

Michigan Journal of International Law

Volume 3 | Issue 1

1982

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Recommended Citation

Atle Grahl-Madsen, *Refugees and Refugee Law in a World in Transition*, 3 MICH. J. INT'L L. 65 (1982).
Available at: <https://repository.law.umich.edu/mjil/vol3/iss1/4>

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Refugees and Refugee Law in a World in Transition

Atle Grahl-Madsen*

SURVEYING THE SITUATION

Mene mene tekel!

The writing on the wall is there for everybody to see. Gone is the optimism of the fifties and the sixties. The world economy is stagnating, and it is not only a question of a cyclical crisis, of restoring balance between supply and demand. Mankind is becoming increasingly aware of our global limitations with respect to raw materials, availability of energy, and capacity to resorb pollution.¹

The western economies are struggling with rising prices and unemployment. It seems to become more and more difficult to maintain or restore balance in public budgeting and foreign trade. In the socialist countries there are signs of increasing shortages of important commodities such as grain and meat.

Workers in the industrial countries fight to preserve their accustomed living standard. The New International Economic Order is still but a fair dream. Frustration rides high everywhere. And as may be expected, irrational reactions are becoming more and more frequent. Nations are seeking domestic solutions to international problems. Tension between states is on the upswing, also in the fateful relationship between East and West.

In country after country a political polarization is growing, a movement away from the center—to the right and to the left. In states with a less than stable political structure, coups d'état and strongmen are commonplace. International law is broken as a matter of convenience. The media are filled with news of interventions, aggressions, even warfare. Human rights are frequently trodden under foot. And we are faced with a rising wave of xenophobia.

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Perhaps such a pessimistic picture is too dark; there are certainly rays of light. To be realistic, though, a sober diagnosis must precede a successful cure which will encompass the plight of refugees.

The fate of refugees is greatly affected by the present world situation. Political events and oppressive regimes cause hundreds of thousands, even millions to leave their countries. The number of refugees now must be written with eight digits, including the so-called "displaced persons." Neighboring countries often find it difficult to accommodate the oncoming masses of refugees. Even in as historically receptive a nation as the United States there seems to be a sensation of saturation. And third countries are proving increasingly reluctant when it comes to "burden sharing."

Many European countries have tended to apply the eligibility criteria of the 1951 Refugee Convention² and the Refugee Protocol (1967)³ in a rather narrow way. Instead of being recognized as refugees, many asylum seekers have been given residence permits on humanitarian grounds or as B-refugees.⁴

But as many would-be migrant workers find themselves excluded by bars on immigration or employment and—making the most of the political conditions in their home country—try to qualify as asylum seekers, governments are growing reluctant to admit aliens from beyond the nearest region for permanent resettlement. Thus, a growing number of persons who do not qualify for recognition as Convention (or Protocol) refugees are being turned back.

According to official estimates, today there are more than seven million refugees throughout the world who come within the jurisdiction of the United Nations High Commissioner for Refugees (UNHCR).⁵ In addition, it is estimated, there are some three and a half million displaced persons, mostly people who are uprooted because of war or civil war or similar circumstances but who remain within their own country.

These estimates are far from complete. They exclude the approximately two million Palestine refugees who are the concern of a special agency, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).⁶ Also, the unknown number of persons uprooted within Cambodia are not included nor are the large number of asylum seekers whose status has not yet been determined. In the Federal Republic of Germany the number of this latter category alone probably amounts to six digits, and the same may be the case in the United States, as a result of the great influx of persons coming from Cuba and Haiti who are seeking asylum.⁷ These figures do not encompass the millions of legal and illegal migrant workers and their families, however precarious their situation may be.⁸

There are, needless to say, no "easy" answers to the problems engendered by the swelling refugee numbers. The Government of the United

States has accepted hundreds of thousands of Indochinese refugees over the past several years. Barring a new outflow of refugees from Vietnam, this American contribution will probably effectively resolve the problem of the "boat people" to the extent that they are resettled.⁹ With respect to the three hundred thousand (or more) refugees in Thailand, the international community must provide care and maintenance (and such other services as may be needed, not the least, educational facilities) until the situation in their homeland allows the safe return of the refugees. The same temporary, rather than permanent resettlement approach apparently applies to non-Indochinese refugees in Southeast Asia, as well as for the Afghan refugees. This may also be the answer to the refugee problem in the Sudan. It must, however, be emphasized that the host countries cannot, and should not, be expected to bear the burden of care and maintenance without international assistance on a substantial scale.

In Somalia the many refugees are among their own brethren. Barring a political solution, perhaps involving a readjustment of frontiers, it seems that the answer to the problem lies in integration into the Somali economy. But a poor country is not able to achieve this alone. International aid is forthcoming, but a large, sustained effort is needed.¹⁰ In equatorial Africa, it seems likely that the majority of refugees must resign themselves to a lifetime in exile and consequently must be helped to reestablish themselves in their countries of refuge. In southern Africa, on the other hand, repatriation appears to be a feasible solution, at least for the approximately eighty thousand Zimbabweans, once the new majority regime has brought peace and stability to their native land.

For the overwhelming majority of African refugees, their problems must be resolved on African soil. Resettlement in other countries is neither necessary, feasible, nor desirable. There may be a tiny minority of refugees for whom the situation is different, but this is clearly not a question of any substantial number of persons.

Once the problem of the "boat people" in Southeast Asia has been satisfactorily concluded, it seems that the pressure on the OECD countries (the traditional recipients of refugees) from non-European asylum seekers will not be too heavy.¹¹ The major demand will be for funds to help resolve refugee problems in other parts of the world, and for providing care and maintenance until a solution can be found, either by repatriation or by integration in their host countries.

More and more voices are raised suggesting that one must strike at the root causes of refugee problems, that is to say, at the very conditions causing people to flee from their homelands. This is, however, easier said than done in a world order based on the sovereignty and legal equality of states. To be sure, the UN reached an agreement with the Government of Vietnam, bringing an end to the forced exodus of people of Chinese stock,

but at the same time making departure much more difficult for others who felt that they had to leave in order to escape political persecution.¹²

Many of the root causes are deeply ingrained in the present system of sovereign states. A regime needs neither historical nor democratic legitimacy to control a nation. Oppression, ideologically motivated experimentation, ethnic or religious confrontation, civil war, military intervention, and their like spawn refugees. It would be constructive if the plight of refugees should inspire struggling mankind to find remedies to these problems. It is utopian, though, to believe that the hardships suffered by more than twelve million refugees and displaced persons would appeal so strongly to the consciences of those who decide the destiny of the world that they would abandon those practices which generate the masses of refugees.

THE CONCEPT OF "REFUGEE"

Refugee Definitions

The international instruments relating to refugees, adopted during the period between the two world wars, applied only to particular categories of refugees, such as Russian refugees, Armenian refugees, and refugees from Germany.¹³ The same may be said of the definitions of refugees and displaced persons in the Constitution of the International Refugee Organization (1946).¹⁴

The Statute of the UNHCR (1950)¹⁵ and the Refugee Convention (1951) were, therefore, the first international instruments to contain a general, albeit by no means universal definition of the term refugee. Unlike the UNHCR Statute, the Refugee Convention contained certain geographical and temporal restrictions, which by and large were superseded by the Refugee Protocol (1967).¹⁶ Both the UNHCR Statute¹⁷ and the Refugee Convention¹⁸ and Protocol¹⁹ apply only to persons who are outside their country of origin because of a well-founded fear of persecution.

The High Commissioner's mandate has been broadened beyond that described in the Statute by subsequent resolutions of the United Nations General Assembly.²⁰ Notably, the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) extends the definition of refugee to encompass also a person compelled to leave his home country "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."²¹

The various drafts for a Convention on Territorial Asylum²² contained definitions somewhat broader than those in the Refugee Convention and Protocol. But the efforts for the adoption of an Asylum Convention were effectively frustrated at the ill-fated United Nations Conference on Ter-

ritorial Asylum held in 1977.²³ The political setback aside, the exercise proved how difficult it is to formulate a detailed definition to cover only worthy cases.

Broadening the High Commissioner's Mandate

The High Commissioner is a subsidiary organ of the General Assembly, in accordance with Article 22 of the United Nations Charter. The General Assembly alone can determine and adjust the High Commissioner's mandate. The method of extending the mandate by resolutions of the General Assembly without formally amending the Statute of the High Commissioner's Office has proved to be a practical one, although it has become increasingly difficult to determine how far the mandate actually extends.²⁴

In Resolution 34/60 (1979), the General Assembly requests the High Commissioner "to continue to promote . . . solutions to problems of refugees and displaced persons wherever they occur."²⁵ These are broad terms, indeed. For many years UNHCR has assisted in the repatriation and reintegration of large groups of refugees.²⁶ However, the reference to displaced persons in Resolution 34/60 means that the High Commissioner is now authorized, indeed requested, to provide help not only to persons seeking refuge abroad, but also to those who need assistance because of displacement within their own country.²⁷ This marks a significant development and is an important indicator of the future role for UNHCR in generally addressing the problems of people unwillingly uprooted from their homes.

Restrictive Tendencies in State Practices

The definition of "refugee" in the Refugee Convention and Protocol determines eligibility for the enjoyment of refugee status, as spelled out in the Convention. In a number of countries this definition is also indirectly decisive of whether a given person shall be considered entitled to asylum, which includes a right to stay in the country for an indefinite period of time.²⁸ Even though a state may grant a residence permit on humanitarian grounds, the definition in the Convention and the Protocol is of prime importance as a baseline standard, particularly as countries close their frontiers to foreign labor. The definition is not bad, but as refugee crises multiply, governments are tending to interpret the criteria in a narrow sense.

For example, the 1980 Swedish Aliens Act (*Utlänningslag*) provides that persecution shall mean only such persecution which threatens a person's life or freedom or which otherwise is of a serious nature.²⁹ This represents a considerable narrowing of the concept of persecution, as compared with

the intentions behind the Refugee Convention and State practices in more prosperous years.³⁰ In Norway, a country with a fine humanitarian tradition, the authorities are emphasizing the notion of "agent of persecution,"³¹ and are maintaining that persecution in only one part of the home country does not qualify a person as a refugee, however miserable his conditions might be in another part of the same country.³² These are but examples to show how the criteria for refugeehood under the Convention and Protocol are eroded little by little, and how authorities are resorting to interpretation of obscure parts of a complex definition to narrow its scope instead of squarely addressing the underlying humanitarian problem.

Another way by which governments may limit their commitment is by upholding the "events occurring in Europe" alternative offered by Article 1(B)(a) of the Refugee Convention, and by maintaining the dateline of January 1, 1951 by not acceding to the 1967 Protocol, thus effectively excluding non-European refugees. In contrast, there are countries which in their domestic legislation have more liberal criteria for refugeehood than those contained in the international instruments to which they are parties.³³

The effect of these diverse practices and policies is that a refugee may be considered a refugee in some countries and not in others. This game of chance is most unfortunate from the legal as well as the humanitarian perspective,³⁴ but uniformity would be bought at too high a price if nations agreed only on the narrowest interpretation of who qualifies as a refugee. The supplementary definition in Article I(2) of the OAU Convention instructively expands the Convention definition.³⁵ Many governments are, however, hardly in a mood to consider a more liberal international definition of refugee.

Uniformity of eligibility criteria being an important matter, however, governments should at the very least be encouraged to abandon the "Europe only" alternative and to accede to the 1967 Protocol. One might also consider the possibility of ensuring a uniform interpretation and application of the eligibility criteria by creating some kind of eligibility appeals commission, perhaps on a regional level.³⁶ After all, governments seldom nourish enmity toward refugees. They may, however, be afraid of xenophobic tendencies among their electorate, and might be quite happy with a system that enables them to refer eligibility decisions to an international body.

A Need for a Simple Formula?

At a minimum, the definition in the Refugee Convention and Protocol

must be respected regarding refugee status, including the provisions on *nonrefoulement* which prohibit the involuntary repatriation of a refugee.

In countries with a legalistic tradition, the definitions in Convention (Protocol) and legislation are, indeed, decisive of the status of the persons concerned. But it has repeatedly proven unsatisfactory that admission of refugees, this most important matter, almost a matter of life and death, should hinge on the finer interpretive nuances of some word in a very long and complicated definition. Of course, those who satisfy the definition, however it is interpreted, are entitled to benefit from the rule of *nonrefoulement* as spelled out in Article 33 of the Convention. But over and above this threshold, it should be possible to agree—nationally or, preferably, internationally—on a more broad-minded consideration of the total situation of the individuals concerned, placing emphasis on the humanitarian nature of the act of admitting refugees. Even if governments may be reluctant to accept formally the alternative criteria found in the OAU Convention, they would do well to keep the OAU criteria in mind when deciding a request for asylum. An even better alternative would be for governments to accept, expressly or tacitly, a formula combining the terms of Article 14 of the Universal Declaration of Human Rights (1948)³⁷ and the proviso found in the Norwegian and Swedish Aliens Acts.³⁸ Such a formula is suggested in the Draft Convention on Territorial Asylum: a state ought to grant asylum from persecution to a person in need of asylum in its territory, provided that there is no serious ground for refusing it.³⁹ The provision of Article 14(2) of the Universal Declaration would, of course, also apply to except from protection those asylum seekers who have committed non-political crimes or crimes against the principles of the UN.⁴⁰

As a policy guideline, such a simple formula has many advantages. On the one hand, it emphasizes the need for protection in the form of admission and permission to stay, but, on the other hand, emphasizes that the humanitarian considerations have to be balanced against important reasons of state.

ADMISSION AND REJECTION

First Refuge

The question of admission of refugees into a state's territory may be accentuated in two different ways: either by refugees coming more or less directly from their country of origin and seeking asylum, or by other states or international organs requesting burden sharing in the form of an orderly transfer of a contingent of refugees from a country of first refuge which is overburdened by a mass influx of asylum seekers.

The first of these situations is covered, to some extent, by the provisions

of Articles 31 and 33 of the Refugee Convention.⁴¹ Implicit in these provisions is the assumption that a person claiming to be a refugee has a right to have his claim examined. Once it has been determined that he is, indeed, a refugee, he will be protected by the *nonrefoulement* provisions of Article 33,⁴² and he must be told whether he will be allowed to stay in the country of refuge, or if he must seek admission into another country.⁴³

The rule of *nonrefoulement*—that a refugee shall not be returned forcibly to his or her persecutors—may be considered the modern version of Vattel's old dictum that a refugee has the right to an abode somewhere on the face of the Earth, even if this right is an imperfect one with regard to any particular country.⁴⁴ In the same vein, the General Assembly in Resolution 34/60 (1979) requests states to respect scrupulously the rule of *nonrefoulement*, clearly on the premise that this rule may be considered embedded in general international law and, therefore, is binding not only on the states party to the Refugee Convention and Protocol,⁴⁵ but by all other law abiding nations as well.

At the same time a disturbing crosscurrent is noticeable in certain countries which otherwise may be viewed as in the vanguard of humanitarian actions. In the Scandinavian countries a practice has lately developed of declaring a certain category of would-be refugees collectively noneligible. This policy means, for example, that Assyrians from Turkey, and to some extent Kurds, are rejected at the frontier or otherwise returned to their country of origin.⁴⁶ A similar fate befalls many of the Haitians seeking to enter the United States. Refugees may also be turned back on the ground that another country should be considered their "country of first asylum,"⁴⁷ thus giving rise to the sad phenomenon of "refugees in orbit."⁴⁸

The drive toward a Convention on Territorial Asylum came to a climax at the ill-fated United Nations Conference on Territorial Asylum in 1977.⁴⁹ Later in the same year there was a half-hearted follow-up by the Council of Europe, whose Committee of Ministers adopted a Declaration on Territorial Asylum.⁵⁰ Apart from this effort, the matter has been allowed to rest.⁵¹

The texts adopted by the Committee of the Whole in the 1977 Conference are not much to build on.⁵² And it is not very likely that a second conference will be more successful than the first one. If the matter is going to be further pursued at all—and there are those, both in the East and in the West, who think so—a much more modest approach is probably necessary. A committee could probably prepare a text, which then could be accepted by the General Assembly and opened for signature, as happened with the Refugee Protocol.⁵³

The text of an agreement on territorial asylum would probably have to be very simple, like the text for a protocol proposed in my recent book on Territorial Asylum.⁵⁴ In order to accommodate certain views, particularly

in Eastern Europe, the reference to the definition in the Refugee Convention and Protocol should probably be deleted and replaced with a similarly simple text, preferably based on Article 14 of the Universal Declaration of Human Rights.⁵⁵ According to the terms of such a protocol, a contracting state would not only pledge itself to the rule of *nonrefoulement* but it would also undertake to do its best to give a refugee in its territory, being in need of asylum, the right to stay and to find a livelihood in that territory. The protocol would also contain provisions concerning international cooperation, or "burden sharing," as is the fashionable word for it, in case some state should be overburdened by an influx of refugees.

Mass Influx and Burden Sharing

The drafters of the Refugee Convention created two limitations on the applicability of Article 33: it might be necessary to deviate from the rule of *nonrefoulement* in the case of a mass influx of refugees,⁵⁶ and the rule should not encroach upon the existing law of extradition.⁵⁷ The former of these exigencies occurred in 1956, with the influx of two hundred thousand Hungarians into Austria and Yugoslavia. The governments of these two countries alerted the international community, and, within a relatively short time, this mass of refugees was resettled in a large number of countries.⁵⁸ The next great test came in 1979, when some tens of thousands of Southeast Asian refugees were shoved back from Thailand into Cambodia,⁵⁹ and others were pushed to sea from Malaysia.⁶⁰ Concerted international action, however, highlighted by the meeting convoked by the Secretary General of the United Nations in Geneva on July 20 and 21, 1979, effectively ended these practices.⁶¹ About twenty states offered resettlement opportunities for 280,000 Indochinese refugees, mostly the so-called boat people,⁶² and a large-scale relief operation was initiated.

In the case of at least one country, namely Norway, which has many commercial ships sailing in the South China Sea, the relief operation may be construed as a mixture of direct admission and resettlement. By provision of the Shipping Act (1893), a ship's master is obliged to rescue people in distress at sea, if this can be done without endangering the ship or persons on board.⁶³ Norway guaranteed that persons so rescued would be admitted to Norway, if they could not go anywhere else. Thus, Norway has more than fulfilled its pledge to admit 3,000 boat people by admitting many more refugees under this statutory rescue-at-sea obligation.

The political and cultural conditions in Southeast Asia, and particularly in Malaysia, with its delicate ethnic balance, have required large-scale resettlement in distant countries as the only feasible solution to the massive refugee migrations. The experience has provoked a discussion of the notion of "temporary refuge," or provisional asylum, as it is also called.⁶⁴

The concept of "temporary asylum" links the principle of *nonrefoulement*—which should be scrupulously respected—with the necessity for burden sharing in cases where a state is faced with a large-scale influx of refugees and cannot bear the burden alone.⁶⁵ Perhaps the long-term outcome of the tragic events in Southeast Asia during the summer of 1979 is a strengthening both of the rule of *nonrefoulement* and of the principle of international cooperation or burden sharing.⁶⁶

Resettlement Quotas?

In connection with the boat people, a quota system, whereby each of the states members of the Organization for Economic Cooperation and Development (OECD) would undertake to accept a certain *pro rata* quota of the refugees whose only chance lies in resettlement, is a possible method for allocating the burden of their resettlement.⁶⁷ The proposed quotas can be based on the gross national product (GNP) of the respective countries, but with more emphasis on economy than on the size of population. The formula can be expressed as $i^{1.5}p$, where i means GNP per capita and p population.⁶⁸

Obviously, quotas or contingents must be agreed to on an ad hoc basis, as the need arises: no state is prepared to sign a blank check which would only invite abuse. A formula, such as that suggested, can only serve as a guideline. There are several factors which cannot be considered in a simple formula. For example, typical immigration countries, such as Australia, Canada, New Zealand, and the United States, accepted many more Southeast Asian refugees than the mathematical formula suggests, while other countries, for more or less cogent reasons, took less or none at all.⁶⁹ Nevertheless, such a formula may have some value, because it may help governments to assess what kind of collective effort is needed in order to resolve the problem at hand. The problem of the boat people may now be settled, but nations with a conscience for human beings in distress may be faced with similar challenges in the future.

Undeniably, there are serious problems connected with intercontinental resettlement, with the transplantation of people from one climatic, social, and economic environment to a completely different one. Integration within the region as a rule ought to have priority, but countries outside the region must be prepared to share the burden of resettlement by providing services, food and other supplies, and last, but not least, the necessary funds. Sometimes moral support, above all international recognition of the problem, may be all that is needed. Such support should be forthcoming in the case of the recent large-scale influxes of Cubans and Haitians into the United States, totalling 150,000 persons or more.⁷⁰

Extradition of Refugees

Extradition of refugees is an issue which occasionally comes into focus, in particular in connection with a hijacking of aircraft or a terroristic activity. Clearly, the drafters of the Refugee Convention considered "that Article 33, prohibiting expulsion or return, was without prejudice to the right of extradition."⁷¹ Yet a provision of nonextradition of refugees is articulated in Article 3(2) of the European Convention on Extradition (1957),⁷² and this provision was not modified by the provisions of the European Convention on the Suppression of Terrorism (1977).⁷³ Quite to the contrary, the gist of the Extradition Convention's Article 3(2) was reiterated in Article 5 of the Suppression of Terrorism Convention.⁷⁴

Under the various conventions on hijacking and terrorism, the requesting state has a choice between extraditing the wanted person or submitting him or her to its own judicial process.⁷⁵ In so far as general international law is concerned, one may claim that it follows from the principle of good faith that a state party to the Refugee Convention can only extradite a refugee to a country where he risks persecution, if such extradition is mandatory under an existing treaty or convention.⁷⁶

REFUGEE STATUS

Contractual Protection of Refugees

It is appropriate to explore the possibility of the country of residence extending diplomatic and consular protection to Convention refugees, as well as *de facto* refugees and stateless persons. Any state party to the Refugee Convention and/or Protocol has a right to insist that other contracting states fulfill their contractual obligations. This amounts to what can be called "contractual protection."⁷⁷ which in many respects may be compared with customary diplomatic protection of nationals, although there are also interesting differences. The step to full-fledged diplomatic and consular protection of refugees is not as big as one might first believe.

Certainly, Paragraph 16 of the Schedule to the Refugee Convention states that the issue of a travel document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not *ipso facto* confer on these authorities a right to grant such protection. This paragraph is a reproduction of Article 18 of the London Agreement relating to the issue of travel documents to refugees who are the concern of the Intergovernmental Committee on Refugees (1946),⁷⁸ which in turn was taken from a recommendation adopted by the Third General Conference on Communications and Transit in 1927.⁷⁹ The drafters of the Refugee Convention were in some doubt about the purpose

of this provision, but adopted it merely to be on the safe side. The drafters agreed that the paragraph "neither conferred any right on, nor took any right away from, the refugee."⁸⁰

The key words in Paragraph 16 are "the issue" and "*ipso facto*." Clearly, the Refugee Convention and its Schedule do not prohibit the exercise of protection by the country of residence, and this was fully appreciated by the drafters of the European Convention on Consular Functions (1967).⁸¹ According to Article 2(2) of the annexed Protocol on Consular Functions concerning the Protection of Refugees, "the consular office of the state where the refugee has his habitual residence shall be entitled to protect such a refugee and to defend his rights and interests in conformity with the Convention, in consultation, whenever possible, with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it."⁸²

The text of the Convention is not without peculiarities. Contractual protection, however, can stand on its own, and the country of habitual residence should be able to exercise protection without any reference to UNHCR. After all, protection by states and protection by international organs are different matters, and although states should closely cooperate with the High Commissioner in matters of protection, such cooperation is not a condition for exercising protection.

It may be worthwhile to explore the feasibility of an international instrument, free from the limitations of the unsuccessful Consular Functions Convention, recognizing expressly the right of a country of residence to protect refugees (and preferably also certain other categories) *vis à vis* other states. Such an instrument might provide a welcome supplement to the present international status of refugees. An important consideration is that the cost to the states concerned will be negligible, both in political and financial terms.

Travel Document and Personal Status

In some instances, countries will admit persons on humanitarian grounds without formally recognizing them as refugees, or will recognize them only as so-called B-refugees. The existence of these and other categories of *de facto* refugees raises the question of which rights and benefits persons of their status shall enjoy. They are not formally entitled to the benefits spelled out in the Refugee Convention, unless the decision of noneligibility is successfully contested.⁸³ Articles 12 (concerning personal status) and 28 (with Schedule) (concerning travel documents) are particularly important in this respect, since they contain rules of a legal and an exclusive character, respectively. On the other hand, it is completely within the

power of any state to extend all the other rights and benefits set forth in the Convention to any person in its territory, as the authorities see fit.⁸⁴

The question of regulating the personal status (in a conflict of laws) may not seem very important in the English-speaking countries and in countries like Denmark and Norway, where the resolution of conflicts of laws is based upon the principle of domicile. But in civil law countries, where the principle of nationality prevails, the matter is important and ripe for consideration. Because it involves legal principles, it may take time and effort to bring the matter to a satisfactory solution. But, as with the proposal above for an international instrument, whatever solution on the right of a country to protect refugees should be reached, the cost is negligible, in economic and political terms, for the states concerned.

The issue of travel documents is also ripe for consideration as the number of *de facto* refugees and other persons with an undetermined status is increasing. Whereas Convention (and Protocol) refugees are entitled to Convention travel documents, and also may benefit from arrangements such as the European Agreement on the Abolition of Visas for Refugees (1959),⁸⁵ *de facto* refugees must either use their national passports (which can be problematic, to say the least), or they must get aliens passports, affidavits, or Red Cross documents.

Aliens passports were agreed upon in a recommendation adopted by the Third General Conference on Communications and Transit in 1927.⁸⁶ There is, however, a growing need for a new instrument providing for a modern, internationally recognized travel document for all those who are not able to get a national passport or a refugee travel document. Presently, agreement on visa abolition provisions similar to those in the said European Agreement of 1959 may be difficult to reach, but it should not be too difficult to grant to holders of the new travel documents the benefits of bilateral and other visa exemption agreements applicable to nationals of the respective issuing states. It may well be that—not least because of its lack of political overtones—the new travel document may indeed prove more advantageous than the present Convention travel document. Currently this would not seem to be problematic, in particular, not if a refugee has a free choice between the two documents.

Refugee Status and Human Rights

The special status of refugees, for which the Refugee Convention provides in considerable detail, may have been unique at the time when the Convention was drafted, but since then, a network of international agreements has arisen which provide similar benefits for everyone residing in the territory of a contracting state. This does not mean that many of the provisions of the Refugee Convention have become redundant. Among

other things, different states are parties to different conventions, and if in some countries other international instruments may guarantee a similar or perhaps even a better standard than that for which the Refugee Convention provides, the situation may be very different in other countries. Furthermore, it is an advantage in itself to have a catalogue of minimum rights and benefits due especially to refugees.

It is useful to see how the provisions of the Refugee Convention tally with those of other conventions. Certain benefits are peculiar to the status of refugees. In addition to the provisions concerning personal status, the rule of *nonrefoulement*, and the stipulations for the Convention travel document, this is also true of the exemption from reciprocity and the provision for administrative assistance. Provisions similar to those of Articles 7 (exemption from reciprocity), 12 (personal status), 25 (administrative assistance), 28 (travel documents), and 33 (*nonrefoulement*) of the Refugee Convention are not found in any other convention, except the Convention relating to the Status of Stateless Persons (1954),⁸⁷ which in fact is modelled on the Refugee Convention, but which does not contain any provision on *nonrefoulement*.⁸⁸

The exemption from exceptional measures in times of war or other emergencies (Article 8), however, is an important provision also found in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 15),⁸⁹ and in the International Covenant on Civil and Political Rights of 1966 (Article 4).⁹⁰

Some rights articulated in the Refugee Convention are provided in other international agreements. Rights to property are guaranteed by Protocol No. 1 to the European Convention (Article 1) as well as by the American Convention on Human Rights of 1969 (Article 21),⁹¹ and also by Protocol No. 1 to the Universal Copyright Convention (revised 1971).⁹² These compare with Articles 13 and 14 of the Refugee Convention providing comparable rights for refugees. The right of association is laid down in all existing human rights conventions,⁹³ as it is in Article 15 of the Refugee Convention. The right to work is expressly recognized in the International Covenant on Economic, Social and Cultural Rights of 1966 (Article 6),⁹⁴ and the right to education in the same Covenant (Article 13) as well as in the First Protocol to the European Convention (Article 2). The Refugee Convention protects the same rights in Articles 17-19 and 22, respectively. The applicability of labor legislation and social security benefits is guaranteed by the above 1966 Covenant (Articles 7 and 9), and in this case, as with respect to several other protected rights, there are a number of International Labour Organisation (ILO) and Council of Europe Conventions which apply to refugees. Freedom of movement within a country is secured by provisions of the International Covenant on Civil and Political Rights (Article 12), the American Convention on Human Rights (Article

22), and Protocol No. 4 to the European Convention (Article 2). These compare with the rights enumerated in Article 26 of the Refugee Convention. Safeguards against expulsion similar to the Refugee Convention's Articles 32 and 33 are spelled out in the above International Covenant (Article 13), as well as in the above Protocol No. 4 (Articles 3 and 4), and also in a number of other international agreements.⁹⁵

This enumeration is not exhaustive. It does indicate that in many of the fields covered by the Refugee Convention, there has been a development toward guaranteeing much the same—or perhaps even more extensive—benefits to all persons in the territory of a contracting state, including *de facto* refugees. A detailed analysis of this development is needed to discover existing discrepancies and possible improvements in the status of refugees—and others—perhaps at minimal cost.

THE ORGANIZATIONAL TANGLE

An Overview

Around the world are a number of refugee crisis areas: Southeast Asia, Western Asia, the Middle East, the Horn of Africa, equatorial Africa, and southern Africa, to which should be added the southern United States, while smaller refugee problems exist in other parts of the world. The Palestinian refugee problem is the concern of a special agency, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). All other areas of protection of and assistance to refugees and displaced persons are the nonexclusive concern of the United Nations High Commissioner for Refugees (UNHCR). Other intergovernmental, governmental, and nongovernmental organizations have their shares in the responsibility and in the action.⁹⁶ Humanitarian aid is badly needed in most refugee situations, but the territories in question are not always accessible for help from the outside, or only certain organizations, *par excellence* the Red Cross and the Red Crescent, may gain access to the disaster area.

In addition to the man-made disasters, mankind has its toll of natural disasters as well, caused by storms, rains, floods, landslides, avalanches, droughts, earthquakes, and volcanic eruptions. The catastrophes may be large or small. The necessary relief may be provided by domestic means, or there may be a need for international assistance. There are differences, but also similarities, between natural and man-made disasters. In many instances there is much the same need for shelter, household equipment, clothing, food, medicines, water, sanitary facilities, transportation, communications, as well as personal care, counseling, help in locating relatives, and eventually, education, training, and social amenities. However, whereas refugee situations tend to develop over some time, and do not affect the

infrastructure of the receiving country, apart from perhaps overstraining it, natural disasters are sudden and momentary, leaving in their wake the killed, the trapped, the injured, and the homeless in a badly damaged environment. A major difference between refugee problems and natural disasters is that refugees are strangers in a foreign land, and their reestablishment on foreign soil is difficult and takes considerable time, whereas after a natural disaster, rehabilitation may start right away. Availability of manpower and material resources are the only limiting factors. Because of the often extensive material damage in natural disasters, there is a close link between disaster relief and long-range domestic development programs. For political refugees, however, protection is not to be found within the country from which the disruptive forces emanate, but must be sought elsewhere. Thus, refugees of man-made disasters need external protection, as well as relief assistance.

The Arrangements

Nongovernmental organizations—particularly the various branches of the Red Cross and the Red Crescent—provide assistance in all kinds of emergencies, whatever their cause. But the United Nations system has tended to keep natural disasters and man-made emergency situations apart. To some extent, at least, this is a result of the historic development: specialized organs and organizations have been set up to take care of specific needs. But the division is also undoubtedly the result of a conscious choice.

As discussed above, the mandate of UNHCR has slowly evolved until it now encompasses providing protection and assistance to refugees, displaced persons, and stateless persons, as well.⁹⁷ When, in 1971, the General Assembly decided to establish an organ for the coordination of international disaster relief,⁹⁸ the emphasis was on natural disasters, although throughout the resolution there is mention also of other disaster situations. The Office of the United Nations Disaster Relief Coordinator (UNDRO) was involved, in 1979, in no less than twenty-seven disaster situations. In those situations alone, more than 3,000 persons were killed, 2,000 by hurricanes in Dominica, West Indies. The number of the injured exceeded eleven thousand, and almost a million persons were rendered homeless. However, UNDRO's involvement was slight in most of these cases, and the organization has been severely criticized for its lack of efficiency.

There are other organs, too, with competence in disaster situations, such as the United Nations Children's Fund (UNICEF) and the World Food Programme (WFP),⁹⁹ and, in addition, there are the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the United Nations Educational, Social and Cultural Organization (UNESCO), and

the United Nations Development Programme (UNDP), to mention but a few.

Outside the United Nations system, there is the UNHCR's twin sister, the Intergovernmental Committee on Migration (ICM), which has specialized in the processing and transportation of refugees and other migrants over long distances, and in their integration in their new environments.¹⁰⁰

With such a multitude of organizations it is unavoidable that there will be some overlapping. Even worse is that there are situations where no organization is competent because of gaps among the respective mandates. The sad result is that people in distress may be left without aid, except that which nongovernmental organizations are able to provide.

This situation of gaps and overlaps in the organizational tangle, as much as the drain on economic resources owing, among other things, to the elephantiasis of some intergovernmental organizations, has made important donor nations, and other states as well, deeply concerned.¹⁰¹ A streamlining of the international machinery for humanitarian action has, therefore, become an urgent necessity.

Reorganizing for Humanitarian Action

Undoubtedly, UNHCR and UNDRO are the two principal organs within the United Nations Organization for protection and relief in disaster situations, man-made and natural. UNHCR has as its distinctive task the protection of refugees, and, more recently, of stateless persons. In addition, the UNHCR was originally conceived as a largely coordinating agency for material assistance to refugees. However, large-scale emergency situations in recent times have prompted UNHCR to become primarily an operative organization. Its staff numbers now approximately 1,500 persons, and the annual budget amounts to some \$500 million. Naturally, UNHCR has been primarily concerned with the human side of the operations in which it is involved. UNDRO, on the other hand, leans more toward the technical and logistical aspects of disaster relief, such as predisaster research and planning, stockpiling of emergency supplies, training of personnel, and organizing transportation and communications.

These different inclinations provide a clue to the solution of their respective future functions. As huts, tents, blankets, clothing, foodstuffs, medicines, transportation and communication requirements are the same no matter what the emergency might be, it would seem rational that one and the same organization should be responsible for all these things, irrespective of the cause for the emergency. On the other hand, care and maintenance of persons in distress is also much the same, whatever the reason for the calamity. UNDRO could be developed into a logistics orga-

nization, responsible for the coordination—and to the extent absolutely necessary also for the execution—of such functions as:

- (1) procurement, stockpiling, transportation, and warehousing of essential commodities and equipment, such as food, medicines, fuels, tents, household equipment, building materials, sanitary facilities, means of transportation and communication;
- (2) transportation and communications, engineering, construction and demolition works;
- (3) rescue operations by helicopter, bulldozing, and search parties.

Concurrently, the High Commissioner's mandate could perhaps be extended to coordinate the care of victims also of natural disasters. Thus, he would become in fact a High Commissioner for Protection and Care.

Of course, the High Commissioner must not lose sight of his primary task as high protector and helper of refugees. His responsibility would become fourfold:

- (1) protection of refugees, stateless persons, and other persons not enjoying regular national protection;
- (2) care and maintenance of persons in a situation of distress;
- (3) resettlement and repatriation;
- (4) integration of refugees into ordinary life.

The organization of the High Commissioner's Office of course must reflect these four tasks, and close liaison must be maintained with UN-DRO, and also with ICM. ICM has been and should continue to be considered the agency best qualified for the transportation of refugees and other persons in a similar predicament, the ancillary tasks of processing, and, to some extent, integration.

It should be relatively easy to draw a demarcation line between the logistic responsibility of UN-DRO and the humanitarian responsibility of the High Commissioner. As soon as a person was rescued, he would pass from the hands of the rescue team (under UN-DRO) to those responsible for his care (under the High Commissioner). The construction of a camp, the stocking of a warehouse, the availability of means of transportation, the functioning of communications, would be the responsibility of the logistic agency, UN-DRO, while the allocation of huts and tents to families and individuals, the distribution of food, counseling, selection of persons for resettlement schemes, in short, the temporal and spiritual welfare of the individuals, would be the responsibility of the humanitarian agency, UNHCR. Because of their dependence on equipment and other resources, medical teams would probably have to be coordinated by the logistical

rather than the humanitarian side. By such a division of responsibility, overlapping could be avoided, and gaps between the competencies of different organizations need not occur.

Other agencies within the United Nations system would act as needed: the Food and Agriculture Organization (FAO), the International Maritime Consultative Organization (IMCO), the International Telecommunications Union (ITU), the Universal Postal Union (UPU), the World Food Programme (WFP), the World Meteorological Organization (WMO), probably also the World Health Organization (WHO), on the logistical side; the International Labour Organisation (ILO), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), on the humanitarian side. The United Nations Development Programme (UNDP) and other organs charged with development tasks would enter into the act as the emergency measures are phased out.

Similarly, national Disaster Relief Units, such as those organized by the Swedish and the Swiss Governments,¹⁰² could maintain contact with and be at the disposal of UNDRO; while the High Commissioner would maintain liaison with—and as necessary alert—voluntary organizations: the Red Cross and others.

If the division of responsibility were sufficiently clear-cut, and the level of cooperation were good, there should be no need for a coordinating agency over UNDRO and the High Commissioner. Actually, a hierarchy of coordinators would be unfortunate, for, after all, both the High Commissioner and the Disaster Relief Coordinator are at the top level within the United Nations Organization,¹⁰³ second only to the Secretary General.

Should the division of responsibility, and the cooperation, not be satisfactory, an alternative would be to merge the two organizations, but this would yield a very big and unwieldy organization; hardly something to be desired.

CONCLUSIONS

The probability that there will be many new refugees and displaced persons in the future, that countries of first refuge in many cases will feel saturated, and that many potential resettlement countries will prove less hospitable than in the past must be reckoned. It may also become increasingly necessary to economize with the available funds, to prevent overlapping while simultaneously trying to stop the all too apparent gaps among the competencies of aid organizations. But our humanitarian ideals must also be pursued, or else the future will become much more perilous. The

humanitarian spirit is a most necessary corrective to the destructive and separatist forces which generate refugee crises.

Improvement of the lot of the unfortunate must be sought, especially where exigencies are most pressing. The solutions, though, must also be politically, socially, and economically acceptable. The timid and the over-cautious should not dictate the solutions, but neither should the audacious and radical push for achievements lacking support among the powers that be.

A new travel document, a satisfactory personal status for *de facto* refugees, consular protection for resident refugees, perhaps even an Asylum Protocol, are tasks which, if approached in the right way, could lead to considerable benefits for those who need this help. Also, a general policy for the admission—and, if need be, the rejection—of persons who feel that they can no longer live in their own country should be pursued as one based on humanitarian criteria, weighed against the legitimate interests of states.

On the organizational side, the High Commissioner's primary task as high protector must not be abandoned. Emphasis for improving disaster relief efforts should be on coordination rather than operation, on clear-cut division of responsibilities to prevent overlapping and gaps among competencies, and economy generally. These are the conditions for facing the future with some confidence that refugee disasters will be adequately addressed by international and national organizations.

NOTES

¹ See generally B. COMMONER, *THE CLOSING CIRCLE: NATURE, MAN, AND TECHNOLOGY* (1971); M. MESAROVIC & E. PESTEL, *MANKIND AT THE TURNING POINT* (1974); ENERGY: GLOBAL PROSPECTS 1985-2000 (McGraw-Hill 1977).

² Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter cited as Refugee Convention].

³ Protocol relating to the Status of Refugees, done Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 [hereinafter cited as Refugee Protocol].

⁴ This term is a Swedish one, referring to an alien who is not a refugee, but who does not want to return to his or her homeland because of the political conditions there, and who can invoke convincing reasons for his or her stand. *Utlänningslag*, No. 376, § 6 (June 5, 1980). See Melander, *Nordic Refugee Law and Policy*, this volume.

⁵ This and the following figures are based on information from UNHCR.

⁶ 1,750,000, according to 26 A.W.R. BULL. 142 (1979).

⁷ See Speech by Ambassador Donald F. McHenry before the Economic and Social Council, in Geneva (July 8, 1980) (reported in Press Release No. 78 of the Public Affairs Office of the U.S. Mission to the United Nations).

⁸ For statistics on world refugees, see Nobel, *Refugees, Law, and Development in Africa*, Carlin, *Significant Refugee Crises Since World War II and the Response of the International Community*, both this volume.

⁹ See A. GRAHL-MADSEN, TERRITORIAL ASYLUM 108 (1980).

¹⁰ See MELANDER, REFUGEES IN SOMALIA (1980).

¹¹ See GRAHL-MADSEN, *supra* note 9, at 107.

¹² See Office of the United Nations High Commissioner for Refugees, Letter dated 30 October 1979 from the Permanent Representative of the Socialist Republic of Viet Nam to the United Nations addressed to the Secretary-General, U.N. Doc. A/C.3/34/7 (1979).

¹³ See The Arrangement of May 12, 1926, 89 U.N.T.S. 47 (defining Russian and Armenian refugees); The Arrangement of June 30, 1928, 89 U.N.T.S. 63 (defining Assyrian and Turkish refugees); The Convention Relating to the International Status of Refugees, Oct. 28, 1933, art. 1, 159 L.N.T.S. 199 (defining Russian and Armenian refugees); The Convention Concerning the Status of Refugees Coming from Germany, Feb. 10, 1938, art. I, 192 L.N.T.S. 59 (defining refugees coming from Germany); Protocol of Sept. 14, 1939, art. I, 198 L.N.T.S. 141 (defining Austrian refugees); Constitution of the International Refugee Organization, Dec. 15, 1946, Annex I, 18 U.N.T.S. 3; 1 A. GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW 122-42 (1966).

¹⁴ Constitution of the International Refugee Organization, *supra* note 13.

¹⁵ G.A. Res. 428, 5 U.N. GAOR, Supp. (No. 20) 46, U.N. Doc. A/1775 (1950); *reprinted in* United Nations Resolutions and Decisions relating to the Office of the United Nations High Commissioner for Refugees, U.N. Doc. HCR/INF/48/Rev. 2 (3d ed.).

¹⁶ Refugee Protocol, *supra* note 3.

¹⁷ Statute of the UNHCR, *supra* note 15, at para. 6(A) (ii).

¹⁸ Refugee Convention, *supra* note 2, at art. 1(A) (2).

¹⁹ Refugee Protocol, *supra* note 3, at art. 1(2).

²⁰ See Goodwin-Gill, *Entry and Exclusion of Refugees: The Obligations of States and the Protection Functions of the Office of the United Nations High Commissioner for Refugees*, this volume.

²¹ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, *done* Sept. 10, 1969, art. I(2), U.N.T.S. No. 14691, *reprinted in* G. MELANDER & P. NOBEL, AFRICA'S REFUGEES AND THE LAW 92-97 (1978).

²² Carnegie Endowment Working Group, Draft Convention on Territorial Asylum, art. 1, in GRAHL-MADSEN, *supra* note 9, at 174; International Law Association, Draft Convention on Territorial Asylum, art. 1 in *id.* at 177; Comprehensive Draft Convention on Territorial Asylum, art. 7, in A. GRAHL-MADSEN, AN INTERNATIONAL CONVENTION ON TERRITORIAL ASYLUM 76 (1975); United Nations Secretariat, Consolidated Text of Articles, art. 2, in GRAHL-MADSEN, *supra* note 9, at 194; Non-Governmental Organizations Special Working Group, Draft Convention on Territorial Asylum, art. 2, in *id.* at 198; Grahl-Madsen & Melander, Draft Convention on Territorial Asylum, in *Towards an Asylum Convention*, included in U.N. Conference on Territorial Asylum, 1977, U.N. Doc. A/CONF. 78 (1977).

²³ GRAHL-MADSEN, *supra* note 9, at 61-66.

²⁴ See Goodwin-Gill, *supra* note 20.

²⁵ Report of the United Nations High Commissioner for Refugees, G.A. Res. 34/60, para. 2, 34 U.N. GAOR, Supp. (No. 46) 173, U.N. Doc. A/Res/34/60 (1979).

²⁶ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNHCR: THE LAST TEN YEARS 27, 57, 81 (1980).

²⁷ It is apparent from the language of G.A. Res. 34/60 that the term "displaced persons" refers to internally displaced persons.

²⁸ GRAHL-MADSEN, *supra* note 9, at 51-53.

²⁹ Utlänningslag, No. 376, § 3 (June 5, 1980).

³⁰ 1 A. GRAHL-MADSEN, *supra* note 13, at 188-216.

³¹ *Id.* at 189-92.

³² But see OAU Convention, *supra* note 21, art. I(2).

33 See, e.g., the discussion of national laws in Weis, *The Development of Refugee Law*, this volume. See also Appendix III, Review of Foreign Laws, this volume.

34 Grahl-Madsen, *Refugees in Orbit: Some Constructive Proposals*, 26 A.W.R. BULL. 118 (1979).

35 See text at note 21 *supra*.

36 Grahl-Madsen, *supra* note 34, at 122; Grahl-Madsen, *Annerkjennelse av flyktninger i Norge*,

48 NORDISK TIDSSKRIFT FOR INTERNATIONAL RET 158, 165-66, 169-70 (1979).

37 Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

38 Lov om utlendingers adgang til riket (Fremmedloven), 3 Norsk Lovtidend 1956, at 481 (July 27, 1956); Utlänningslag, *supra* note 4.

39 Art. 1(1), Grahl-Madsen and Melander, *Towards an Asylum Convention* (Geneva: I.U.E.F. 1977), reprinted in GRAHL-MADSEN, *supra* note 9, at 201-204. Dr. Göran Melander and this author developed this formula for the Draft Convention on Territorial Asylum on the basis of deliberations at the Nansen Symposium, 1976.

40 Universal Declaration of Human Rights, *supra* note 37, art. 14(2).

41 Refugee Convention, *supra* note 2, arts. 31, 33.

42 It is implicit in Articles 31 and 33 that a person is also provisionally protected against forcible return, until his status has been determined; see 1 A. GRAHL-MADSEN, *supra* note 13, at 340; 2 A. GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW 223-25 (1972).

43 A. GRAHL-MADSEN, *supra* note 42, at 364-73, 435-43.

44 3 E. VATTEL, LE DROIT DES GENS OU PRINCIPES DE LA LOI NATURELLE §§ 17, 20, 51, 71, 76, 77, 107, 125, 220-33 (1758); 2 A. GRAHL-MADSEN, *supra* note 42, at 14-16.

45 Report of the United Nations High Commissioner for Refugees, *supra* note 25, at 174.

46 See Melander, *supra* note 4.

47 See Melander, *Refugees in Orbit*, in ROUND TABLE ON "REFUGEES IN ORBIT," at 6, U.N. Doc. HCR/120/27/79 (1979).

48 *Id.* See generally Grahl-Madsen, *supra* note 34, at 118-123.

49 U.N. Conference on Territorial Asylum, 1977, U.N. Doc. A/CONF. 78 (1977). See GRAHL-MADSEN, *supra* note 9, at 61-66.

50 The text of the Declaration is reprinted in GRAHL-MADSEN, *supra* note 9, at 212-13.

51 Since the conference, the matter is only touched upon in Office of the United Nations High Commissioner for Refugees, Report of the Third Committee, para. 13, U.N. Doc. A/32/352 (1977).

52 GRAHL-MADSEN, *supra* note 9, at 69-71.

53 See Protocol relating to the Status of Refugees, G.A. Res. 2198, 21 U.N. GAOR, Supp. (No. 16) 48, U.N. Doc. A/Res/2198 (1966), in which it was recommended that the Protocol be transmitted to the States for their signatures. The same method was used for the International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068, 28 U.N. GAOR, Supp. (No. 30) 75, U.N. Doc. A/Res/3068 (1973), and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, G.A. Res. 3166, 28 U.N. GAOR, Supp. (No. 30) 146, U.N. Doc. A/Res/3166 (1973).

54 GRAHL-MADSEN, *supra* note 9, at 69-80.

55 Universal Declaration of Human Rights, *supra* note 37, art. 14. See GRAHL-MADSEN, *supra* note 9, at 89-90; Grahl-Madsen & Melander, Draft Convention on Territorial Asylum, *supra* note 22, art. 1; Grahl-Madsen, Proposed Protocol Relating to Territorial Asylum, art. 2, in GRAHL-MADSEN, *supra* note 9, at 216.

56 U.N. Doc. A/CONF.2/SR.35, at 31 (1951) (statement of Baron von Boetzelauer); N. ROBINSON, CONVENTION RELATING TO THE STATUS OF REFUGEES 163 n.275 (1953).

57 U.N. Doc. A/CONF.2/SR.24, at 10 (1951). See ROBINSON, *supra* note 56, at 165-66; GRAHL-MADSEN, *supra* note 9, at 39.

58 See generally L. HOLBORN, REFUGEES: A PROBLEM OF OUR TIME (1975); Carlin, *supra* note 8.

- 59 U.N. Doc. A/34/627, Annex I, para. 8 (1979).
- 60 *Id.*, paras. 15, 35.
- 61 See GRAHL-MADSEN, *supra* note 9, at 105.
- 62 *Id.* at 113.
- 63 Lov om Sjøfarten, § 62(3), No. 1 (July 20, 1893), Norsk Lovtidend 1891-1894, at 1175.
- 64 U.N. Doc. A/AC.96/586 (1980).
- 65 See Grahl-Madsen, Comprehensive Draft Convention on Territorial Asylum, art. 4, in GRAHL-MADSEN, *supra* note 22, at 76; Grahl-Madsen, Proposed Protocol Relating to Territorial Asylum, *supra* note 55, at art. 6.
- 66 See the reference to *nonrefoulement* in Report of the United Nations High Commissioner for Refugees, *supra* note 25, at para. 3(a).
- 67 See Grahl-Madsen, *The Boat People: Our Concern*, 26 A.W.R. BULL. 97 (1979); *The Boat People: Still a Concern*, 27 A.W.R. BULL. 110 (1980).
- 68 See tables at 27 A.W.R. BULL., *supra* note 67, at 110.
- 69 *Id.* at 113.
- 70 Speech by Ambassador Donald F. McHenry, *supra* note 7.
- 71 U.N. Doc. A/CONF.2/SR.35, at 21 (1951).
- 72 European Convention on Extradition, done Dec. 13, 1957, 359 U.N.T.S. 273.
- 73 Jan. 27, 1977, Europ. T.S. No. 90.
- 74 *Id.*, art. 5.
- 75 Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), Dec. 16, 1970, art. 7, 22 U.S.T. 1641, T.I.A.S. No. 7192; Convention to Prevent and Punish Acts of Terrorism of International Significance, Feb. 2, 1971, art. 5, 27 U.S.T. 3949, T.I.A.S. No. 8413; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), Sept. 23, 1971, art. 7, 24 U.S.T. 564, T.I.A.S. No. 7570; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, *supra* note 45, art. 7; European Convention on the Suppression of Terrorism, *supra* note 73, art. 7.
- 76 ROBINSON, *supra* note 55, at 166; GRAHL-MADSEN, *supra* note 9, at 38-39.
- 77 *Protection for the Unprotected*, [1967-1968] Y.B. OF THE A.A.A. 176.
- 78 Oct. 15, 1946, 11 U.N.T.S. 73.
- 79 3 League of Nations Doc. C.558(b).M.200(b).1927.VIII, at 57. See discussion at 33, 62.
- 80 U.N. Doc. E/AC.32/SR.18, at 14.
- 81 Dec. 11, 1967, Europ. T.S. No. 61.
- 82 A similar provision concerning stateless persons is found in Article 46 of the Convention.
- 83 1 A. GRAHL-MADSEN, *supra* note 13, at 339.
- 84 *Id.* at 263.
- 85 April 20, 1959, 376 U.N.T.S. 85.
- 86 *Supra* note 79, at 57.
- 87 Sept. 28, 1954, 360 U.N.T.S. 117.
- 88 However, a resolution was included in the Final Act of the Conference, at 360 U.N.T.S. 122-24.
- 89 Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950; 213 U.N.T.S. 221.
- 90 Annex to G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/63/6 (1966).
- 91 Nov. 22, 1969, OAS Official Records, OEA/Ser.K/XVI/1.1.
- 92 July 24, 1971, 25 U.S.T. 1341, T.I.A.S. No. 7868.
- 93 International Covenant on Civil and Political Rights, *supra* note 90, art. 22; International Covenant on Economic, Social and Cultural Rights, Annex to G.A. Res. 2200A, art. 8, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/63/6 (1966); American Convention on Human

Rights, *supra* note 91, art. 16; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 89, art. 11.

94 International Covenant on Economic, Social and Cultural Rights, *supra* note 93, art. 6.

95 *See generally* International Covenant for Civil and Political Rights, *supra* note 93, art. 12; Convention relating to the Status of Refugees, *supra* note 2, arts. 32, 33; Convention relating to the Status of Stateless Persons, Sept. 28, 1954, art. 31, 360 U.N.T.S. 117; European Convention on Establishment of Companies, Jan. 20, 1966, arts. 2, 3, Europ. T.S. No. 57; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 89, Protocol 4, art. I.

96 *See* Zucker, *Refugee Resettlement in the United States: The Role of the Voluntary Agencies*, this volume.

97 *See* G.A. Res. 31/36, 31 U.N. GAOR, Supp. (No. 39) 94, U.N. Doc. A/Res/31/36 (1976).

98 Assistance in cases of natural disaster and other disaster situations, G.A. Res. 2816, 26 U.N. GAOR, Supp. (No. 29) 85, U.N. Doc. A/Res/2816 (1971).

99 These two organs are mentioned along with the UNHCR in G.A. Res. 2816, *supra* note 98.

100 *See* Carlin, *supra* note 8.

101 *See* Speech by Ambassador McHenry, *supra* note 7.

102 An interesting account may be found in Bruzelius, *Svärdet som plogbill: katastrofhjälp i militär regi*, in KUNGLIGA KRIGSVETENSKAPS AKADEMIENS HANDLINGAR 1980, 178-193.

103 The High Commissioner is elected by the General Assembly on nomination by the Secretary General, Statute of the Office of the United Nations High Commissioner for Refugees, *supra* note 15, para. 13; the Disaster Relief Coordinator is appointed by the Secretary General at a level comparable to that of an under-secretary-general of the United Nations, G.A. Res. 2816, *supra* note 98, para. 2.