma that will not go away. Yet the true test and quandary for the future of the issue will be how the nations of the world reconcile their individual rights with the stability and well-being of the world community, and whether they will, in fact, join together as a world community to find some progressive solutions for the twentieth and twenty-first centuries with respect to mass migration.

In fact, the central dilemma of the future of international law itself focuses upon the very question of whether rights perceived as "sovereign" will be redefined as "international" in nature, and whether a new "international" approach will then prove itself capable of significant and innovative new realism throughout the world community.