
The Victory of Expediency Afghan Refugees and Pakistan in the 1990s

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More than 2 million refugees returned to Afghanistan from neighboring countries in 2002 in what has become the largest assisted repatriation movement in world history. With many thousands more expected in coming months, this tide of returns has come none too soon for many countries hosting Afghan refugees, particularly the weary Pakistan, which has housed roughly half of this 4.5 million-strong caseload—the largest in the world—for more than two decades. But even as this historic torrent of refugee returns continues, little study has been devoted to whether treatment of this important group of people before the wave of returns was optimal. What an examination of the policies implemented by the government of Pakistan (GoP) and the international community towards Afghan refugees in the 1990s reveals is that the international refugee regime is both highly politicized and offers few protections to asylum seekers in, or from, non-strategic peripheral states.

This study discusses how Pakistan, a country which is not a party to the most important human rights treaties, including the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and which played only a minor strategic importance to major Western powers throughout the 1990s, implemented increasingly abusive measures in an effort to rid itself of its Afghan refugee burden. Other states were hardly more helpful, reducing refugee assistance budgets, accepting only a tiny number of refugees for third-country resettlement, and

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reluctantly assisting repatriation to a country ravaged by armed conflict and governed by the Taliban, a regime notorious for its human rights abuses. Within this context, the United Nations High Commissioner for Refugees (UNHCR), short of funds and lacking member-state support, found itself hard-pressed to provide adequate protection to Afghan asylum seekers. Together, these policies and practices were disastrous for Afghan refugees, and resulted in widespread rights abuses, in addition to untold amounts of suffering.

Today, though the fall of the Taliban regime in Afghanistan has induced many returns, Afghan asylum seekers remain encumbered by a set of policies

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which were inherited from the 1990s and which continue to serve their needs poorly. As rights advocates and news reports show, Pakistan continues to harass Afghans in order to encourage returns, while UNHCR encourages voluntary repatriation despite the fact that rights abuses remain widespread in many areas in Afghanistan. As interviews with refugee advocates indicate, while many families are eager to return to Afghanistan, others are doomed to return to areas where security is extremely tenuous, where persecution remains a serious concern, and where the potential for continued displacement is very real. These facts suggest

that Pakistan and the international community are rushing returns at the expense of many Afghans with legitimate claims for asylum.

The picture is not entirely bleak, however. Millions of Afghans have received protection during the past 23 years. In addition, in August 2001 UNHCR succeeded in obtaining Pakistan's agreement to stop a policy by which thousands of Afghans were being arrested on the streets and forcibly deported, beginning at that time a refugee status determination process which would grant temporary protection to thousands of Afghans. This deal helped bring Pakistan's *ad hoc* and inconsistent set of refugee policies more in line with international standards, providing the basis for a new agreement between Pakistan, UNHCR, and Afghanistan in December 2002 which will allow for the first nation-wide refugee status determination process for all Afghan asylum seekers. Together, the experiences of the past decade suggest the need for several changes in refugee policy. These include a needed shift away from UNHCR's recent emphasis on voluntary repatriation as a durable solution to refugee crises, renewed efforts to promote respect for international human rights standards in Islamic nations, and the creation of a better regime by which donor nations will share the burdens of caring for the world's refugees.

Research for this report was conducted in July and August 2001, with follow-up in 2002. It is informed by a range of published and unpublished documents, in addition to hundreds of interviews with refugees in Pakistan's refugee camps, internally displaced persons (IDPs) in Afghanistan, aid workers, UN officials, diplomats, and Pakistani government officials.

THE LEGAL STATUS OF AFGHAN REFUGEES IN PAKISTAN

Despite its long-standing relationship with millions of Afghan refugees, Pakistan is not a party to some of the most basic human rights treaties, ratifying neither the 1951 UN Convention Relating to the Status of Refugees, nor its 1967 Protocol. It has also ratified neither the 1954 UN Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, nor the two UN covenants on human rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights).¹ This lack of signatory status is part and parcel of a larger human rights deficit in Pakistan that has existed as a result of decades of authoritarian government, corruption, and mismanagement, making Pakistan a consistent target of criticism by rights advocates.² Throughout the 1990s, Amnesty International and Human Rights Watch documented widespread rights abuses, including arbitrary arrests, disappearances, summary executions, and torture in Pakistan. As Amnesty International wrote in 1997, "Torture, including rape, is widespread. Scores of people die as a result of torture every year, yet virtually no police have been brought to justice for torturing or killing detainees....The police do not just show utter contempt for the human rights of detainees, but also for the legal process."³

Little has changed since the Amnesty report was written. In its 2002 human rights report, the U.S. State Department said Pakistan's human rights record "remained poor," and characterized by both a widespread pattern of rights abuse and impunity for rights abusers, particularly the police. Abuse and discrimination against women were common, it said, with more than 600 "honor killings" for adultery or unapproved affairs in 2000 alone, and "significant numbers of women [being] subjected to violence, abuse, rape, and other forms of degradation by spouses and members of society."⁴

The growth of radical Islam within Pakistan has further complicated the rights picture. In 1979, President Zia Ul-Haq sought to Islamicize much of the legal system, imposing Islamic punishments for sexual offenses. Thereafter, with radical Islam growing in popularity, political leaders, all but a handful of whom have taken power through unconstitutional means (including current the president, Pervez Musharraf), have viewed international human rights instruments as hostile to their interests and alien to Pakistan's tribal and religious traditions.

Given this environment, it is perhaps not surprising that refugee rights advocates have fared poorly in Pakistan.⁵

Obstacles have been especially strong given the confusion existing in Pakistan's domestic asylum law. Pakistan has never had a clear set of asylum statutes, and those that have been written have tended to be variously ignored or enforced sporadically, leaving many asylum seekers at the mercy of local or provincial authorities. The treatment of Afghan refugees began with the extremely generous practice, in line with Pakistan's support for the anti-Soviet jihad in Afghanistan beginning in 1979, of granting *prima facie* refugee status to any Afghan asylum seeker that arrived in the country. At that time, the language of Pakistan's relevant refugee laws was even more generous than the 1951

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Convention (which grants asylum only on the basis of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion). Pakistan, alternatively, stated it would grant "temporary asylum to Afghan nationals fleeing their country in the wake of political repression and occupation by foreign troops."⁶ According to this law, "temporary asylum" (a term which was left undefined) was provided solely on humanitarian grounds "without any strings or dis-

crimination as well as for reasons of cultural, ethnic, and religious affinity between the peoples of the two countries."⁷ While some Pakistani citizens complained about the arrival and presence of millions of Afghan refugees in the 1980s, the Afghan refugee community was generally accepted as an important byproduct of Pakistan's alliance with the United States and the anti-Soviet war in Afghanistan.

Amid the legal confusion, Pakistan applied a policy of restricted movement, and confined Afghans to refugee camps in these initial years, and instituted a required registration process. In several provinces, including Baluchistan, in the southwest, and in the North West Frontier Province (NWFP), the government also established a "Commissionerate for Afghan Refugees" (CAR) to register refugees and administer refugee villages. CAR issued identity papers to the head of each family that presented itself, a practice which became increasingly problematic in later years as refugee children and spouses of heads of households found they had nothing to document their legal stay in Pakistan.

Though Pakistan's official policy restricted the movement of Afghans to their villages, in reality it did little to enforce the restriction, and as time passed, the Afghan community took an increasingly prominent role in the economy. In

1989, the Lahore High Court noted that the government “is competent to place the foreigners in a particular place,” thereby restricting Afghans’ movements. Refugees were also not “entitled to carry on their business throughout the country on their sweet will,” the court said.⁸ In practice, however, most refugees continued to move and work freely.

AFGHANS AND COLD WAR POLITICS: WHEN REFUGEES ARE USEFUL

Afghans began streaming across the Pakistani border in 1978, shortly after the communist Peoples’ Democratic Party of Afghanistan (PDPA) deposed Prime Minister Muhammad Daoud. This refugee flow grew into a tide after the leaders of Afghanistan’s burgeoning Islamist political movement declared a jihad against the communists in 1979 in retaliation for the PDPA’s radical modernization policies.⁹ Refugee flows mushroomed further when the Soviet Army invaded Afghanistan in 1979 to support the PDPA. More than four million Afghans would eventually settle in Pakistan in the 1980s, becoming the largest refugee population in the world.¹⁰ UNHCR, with the cooperation of the government of Pakistan, located the refugees in a long line of camps stretching from the border with the North West Frontier Province down to Baluchistan.¹¹ Most of these refugee settlements would prove extremely convenient for the *mujahedeen* factions who used them for recruitment and support, particularly in and around Peshawar, in NWFP, and would remain there for the next 20 years. Later, when assistance budgets for refugees began to wither, hardline Islamists would take over responsibilities for educating many Afghan refugee youth, and the Taliban would be highly successful recruiting in these camps.

The *mujahedeen* factions received large amounts of assistance during this time—about \$10 billion dollars total from the United States, Saudi Arabia, European countries, and others. While some of this was military funding funneled through the CIA to Pakistan’s Inter-Service Intelligence agency, much of it was humanitarian.¹² With large amounts of aid also flowing from UNHCR, the World Food Program, non-governmental organizations (NGOs), and others, Pakistan found little difficulty in accommodating the refugee influx.¹³

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Pakistan’s generosity would later evaporate when post-Cold War geopolitical realities in the 1990s led to funding cuts and more restrictive refugee policies in developed nations.

A CHANGING INTERNATIONAL REFUGEE REGIME

As Guy Goodwin-Gill, B.S. Chimni, Bill Frelick, James Hathaway, and others have noted, the dominant paradigm governing the treatment of refugees worldwide began to shift in the 1980s and gathered steam in the 1990s with the swelling of refugee numbers due to an outburst of post-Cold War conflicts. This global trend provides an important context for the understanding of the treatment of Afghans in Pakistan since the 1990s.¹⁴

Developing within a global order conditioned by a standoff between the Soviet Union and Western democracies and by the understanding that asylum seekers were not expected to return to their countries of origin, the traditional refugee regime has what is usually referred to as an “exilic bias”—that is, refugee status more often than not resulted in permanent exile, with the refugee obtaining a range of rights in his or her new home country and, by extension, receiving assistance from the new home state in his or her efforts to make a new life. This regime was based on the notion of permanent asylum, which did not seek to solve problems in the nations from which refugees had come, particularly those refugees fleeing the Soviet bloc. This regime focused on “providing refuge first, and worrying about durable solutions later, often much later.”¹⁵

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All of this changed in the late 1980s and early 1990s, when an upsurge in conflicts resulted in a swelling of refugee ranks and a search for durable solutions to the causes of conflicts. The UN Security Council, increasingly unfettered by Cold War rivalries, saw violent conflict, including internal conflicts, as creating threats to international peace and security, and in several cases, including those in Iraq, Somalia,

Cambodia, El Salvador, Bosnia, and Haiti, invoked the UN Charter’s Chapter VII clause to support armed intervention to resolve them. As analysts have noted, this interventionist approach was not motivated by altruism alone, because measures to end or mitigate conflict can work in a nation’s own interests. “There is a lesson being learned by the international community,” British Prime Minister Tony Blair stated during a tour of Africa in February 2002, “which is that we cannot ignore these conflicts because sooner or later they end up on your doorstep.”¹⁶

Within this new set of circumstances, a new orthodoxy emerged by which developed nations essentially sought to limit the number of refugees that would arrive at their borders. This set of policies sought not only to foster conditions of

peace in countries of origin, but also to return refugees to their places of origin and prevent refugee flows in the first place. This shift had important impacts on UNHCR's governing mandate. Suddenly, the agency found itself charged with working within armed conflicts—from Bosnia to Afghanistan—in 1990s.¹⁷ Although there has been much debate about the wisdom of this approach, the shift has been fully incorporated by UNHCR, as demonstrated in its *State of the World's Refugees* report from 1993:

UNHCR is therefore adopting new approaches...[and] has moved beyond its traditional mandate in an effort to meet the needs of the entire community, stabilize the population and pre-empt renewed displacement. In other repatriation operations, from Central America to Cambodia to Somalia, UNHCR...[is helping] returnees and their communities regain self-sufficiency.¹⁸

This was a fundamental change for the agency, and it brought with it a range of alternative or complimentary solutions to traditional asylum. These include:

- Providing assistance to internally displaced people
- Facilitating and/or encouraging voluntary repatriation
- Creating “safe areas” within conflict-affected states
- Offering temporary protection to the vulnerable and “persons of concern”
- Containing refugee flows to the regions in which they occur
- Encouraging local integration of refugees in countries of first asylum

Rights advocates have argued that this focus on new solutions has, unfortunately, actually weakened the notion of asylum at the center of the 1951 Refugee Convention by allowing nations to shirk their obligations under the Convention in favor of these alternatives. It has also led to countries of first asylum shouldering the vast majority of the refugee burden worldwide.¹⁹ Meanwhile, no regime has emerged to compel distant states to accept refugees or to fund the bodies that protect refugees.

The most commonly cited durable solution that has been recently proposed is the promotion of voluntary repatriation, a turn in policy of which Chimni has been particularly critical. The entire notion of voluntary repatriation was imposed more out of political expediency than any real concern for victims of persecution or generalized violence, Chimni says.

What may be termed the repatriation turn in refuge policy was not then a product of extensive study of the complex issues involved, but the outcome of a marriage between convenient theory, untested assumptions, and the interests of states. It is not entirely surprising, therefore, that new concepts have been advanced from time to time to justify repatriation in less than

conducive conditions. These include the ideas of spontaneous repatriation, safe return, and imposed return.²⁰

Such returns often occur without serious advanced planning or analysis regarding conditions into which refugees will be returning. They also often leave returnees in unstable communities with few resources or in camps for IDPs where opportunities for sustainable livelihoods are even more restricted and security far worse than it would be if international protection were provided. This can cause what has become known as “revolving door” refugee patterns, where refugees return to their homes only to find themselves made refugees again a short time later.²¹ It is not just the refugees themselves who suffer because of this. Encouraging unsustainable returns leads to further instability in conflict-affected countries and their neighbors as well. As we shall see in the following examination of practice in Pakistan, this is exactly what happened.

THE 1995 WATERSHED: WHEN FUNDING DISAPPEARS

Evolving international trends incited a radically different approach by Pakistan to Afghan refugees. The shift occurred in 1995, when the World Food Program and UNHCR announced that they would phase out all assistance by 1998 in the understanding that the remaining Afghans in the country would gradually repatriate and that others could support themselves.²² While by all accounts Pakistan had been relatively patient and generous to Afghans while international assistance was forthcoming, the news that more than two million Afghans would soon become their sole responsibility caused alarm in government circles. The announcement of the aid phase out, ironically, occurred midway through the Taliban’s northward sweep from its southern base in Kandahar, and when warlordism and banditry in areas which the Taliban had not yet taken control over was still rife. “There was a turning point in 1995,” said M. Naeem Khan, NWFP head of the Commissioner for Afghan Refugees. “In that year there was a drastic reduction in expenditure—at the same time that there were many people coming here who didn’t like the Taliban way. The entire burden for caring for the refugees was shifted to the government and the people of Pakistan.”²³

Indeed, funding figures for UNHCR between 1992 and the late 1990s demonstrate this decline. According to figures published by the Organization for Economic Cooperation and Development, UNHCR funding in Pakistan fell from a post-Afghan jihad peak of \$60.1 million in 1992 to just \$3.2 million in 1999.²⁴ The World Food Program (WFP) funding, meanwhile, fell from \$97.3 million in 1991 to only \$3.1 million in 1995 (it subsequently recovered to \$16.4 million in 1997).²⁵ Figures for UNHCR’s operations in Afghanistan, meanwhile, show that only about half of UNHCR’s requested funding of approximately \$16 million was

provided annually. By 1999, that funding crisis forced UNHCR to cut back on reintegration programs even while voluntary repatriation continued from both Pakistan and Iran (Iran deported some 35,000 Afghan refugees in 1999), forcing the UN to admit in its mid-year review that "the first six months of 1999 [have] tested the ability of the concerned agencies to facilitate voluntary repatriation of refugees back to Afghanistan in safety and dignity....Lack of resources hampered an adequate response..."²⁶

Other factors were behind the funding decline. Observers have noted that not only did donor fatigue set in after conflict resumed in Afghanistan following the Soviet withdrawal, but donor state coffers for humanitarian assistance also became strained by large, high-profile aid missions in Bosnia, Rwanda, and Somalia.²⁷ As an Oxfam study in 2000 noted, however, competition for donor funds cannot justify grossly unequal distribution of humanitarian aid in the 1990s, with a range of African and Asian "forgotten emergencies" losing out to a handful of high profile conflicts, particularly those in the Balkans.²⁸ The study noted, for example, that the eight UN Consolidated Appeals launched between 1993 and 2000 for the former Yugoslavia attained an average of 85 percent of requested funding from donor countries. Four of those appeals exceeded 100 percent of the requirements, a response unequalled by any UN Consolidated Appeal over the past decade. Meanwhile, even though the plight of Afghan civilians was ranked by the 1999 *World Disasters Report* as the "world's worst emergency," only once in seven years was Afghanistan's appeal more than 50 percent funded.²⁹

A final factor behind the withdrawal of funding for Afghan refugees seems to have been the expectation that Afghans would integrate within Pakistani society, something the GoP vigorously opposed, especially since it had granted asylum on a temporary basis since the late 1970s. While none of the UN Consolidated Appeals documents explicitly promoted integration as a durable solution, it was nonetheless proposed from time to time. A discussion paper prepared for the Afghan Support Group, the main coordination body of donors in 2000, listed local integration as one of three durable solutions, along with repatriation and third country resettlement.³⁰ But Pakistan itself would have nothing of this idea. "This international policy was based on the assumption that Afghans would integrate into the social structure and that legally the government of Pakistan would accept them as citizens," Commissioner Khan said. "That is wrong. The refugee problem cannot be perpetual."³¹

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stark contrast to the restrictive resettlement policies in Western nations, a fact which Pakistan has never been at a loss to point out as unfair and hypocritical. Precious few Afghans were resettled in countries outside of Pakistan throughout the decade. In 1998, while some 1.2 million Afghans were living in Pakistan, only 1,175 Afghan refugees were resettled in third countries.³² That figure was standard throughout the decade. Meanwhile, UNHCR's resources devoted to refugee status determination for Afghans remained woefully inadequate. One UNHCR protection officer in Islamabad, covering the areas of Sindh and Punjab, for example, was responsible for a caseload of 50,000 Afghans, each ostensibly requiring individual interviews that could last days. With the international community requiring Pakistan to shoulder the burden of the refugee caseload but unwilling to either robustly fund refugees or support significant third country repatriation, one can sympathize with Pakistan's criticism. This is particularly true given the fact that most Western governments had consistently condemned the Taliban regime for human rights abuses including the persecution of women, intellectuals, former communists, and ethnic minority groups.

FACTIONAL WARFARE AND THE RISE OF THE TALIBAN

In contrast to the above, Afghanistan remained just as dangerous and repressive during this time as any period in the last decade, giving many civilians a pressing need for international protection. As noted earlier, factional warfare had broken out in 1992, following the withdrawal of Soviet troops in 1989 and the failed attempt by the *mujahedeen* factions to form an effective government. What followed was a period of extreme violence and persecution for many types of individuals standing against (or between) one or another of the factions. The period was also characterized by widespread and systematic human rights abuses, including the deliberate targeting of civilians, particularly non-Pashtun minorities, former communists, employees of the communist regime, women, and intellectuals.³³

The Taliban's sweep northward from Kandahar in 1994, with Jalalabad and Herat falling in 1995, and Kabul after an 18-month siege in 1996, resulted in a new influx of several hundred thousand refugees to neighboring countries, particularly Pakistan and Iran. Overwhelmed by the burden of caring for these asylum seekers, the government of Pakistan closed its border with Afghanistan for the first time. While it opened the border again a few months later, this practice of closing the border would become more and more common in the coming years. The action, in fact, had only marginal effect, as asylum seekers were able to cross at unofficial entry points along the porous 1,800-mile border.³⁴ Meanwhile, Pakistan moved to recognize the Taliban government in 1996, with Prime Minister Benazir Bhutto declaring her hope that the militia would be able to bring peace to the country, and thus provide enough security for refugees to

return.³⁵ This recognition would serve as the basis for Pakistan's argument that asylum for Afghans should be withdrawn.

WHEN CAUSE LEADS TO EFFECT: THE BLOOMING OF THE CRISIS

By late 2000 and early 2001, with funds having dwindled to a trickle and Pakistan becoming increasingly hostile to the refugee community even as internal conditions with Afghanistan deteriorated, a full-blown human rights and humanitarian crisis would develop in Pakistan. This crisis erupted in late 2000, when more than 170,000 Afghans—the largest number of new arrivals since the Soviet withdrawal—fled due to the combined effects of the ongoing conflict between the Taliban and the Northern Alliance and the third year of the most severe drought in a century. Sadly, many Afghans affected by these conditions found themselves cut off from one of their only recourses, asylum, as Pakistan moved to discourage the influx by prohibiting UNHCR from registering new arrivals, by closing its borders, and by limiting humanitarian access to refugee camps. Equally distressing was a police campaign to harass, arrest and deport refugees. Funding and resources for UN protection activities, meanwhile, remained far short of needs. These measures will be described in more detail below. While it is not known how many Afghans died as a result of these policies and practices, it is clear that many suffered intensely and that the fundamental rights of many were violated. Both the international community and the government of Pakistan share responsibility for this fact. It was this set of practices which led Amnesty International to blast Pakistan and the international community in 1999 before the situation worsened yet further:

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For Afghan refugees—and many other groups—there seems to be a marked lack of commitment on the part of the international community to uphold its responsibilities. In terms of sharing the protection costs of Afghan refugees, the international community appears to be moving towards a complete abdication of its obligations. In addition to devising a more extensive and elaborate means of preventing Afghan asylum-seekers from reaching their borders, the countries from the north have over successive years reduced their funding or aid programs...³⁶

Voluntary repatriation as a solution to refugee flows was growing in popularity worldwide in the 1990s, and this was particularly true in Pakistan, where UNHCR found a growing conflict between its mandate to protect refugees needing asylum and the new imperative to conduct operations to assist voluntary

returns and help IDPs. "Vol-rep," as it is popularly known, was asserted over and over again in UN documents as the preferred durable solution in Pakistan, with the organization taking the careful view that voluntary repatriations would be "supported and facilitated but not encouraged."³⁷ This was the same position encouraged by the United States government and other donors as well. In this environment, UNHCR aimed to assist roughly 100,000 returnees per year. There is fine line between what is "voluntary" and what is "coerced," however, and as will be shown, Pakistan's measures in the late 1990s toward Afghan refugees sought to make use of this fact to induce more voluntary departures.

HARSH MEASURES

Concerned that it could not bear yet another influx of refugees, the government of Pakistan officially closed its borders with Afghanistan on November 9, 2000. Asylum seekers continued to arrive, however, by bribing border guards or finding alternative routes into the country. The majority of these Afghans were not Pashtuns who dominated the North West Frontier Province, but Tajiks, Uzbeks, and Hazaras dominant in the north and center of the country where the conflict continued. Those Afghans who did not have relatives already in Pakistan or the wherewithal to rent homes were directed to a makeshift area on a flood plain next to an existing refugee camp, Jalojai, about 30 kilometers from Peshawar, which contained no provisions for water, sanitation, or shelter. By November, "New Jalojai" had become "one of the worst refugee crises in the world,"³⁸ according to the UN—a place swamped with 70,000 asylum seekers huddling in the sub-zero temperatures in tents made of sewn-together rags, plastic and old clothing, and the stench of human feces filling the air. Aid workers witnessing the site said they had not seen a situation as inhumane since the refugee disaster following the Rwandan genocide in Africa's Great Lakes region. Though the site lacked the disease that decimated populations in those camps, the U.S. Office of Foreign Disaster Assistance (OFDA) described the place as "dismal" and "a disaster waiting to happen," because temperatures would soon rise to above 100 degrees Fahrenheit in the spring.³⁹ Only the overcrowding protected people from the howling wind, OFDA said, and only the lack of rain due to the drought saved the entire camp from being swept away in a mud slide since it was located in a flood plain. UNHCR, which had complained in January of being "chronically hampered by a lack of funds as well as [by] late contributions to the repatriation program," did begin to register these new arrivals, and also shifted more than 50,000 of them to a better, newly established site, New Shamshatoo, not far away.⁴⁰ Aid agencies and the government quickly realized, however, that each time they registered these refugees and moved them to the new site, the camp would fill up again the next night with thousands of new arrivals.⁴¹

In response, in January, Pakistan forced UNHCR to end both registrations

and relocations, claiming that the new arrivals were “illegal immigrants” or “economic migrants” without rights to asylum and trying to take advantage of the opportunity to receive handouts. The camp, the government asserted, was creating a “pull factor” that was luring Afghans from within the country and exacerbating what had been an untenable situation in Pakistan further. Pakistan also demanded that the international community increase its assistance and establish IDP camps within Afghanistan itself, arguing that Pakistan would only begin to accept some refugees when it did so.⁴² Following visits by both UN Secretary General Kofi Annan and UNHCR head Ruud Lubbers, during which the two urged the government to act with more leniency toward the new arrivals, Pakistan allowed aid agencies to bring in more water, sanitation, and a limited number of tents in April. Still, by late May more than 80 Afghans had died in camp due to its poor conditions.⁴³ The GoP still refused to resume registrations, a fact that made fair distribution of aid impossible and invited widespread corruption.⁴⁴ The precise character of the population of the camp, meanwhile, remained a mystery: no one knew precisely who these refugees were or why they had fled, making it difficult to counter the GoP’s arguments that the camp residents were economic migrants.⁴⁵ It was only in May, when the World Food Program and later the International Rescue Committee (IRC) conducted a survey of the camp, that it was revealed that a majority did probably have asylum claims, with more than 85 percent of the camp coming from provinces that had seen fighting within the last year. According to the IRC, more than 70 percent of the New Jalozai residents said they would be unwilling to return to their homes even if they could be provided assistance there. On the basis of this evidence, a majority of the camp’s residents seemed to have strong claims to asylum based on the 1951 Convention definition.⁴⁶

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Soon a standoff began between UNHCR and the government over the proper handling of this “new caseload,” including not only the Jalozai and Shamshatoo refugees, but all those that had entered the country after the government declared that refugees arriving after 1997 would no longer be given asylum on a *prima facie* basis.⁴⁷ The argument, played out over the next several months, revolved around UNHCR’s position that Pakistan should set up a proper refugee status determination mechanism for all the newly arrived refugees. Pakistan refused to do so, still claiming that the new arrivals were economic migrants.

DEPORTATIONS AND THE PUSH FACTOR

Complicating the situation was the muddled legal status of Afghans after 1995, the result of a conflict between various liberal court rulings and the Pakistani government's declaration that Afghans be subject to the Foreigners Act of 1946, which requires that all aliens obtain proper visas before entry to the country and which allows for harsh punishments in the event of non-compliance. In contrast to this law, a circular letter from Pakistan's Supreme Court in 1997 claimed to assert that the official government position was to accommodate the Afghan caseload, allowing them to work and travel freely, regardless of whether they had been registered as refugees.⁴⁸ The court's clarification seems to have been

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disregarded, however, and was never endorsed by the Ministry of Interior.⁴⁹ In 1998, following the economic downturn in the wake of sanctions imposed by the U.S. and several other Western states for Pakistan's development and testing of nuclear weapons, the government of Pakistan formally declared that all foreigners, including Afghans, were subject to the 1946 Foreigners Act and therefore subject to deportation and fines for residing in the country without proper visas and documen-

tation. This policy made no stipulations for the hundreds of thousands of Afghans who had been granted *a priori* refugee status earlier but had not been issued documentation, who had been born in the country to refugee parents, or who had newly arrived seeking asylum due to the Taliban's practices after 1994.

Closure of the border, removal of *prima facie* status, and refusal to register the new arrivals were not the only measures taken by Pakistan in the winter and spring of 2001. Most alarming to many rights advocates was a new campaign of deportation and harassment meant to create a "push factor"—an environment so unfriendly that Afghans would decide to leave the country on their own accord. A confidential UN study written in May 2001 described the campaign, which involved, among other measures, "push backs," a practice of randomly arresting Afghan men and boys on the streets and, after a period of detention, depositing them on the Afghan side of the border. The underlying purpose of the practice was clear, the report said.

The new Pakistan government policy to push back Afghan men across the border to Afghanistan appears to be part of a wider campaign to send the message that Afghans are no longer able to reside in Pakistan without

restriction. The fact that this is the first time that such an action has been implemented in this matter is significant. The push-backs should be considered in conjunction with a number of other recent official actions that have impacted adversely on the Afghan community. The random and arbitrary nature of the majority of the push-backs is also significant.⁵⁰

According to the report, the Pakistani police began the campaign in early 2001 when NWFP Governor Iftikhar Shah issued an order with the acquiescence of the national government that each Pakistani police zone should detain and deport 10 to 15 men each day. More than 3,900 Afghan men and boys were summarily deported in this way between January and May 2001. The most common “push backs,” it said, occurred at the Pakistani border itself, though several thousand men and boys were also picked up on the street. The campaign also involved a range of activities including the extortion of daily wages from men and boys returning from work, and the detainment and beating of Afghans who could not pay. Deportations sometimes followed. Victims were not allowed to contact their families during detention, obtain legal counsel or receive deportation hearings.

The report does not use the term *refouler*—to forcibly return a refugee to a country where his or her life is threatened—instead preferring “push back,” a term which avoids implying that Pakistan intentionally violated customary international law. Yet it is clear that many of the thousands of Afghans deported were in fact 1951 Convention refugees, and that the practice was a violation of customary international law. Many Afghans were handed over to Taliban officials at the border and conscripted, the 2001 UN report said.

Adding to the above measures, the government made plans to shut down one of the longest-standing refugee camps in the country, the 20-year-old Naser Bagh, a site that was home to more than 100,000 refugees outside of Peshawar. The government stated that the camp was to be closed because the land had been sold years before to developers for housing and they were now demanding their property. In late April 2001, the government sent a notice around within the camp that it would be closed and all homes bulldozed in 90 days time.⁵¹ The government made no provisions for the Afghan refugees living in the camp, however. It also offered no other information, except to tell the refugees that they must find someplace else to live.

The new measures alarmed rights advocates. “Pakistan’s change of attitude is worrisome. It places tens of thousands of refugees at risk,” wrote the U.S.

The report does not use the term refouler—to forcibly return a refugee to a country where his or her life is threatened—instead preferring “push back.”

Committee for Refugees. “The change should not, however, come as a surprise to the international community. Since the mid-1990s, the international community has substantially reduced assistance to Afghan refugees.”⁵²

MEMORANDUM OF UNDERSTANDING

With the prospect of tens of thousands of refugees being turned onto the street at the end of July, and with the drought and conflict intensifying within Afghanistan, UNHCR increased the pace of talks with the government to conduct a proper process by which the nearly 200,000 refugees who had arrived since 2000 (and some others) could be registered and given screening interviews to determine their suitability for asylum. The landmark agreement, a Memorandum of Understanding (MoU), signed on August 2 between UNHCR and the GoP,

The agreement surprised many UNHCR protection officials, who had begun the process skeptical that Pakistan would bind itself to anything so concrete.

involved status determination for the Afghans at the New Jalojai, Nasir Bagh, and Shamshatoo camps, and delayed the destruction of Nasir Bagh camp. It also restarted a voluntary repatriation operation, which had been suspended due to the government’s campaign of “push backs.”

While dealing with just a small portion of the 2 million strong refugee caseload in Pakistan, obtaining the agreement for the screening process was an important step forward in terms of Pakistan’s compliance with international norms, despite the fact that subsequent implementation of the deal was problematic. As UNHCR wrote in the MoU: “The proposed screening initiative represents the first time in UNHCR’s more than 22 years of assisting Afghans in Pakistan that it has initiated a screening to ascertain why the Afghans are seeking asylum, and to ensure proper protection and assistance to those Afghans who require the safety of Pakistani soil.”⁵³ The MoU was also important as a precedent: the document would stand as the starting point for negotiations between the GoP, UNHCR, and the Afghan government for a refugee status determination process for the more than 1 million Afghan refugees who remained in Pakistan at the end of 2002 following the creation of a new Afghan government in Kabul.

Perhaps the most important aspect of the deal was its use of a surprisingly liberal definition of the type of person that would receive “temporary protection” in Pakistan. The definition not only borrowed from the 1951 Convention (describing a refugee as a person fleeing a well-founded fear of persecution), but it also added a clause broadening it further by defining a refugee as a person facing a “threat to life or security as a result of armed conflict or other forms of

widespread violence which seriously disturb the public order.”⁵⁴ This characterization was, perhaps not coincidentally, very similar to the liberal promoted by the Organization for African Unity and in the Cartagena Declaration, an important refugee statement used in Latin America.⁵⁵

The agreement surprised many UNHCR protection officials, who had begun the process skeptical that Pakistan would bind itself to anything so concrete, particularly in light of its shift in attitude during the 1990s. “We couldn’t believe it,” said one UNHCR team leader involved in the screening process. “We wondered if they knew exactly what they had just done. It seemed almost too easy.”⁵⁶

Unfortunately, implementation, which began in August 2001, was not without complications. Following the summary deportation of 28 Afghan families later that month, it became clear that Pakistan was continuing its program of harassment and intimidation. Given the deteriorating conditions in Afghanistan, questions also emerged as to whether UNHCR was assisting repatriations that were neither voluntary nor sustainable. The repatriations, one must note, were part of the MoU: UNHCR began the program to provide assistance to any refugees who wanted to repatriate voluntarily prior to being screened. This program was deemed necessary because surveys had indicated that between one-third and one-fourth of the Afghans in Jalozai and Nasir Bagh were likely to be “screened out,” or be declared undeserving of asylum, usually because they had fled Afghanistan for economic reasons.⁵⁷ Because UNHCR had decided that Afghans who were screened out would not be allowed to take advantage of the repatriation program, it was judged that many Afghans would forego screening in order to gain assistance in returning. The logic of UNHCR’s decision was that screened out Afghans would not be refugees, and therefore they would fall outside the agency’s mandate. Those taking part in voluntary repatriation, before being screened, would be given the benefit of the doubt.

As the screening process got underway in the first days of August, thousands of Afghans did indeed opt for voluntary repatriation, but as monitoring of the situation indicated, many of those leaving claimed to having been coerced into going. Refugees interviewed at Nasir Bagh, for example, stated that they had been told by the police that they either had to take part in the program or they would be put out on the street because the camp was being destroyed. Dozens of Afghans interviewed by the author had neither been informed about the upcoming screening process, nor of plans being developed by UNHCR and the government to shift the refugees given asylum to new locations where they would receive assistance. UNHCR temporarily suspended both the voluntary repatriation program and the screening when it learned this. The

*War on Terror had little
impact on Pakistan’s
treatment of Afghans.*

program was halted again briefly when it was learned that the 28 families mentioned above were deported.

In Afghanistan, meanwhile, conditions continued to deteriorate. With the drought nearing its fourth year that fall, Afghanistan remained mired at the very bottom of the world's human development indicators. At least 5 million of the country's 25 million people were estimated to be dependent on food aid to survive. Mortality rates were skyrocketing, with one in four children dying before the age of five. And 1 million people were estimated to be homeless, either living in camps for the displaced or on the move searching for food. As of September 2001, it was clear that the country was on the verge of a full-blown humanitarian emergency. Then the September 11 terrorist attacks occurred.

EVENTS AFTER SEPTEMBER 11: SAME OLD SONG?

Events in Afghanistan following the September 11 terrorist attacks and the fall of the Taliban regime have brought hope to millions of Afghan refugees who have returned to restart their lives with the assistance of the international community. Even so, aspects of policy toward the group remain disturbing in light of prevailing conditions in the country. While funding levels have increased for repatriation assistance, much of the persecution and insecurity of the Taliban era remain, creating a pressing need for providing continued asylum for many Afghans in Pakistan.

One feature of the post-September 11 situation has been the end to the shortfalls in funding that characterized the 1990s. For the first time in at least a decade, UNHCR's appeal for Afghanistan was fully funded, and its requested budget—of \$271 million for the 15-month period from October 2001 to December 2002—was more than double the previous year's budget of \$107 million, when only 48 percent of the appeal was met. UNHCR's budget in Pakistan also rose by more than one-third.⁵⁸ Those numbers must be understood within context, however, because more than 200,000 new refugees fleeing the onset of the U.S.-led war had arrived in Afghanistan before the end of 2001, and the agency was tasked with implementing an historically ambitious voluntary repatriation campaign, responsible for assisting the 2 million refugees in 2002 that eventually returned.

That number of returns was in part due to the encouragement of Pakistan, whose improved relations with the United States following the GoP's support for the U.S. War on Terror had little impact on its treatment of Afghans.⁵⁹ To the contrary, for several weeks preceding the anticipated beginning of the U.S.-led military campaign against the Taliban and al-Qaeda in Afghanistan, Pakistan kept its border closed to an anticipated tide of 1.5 million new Afghans. Though many succeeded in bribing border guards or slipping into the country through the

mountains, tens of thousands of the most vulnerable remained trapped on the Afghan side of the border, out of the reach of humanitarian aid agencies, which had withdrawn from Afghanistan. When the country was convinced to open its borders, Pakistan put tight restrictions on the operations of UNHCR and other aid agencies, only allowing new camps to be built in the Pashtun-dominated tribal areas along the Afghan border—areas which are beyond the control of the government of Pakistan. This made the provision of assistance difficult and created serious security issues for both non-Pashtun Afghans and for aid agencies.⁶⁰

In addition, according to the U.S. Committee for Refugees (USCR), Pakistan's police continued to harass, extort, and deport Afghan men and boys. USCR estimated that in the fall of 2001, Pakistan deported several hundred Afghans per day due to their inability to pay bribes.⁶¹ USCR estimated that some 3,000 Afghans were *refouled* in total during the year, a fact which probably boosted the number of refugees that returned in 2002 to unexpected levels. While the unexpectedly large number of returns has taken place for many reasons, one cannot discount Pakistan's aggressive policies from the likely factors. Interviews with returnees in November 2002 confirmed that fear of Pakistani authorities was a significant factor in refugees' decisions to "voluntarily" repatriate. Most of these returnees took advantage of UNHCR's repatriation program, which was restarted in March after the fall of the Taliban.

It is not only Pakistan's continued treatment of Afghans which causes refugee advocates to remain seriously concerned, but also the fact that many of the pernicious practices characteristic of the Taliban-era in Pakistan have continued. The surprisingly large number of returns—roughly three times the original estimate—forced UNHCR to re-evaluate its programming prioritization in August 2002 and cut back on its reintegration programs (which include support for home reconstruction, education, and job creation) in favor of programs for voluntary return (which mainly consist of assistance packages including 150 kg of wheat, cash, and other basic provisions for the return journey).⁶² In other words, as in previous years, the agency found itself assisting returns but being unable to help people rebuild their lives once they have reached their shattered settlements. As decades of practice in assistance have demonstrated, funding returns without funding reintegration often simply results in more displacement, which can further destabilize a country struggling to rebuild.⁶³

Such practices would be less worrying if greater security existed in Afghanistan. Unfortunately, while parts of Afghanistan, especially Kabul, are

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ready to accept new refugees, many areas in the north, south, and west are plagued by dangers. According to Human Rights Watch, Pashtun families in the north near Mazar-I-Sharif are experiencing targeted violence, rape, the seizure of farmland, and extortion at the hands of local warlords. In and around Herat province, in the west, Ismail Khan commands police and security forces suspected of widespread political intimidation, arrests, beatings, and torture.⁶⁴ And provinces throughout the east and south also remain extremely unstable, aid agencies say. The economy of the country as a whole, meanwhile, is extremely fragile, with few jobs available for Afghans that have not left the country.⁶⁵ Security for women all over the country also remains extremely weak.⁶⁶ These facts combined mean that returns to many areas might exacerbate tensions from the dysfunctional economy and simply trigger a re-ignition of conflict, advocates say. "By advocating for repatriation, UNHCR is sending the message to governments that conditions in Afghanistan are sufficiently stable for a large-scale return. This is misleading and is contradicted by conditions on the ground," said Rachael Reilly, refugee policy director at Human Rights Watch.⁶⁷

This is not to say that great hope does not exist nor that progress has not taken place. The UNHCR-GoP Memorandum of Understanding has proven valuable as a precedent and led to a another, later tripartite pact among Afghanistan, Pakistan, and UNHCR according to which 1.5 million Afghans remaining in Pakistan will be screened in line with international standards within

Pakistan's lack of interest in protecting human rights has had devastating effects upon both Pakistani citizens and refugees.

three years time. This final agreement, finalized in early 2003, further bring Pakistan's refugee policies in line with international standards, allowing all Afghan refugees the chance to obtain legal asylum in Pakistan if they meet internationally accepted criteria. In return for this agreement, Pakistan will be given assistance in the screening from UNHCR, and the international community

will support the country's deportation of those Afghans who fail to meet the criteria. The new agreement will, therefore, serve to make Pakistan's refugee practices predictable and regulated by the rule of law. Ultimately, one must note that despite setbacks, the international community's efforts to engage Pakistan over the refugee issue have had long-lasting and beneficial impacts in terms of getting the country to act more in line with international standards.

RECOMMENDATIONS

While the last year has seen progress, it must be noted that ultimately the increased geopolitical profile of the crisis in Afghanistan has been key to bringing

relief to Afghan refugees in Pakistan. It was the sudden emergence of the Taliban regime as a threat to national security in the United States that allowed for a new, more democratic regime, brought new funding and attention to Afghans refugees, and created a greater amount of security, allowing some refugees to return home. Sadly, while overall circumstances have improved, many of the underlying policies of the 1990s remain. Voluntary repatriation to unstable communities continues. Pakistan remains extremely wary of being bound by treaties to guarantee the human rights of its citizens and others. And most countries still refuse to accept all but a symbolic number of Afghan asylum seekers for resettlement. Finally, the threat remains that if donor nations grow tired of funding reconstruction efforts, conflict in Afghanistan will recur, bringing a new flood of refugees. The following recommendations are made in an effort to address some of the current and past challenges to policy and practice toward Afghan refugees in Pakistan. Though directed toward the situation in Pakistan, they have relevance to refugee crises worldwide:

1. UNHCR's mandate to provide international protection to refugees should be strengthened and revitalized. Voluntary repatriation cannot be applied as a cookie-cutter solution to every refugee crisis. Increased emphasis on voluntary repatriations gave Pakistan an opening to adopt a campaign of harassment and intimidation to coerce refugees into leaving the country voluntarily. Determining when to conduct repatriation is an extremely difficult matter, and UNHCR's own guidelines for voluntary repatriation to countries facing continued armed conflict, economic breakdown, and widespread rights violations have not been able to combat the powerful political forces arguing in favor of repatriation. While UNHCR scored a key success in obtaining the agreement from the GoP for its screening measures, this encouragement of unsustainable returns continues, endangering the lives of thousands of refugees and possibly encouraging instability. Donor states and UNHCR should be more cautious in their application of voluntary repatriation as a solution, and should revisit and revitalize the refugee agency's protection mandate. Voluntary repatriation should only occur where funding for reintegration and protection activities remains sufficient to handle the caseloads. Pakistan and other countries of first asylum, meanwhile, should be encouraged to recognize that some returns remain impossible at this time. The country's leaders should also force police to end any harassment and intimidation against Afghans.

2. Renewed efforts must be made to promote international human rights norms, particularly in peripheral nations. Pakistan's lack of interest in protecting human rights has had devastating effects upon both Pakistani citizens and refugees. In response to this rights deficit, the international community should urgently seek to better integrate peripheral states such as Pakistan into the international order by which universal human rights are respected. While signing

a treaty in and of itself will not guarantee the protection of rights, it does signify a country's willingness to stake its reputation upon internationally agreed modes of behavior, and thus would represent a step in the right direction for a country such as Pakistan. Part of convincing Pakistan and other nations to do so, however, will be a greater commitment on the part of donor nations to share the financial and other burdens that would follow from signing on to treaties such as the 1951 Convention relating to the Status of Refugees.

3. The international community should create a better regime for refugee burden sharing. Following from the above recommendation is an urgent need for a system of burden sharing. The fact that Pakistan was expected to support over 2 million refugees while just over 1,000 Afghans each year were being resettled in third countries points to the hypocrisy of the international refugee regime as it currently stands. Funding for refugees in countries of first asylum should also increase. Clearly, the international community cannot expect to continue rejecting asylum seekers while providing few funds to countries of first asylum. One or the other must happen: either more third countries resettlements should take place or funding should increase.

4. Donor nations should resist determining refugee assistance budgets based on political priority. As a matter of principle, it is clear that more assistance should have been provided to Afghans refugees throughout the 1990s, par-

One or the other must happen: either more third countries resettlements should take place or funding should increase.

ticularly when one recalls that refugees in the Balkans received several times as much assistance per head as those in Pakistan. While this inequality, with its implication that some victims of conflict are more valuable than others, is unjustified enough, there is also practical necessity for reviewing the way the donor nations prioritize assistance funding. The fact that Pakistan's refugee camps became the recruiting

grounds for the Taliban and the world's most dangerous terrorist groups at the same time that the UN's appeals for funding consistently went unmet is testament to the fact that donor nations ignore the world's obscure crises at their own risk. In Afghanistan's case, Tony Blair's statement that "sooner or later these conflicts arrive on your doorstep" applies directly.

5. A greater amount of political will should be put into solving the crises that cause refugee flows, as those crises soon spread in unpredictable ways. Funding for humanitarian programs, of course, is not enough to resolve long-standing conflicts. Political will needs to be exerted to prevent the conflicts that cause refugee flows. Sadly, developed nations with the clout and resources to keep Afghanistan from breaking out into war after the Soviet withdrawal instead

effectively abandoned the country. Nor did they work seriously to broker a deal to end a conflict which, in retrospect, had direct relevance to the national security of the United States, in addition to a range of other countries which have had to deal with terrorists trained in Afghanistan.

Ultimately, while UNHCR, other aid agencies, and donors have assisted millions of Afghan refugees with their funds and efforts, the real victors over the last decade seem to have been the states pushing politically expedient but deadly policies to keep their own commitments to a minimum while keeping Afghan asylum contained to the region from which they came. While the rights of refugees served as only a weak protection against the global political forces that were often indifferent to them, one must take hope from the progress demonstrated by Pakistan and others who have, even if haltingly, taken steps to reaffirm the principles of humanity and dignity enshrined in the UN Charter and the 1951 Convention Relating to the Status of Refugees. ■

NOTES

- 1 It has, however, ratified the UN Convention on the Rights of the Child and the UN Convention on the Elimination of all Forms of Discrimination against Women.
- 2 See U.S. Department of State, "Country Reports on Human Rights Practices: Pakistan 2001," U.S. State Department, Bureau of Democracy, Human Rights and Labor, March 4, 2002, <<http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8237.htm>> (accessed November 30, 2002).
- 3 Amnesty International, "Pakistan: Time to Take Human Rights Seriously," January 6, 1997, AI Index ASA/330121997, <www.amnesty.org/ailib/aipub/1997/ASA/33301297.htm> (accessed December 6, 2002).
- 4 U.S. Department of State, "Pakistan: Country Reports on Human Rights Practices-2001," U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, March 4, 2002, <<http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8237.htm>> (accessed February 24, 2003).
- 5 For more on Pakistan's reluctance to ratify international human rights treaties, see Amnesty International "Pakistan: Time to Take Human Rights Seriously," January 6, 1997, <<http://www.web.amnesty.org/ai.nsf/index/ASA33012199>> (accessed December 5, 2002).
- 6 These details on the legal status of Afghan refugee in Pakistan are taken from an excellent unpublished study conducted in 2001 by Christos Theodoropolous, UNHCR protection officer, "Draft Note on the Legal Status of Afghan Refugees in Pakistan," May 23, 2001, 1.
- 7 Theodoropolous, 1.
- 8 Theodoropolous, 2.
- 9 Peter Marsden, *The Taliban: War, Religion and the New Order in Afghanistan* (Karachi/Lahore/Islamabad: Oxford University Press, 1998), 23.
- 10 U.S. Committee for Refugees, "Country Report: Pakistan," <<http://www.refugees.org/world/countryrpt/scasia/Pakistan.htm>> (accessed January 7, 2003).
- 11 Marden, 28.
- 12 Figures on assistance levels come from Barnett Rubin, "Afghanistan: the Forgotten Crisis," *Refugee Survey Quarterly* 15 (2) (UNHCR, 1996). For more on the CIA's involvement, see John Cooley, *Unholy Wars: Afghanistan, America and International Terrorism* (New York: Pluto Press, 2000), 100. See also Ahmed Rashid, *Taliban: Militant Islam, Oil & Fundamentalism in Central Asia*, (New Haven/London: Yale Nota Bene, 2000), 18.
- 13 U.S. Committee for Refugees, "Country Report: Pakistan 2002," <<http://www.refugees.org/world/countryrpt/scasia/Pakistan.htm>> (accessed May 7, 2002).

- 14 For more on the referenced authors, see Guy Goodwin-Gill, *The Refugee in International Law*, 2nd ed. (Oxford: Oxford University Press, 1996), 207-234; 270-295; B.S. Chimni, "The Geopolitics of Refugee Studies: A View from the South," *Journal of Refugee Studies* 11 (4) (1998): 350-374; J. C. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991), 1-27; Joan Fitzpatrick, "Taking Stock: The Refugee Convention at 50," *World Refugee Survey 2001*, <http://www.refugees.org/world/articles/takingstock_wrs01.htm> (accessed January 7, 2003).
- 15 Bill Frelick, "Humanitarian Evacuation from Kosovo: A Model for the Future?" <<http://www.refugees.org>> (accessed March 15, 2002).
- 16 Nick Assinder, "Blair Seeks Support for Africa," BBC World Online, Feb. 10, 2002, <http://news.bbc.co.uk/hi/english/world/africa/newsid_1812000/1812382.stm> (accessed February 10, 2002).
- 17 UNHCR, *The State of the World's Refugees: The Challenge of Protection* (New York: Penguin Books, 1993), 171.
- 18 Joan Fitzpatrick, "Revitalizing the 1951 Refugee Convention," *Harvard Human Rights Journal* 9 (1996): 229-253.
- 19 This point of view was persuasively argued by Norah Niland, the Afghanistan/Pakistan representative of the UN Office of the UN High Commissioner for Human Rights, in an interview in Islamabad, Pakistan, August 15, 2001.
- 20 Chimni, 364.
- 21 Revolving door refugee patterns also occur when opportunistic refugees take advantage of the financial incentives offered for returns and then leave their home countries again to benefit from the voluntary repatriation program again.
- 22 U.S. Committee for Refugees, "Country Report: Pakistan" *USCR: 1999 Country Reports*, <<http://www.refugees.org/world/countryrpt/scasia/1999/Pakistan>> (accessed May 7, 2002).
- 23 Interview with Naeem Khan, CAR directorate, Peshawar, August 17, 2001.
- 24 The figures referred to were culled from reports ranging from 1980 to 1999 from the Organization for Economic Cooperation and Development's annual *Geographic Distribution of Financial Flows to Aid Recipients* (Paris: OECD). The 1999 figure, not yet published by the OECD, was taken from Agence France Presse, "UN Delegation Arrives in Afghanistan to Discuss Repatriating Refugees," February 22, 2000.
- 25 Returnees are given a cash grant of 5,000 Pakistani rupees (about \$80) from UNHCR and 300 kg of wheat per family from WFP. Also see Hiram Ruiz, "Photo Journal: No Longer Welcome: Afghan Refugees in Pakistan," <http://www.refugees.org/news/crisis/Afghanistan/slideshow/Afghanistan_slideshow.htm> (accessed May 7, 2002).
- 26 UNHCR, *Mid-Term Review: United Nations Consolidated Inter-Agency Appeal for Afghanistan, January-June 1999* (New York and Geneva: United Nations, 1999), 9, <<http://www.reliefweb.int/library/appeals/afgmt99.pdf>> (accessed January 7, 2003).
- 27 The Geneva Accords created the *mujahedeen* government with Bernahuddin Rabbani as its president. It fell apart six months after taking office, with war breaking out between rival factions led by Rabbani's Defense Minister Ahmed Shah Masood (of the Jamiat-i-Islami faction) and (Gulbuddin Hekmatyar, the head of Hizb-e-Islami). See Marsden, 39.
- 28 "An End to Forgotten Emergencies?" Oxfam Briefing, May 7, 2000, <<http://www.oxfam.org>> (accessed November 30, 2002)
- 29 Ibid.
- 30 Afghan Support Group, "Refugees-Moving Towards a Durable Solution," Unpublished discussion paper for session 6 at the ASG meeting in Montreaux 7-8 December 2000, prepared by the local ASG sub-group on refugees, 3.
- 31 Interview with Naeem Khan.
- 32 USCR, 1999.
- 33 Providing assistance within Afghanistan was also extremely difficult. Aid convoys seeking to deliver emergency supplies were forced to run a gauntlet of warlord blockades where they would be forced at gunpoint to hand over a portion of supplies to pass. Gulbuddin Hekmatyar, the head of the Hezb-e-Islami faction, allied with Uzbek commander (and current Deputy Defense Minister) Abdul Rashid Dostum initiated a siege of Kabul in 1992 that would ravage the city, cause more than 50,000 civilian deaths and a new wave of displacement.
- 34 Federal News Service, "Prepared Testimony by Julia V. Taft, Assistant Secretary of State for Population Refugees and Migration Before the Senate Appropriations Committee Subcommittee on Foreign Operations," Washington, D.C., March 9, 2002, <<http://web.lexis-nexis.com/universe>> (accessed May 2, 2002).

- 35 According to most observers, Pakistan's active support for the Taliban, apparently extending back as far as 1994, is generally ascribed to its desire to achieve "strategic depth" in its security maneuvering against India. However, some believe it was also a result of the desire to back a winner in the war who could impose order and allow refugees to go home. This attempt seems to have backfired as its fueling of the war caused even greater insecurity and larger refugee flows. Pakistan refused to countenance such arguments against its intervention, and insisted that all new refugees after 1995 were not caused by war but were "economic migrants" who had fled the intensifying drought.
- 36 Amnesty International, "Refugees from Afghanistan: The World's Single Largest Refugee Group," AI Index ASA1101699, November 1, 1999, <<http://web.amnesty.org/ai.nsf/Index/ASA110161999?OpenDocument&of=COUNTRIES/AFGHANISTAN>> (accessed January 7, 2003).
- 37 In one repatriation coordination meeting, a UN official mistakenly referred to voluntary repatriation as the "final solution" for Pakistan's refugees. The irony was not lost on many who understood the condition to which most Afghans would be returning.
- 38 Quoted in USCR 2002.
- 39 USAID Office of Foreign Disaster Assistance, "Jalozai and Shamshatoo Camps for Afghan Refugees, North West Frontier Province, Pakistan: Assessment and Recommendations to USAID's Office of Foreign Disaster Assistance," Unpublished final draft report for the U.S. Agency of International Development. February 6-10, 2001.
- 40 United Nations, "Return of Refugees from Neighboring Countries," Unpublished background note for the Afghan Support Group meeting in Montreaux on December 7-8, 2000, prepared by UNHCR.
- 41 USAID.
- 42 Agence France Presse, "Pakistan to Accept Fewer Afghan Refugees without More Funds: Minister," November 15, 2001.
- 43 U.S. Committee for Refugees, "Country Report: Pakistan" *USCR: 2002 Country Reports*, <<http://www.refugees.org/world/countryrpt/scasia/2002/Pakistan>> (accessed November 11, 2002)
- 44 As a protection officer for an international aid agency often working in Jalozai from May to August last year, I was witness to the unfairness of the aid distribution system at the camp. Because refugees were not registered, there was no way of knowing who had or had not received assistance, and distributions took place through "block leaders" who were charged with fairly distributing everything from wheat to tents. Nothing kept the block leaders from keeping assistance for themselves while doling out other parts according to a crony system. Female-headed households and the elderly were at the bottom of the pecking order and fared poorly.
- 45 WFP had also begun a study to determine who the residents of the camp were, but was forced to stop by the GoP. The incomplete survey results were similar to those found by IRC later.
- 46 IRC's unpublished study, "Survey on the Characteristics of the Population of Jalozai Camp," dated June 2001, was distributed widely in Pakistan and forwarded to non-governmental organizations and UN Agencies.
- 47 Afghan Support Group, "Return of Refugees from Neighboring Countries." It remains uncertain precisely when this new rule came into force, and it seems to have been applied only selectively (and particularly against non-Pashtun Afghan minorities), but the government held that all Afghans entering Pakistan were required to have valid travel documents in line with the 1946 Foreigners Act.
- 48 Theodoropolous, 5.
- 49 Ibid.
- 50 Office of the UN Coordinator, "Study on the Forcible Return of Afghans in North West Frontier Province Pakistan," Unpublished confidential report, Islamabad, May 2001, 18.
- 51 The homes in all but the newest refugee camps in Pakistan are made of mud.
- 52 Hiram Ruiz, "Afghan Refugees in Pakistan at Risk," July 2001, <http://www.uscr.org/world/articles/Afghan_rr01_7.htm> (accessed February 7, 2003).
- 53 UNHCR/Government of Pakistan, "Agreed Understanding for the Screening Process for Afghans in Jalozai Makeshift Camp, Nasirbagh Camp and Shamshatoo Camp to Determine Which Persons are in Need of International Protection and Which Are Not," Unpublished official document signed by UNHCR Representative Hasim Utkan and Safdar Javaid Syed, Additional Secretary Kashmir Affairs and Northern Areas and States Frontier Regions Division. Islamabad, Islamabad, August 2, 2001. Also see the agreement's "Operations Plan for Pre-Screening and Screening at Designated Camps."
- 54 Neither the agreement nor the Operations plan define the length of the temporary stay allowed to Afghans who are screened out. It is also important to note that should a person be screened out, UNHCR would not offer that individual or family any assistance in return, because by definition those individuals would no longer fall within UNHCR's mandate. In reality, however, UNHCR allowed a family to opt for voluntary repatriation until the last moment, even after the family was notified that the next step of the process involved official notification that the family would be screened out.

55 The Cartagena and OAU definitions were part of a trend toward expanding the availability of international protection and humanitarian assistance. This was done because victims of armed conflict and/or human rights abuses had not always been included by states applying the literal terms of the 1951 Convention and 1967 Protocol. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (the OAU Convention) was adopted by the organization's 42 member states in Addis Ababa, Ethiopia, on September 10, 1969, and came into force on June 20, 1974. The OAU Convention adds a paragraph to the 1951 Convention definition of a refugee stating that the term "refugee" shall also apply to "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality." The "Cartagena Declaration on Refugees" was a continuation of the trend, and was adopted at a colloquium of 10 Latin American governments and experts in Cartagena de Indias, Colombia, in 1984. The Cartagena Declaration expands the definition by applying to those who leave their country "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

56 The UNHCR staffer, who asked not to be identified, was interviewed in Peshawar on August 22, 2001.

57 Two surveys conducted by IRC of the populations of Jalozai and Nasir Bagh indicated that about one-third of the residents would likely not receive asylum. UNHCR officials later told the author these studies were used to estimate demand for the repatriation program.

58 UNHCR, "UNHCR Steps Up Aid Operations in SE Afghanistan as Donors Meet Budget," UNCHR, November 18, 2002, <<http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/ceadb56afecd550b85256c840073e7be?OpenDocument>> (accessed December 6, 2002). See also "2002 Mid-Year Progress Report—Pakistan," September 1, 2002, <<http://www.unhcr.ch/cgi-bin/texis/vtx/home/+LwwBmmeCjEpwwwwdwwwwwwwhFqhT0yffrFqnp1xcAFqhT0yffEcFqDpwAo5BwDa+XX+Dzmxwwwwwwwww1FqmRbZ/opendoc.pdf>> (accessed January 15, 2002).

59 USCR "Country Report: Pakistan: 2002," undated, <<http://www.refugees.org/world/countryrpt/scasia/pakistan.cfm>> (accessed January 6, 2002).

60 UNHCR, "UNHCR Global Appeal 2003," UNHCR, December 2003, <<http://www.unhcr.ch>> (accessed January 6, 2002).

61 USCR, "Country Report Pakistan: 2002."

62 UN Integrated Regional Information Network, "Afghanistan: Repatriation Outstripping Funds," May 9, 2002, <<http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/dd9cbd3162b72b7149256bb5001a333b?OpenDocument>> (accessed May 9, 2002).

63 Institute for War and Peace Reporting, 2002.

64 Human Rights Watch, "All Our Hopes are Crushed: Violence and Repression in Western Afghanistan," Human Rights Watch, Vol. 14 (7c), October 2002, <<http://hrw.org/reports/2002/afghan3/>> (accessed November 25, 2002).

65 Human Rights Watch, "Afghanistan: Paying for the Taliban's Crimes. Abuses Against Ethnic Pashtuns in Northern Afghanistan," Vol. 14 (2), April 2002, <<http://www.hrw.org/reports/2002/afghan2/afghan0402.pdf>> (accessed May 2, 2002).

66 Human Rights Watch, "Women Under Threat." Also see Human Rights Watch, "Afghanistan Unsafe for Refugee Returns: U.N. Refugee Agency Sending 'Misleading' Message," July 23, 2002, <<http://www.hrw.org/press/2002/07/afghan0723.htm>> (accessed October 17, 2002).

67 Human Rights Watch, "Afghanistan Unsafe for Refugee Returns."