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PROSPECTS FOR AND PROMOTION OF SPONTANEOUS REPATRIATION

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PROSPECTS FOR AND PROMOTION OF SPONTANEOUS REPATRIATION

In the literature on voluntary repatriation it is often asserted that voluntary repatriation is the 'most desirable' durable solution¹ closely followed by pessimistic evaluations of its prospects.

Sir John Hope Simpson writing in early 1939 about the political, religious, and racial refugees of that time noted:

Deliberate repatriation on a large scale is scarcely relevant in a discussion of practical instruments of solution. In predictable circumstances voluntary return of refugees to their home countries will occur on so small a scale as to not affect the refugee problem itself. The possibility of ultimate repatriation belongs to the realm of political prophecy and aspiration, and a programme of action cannot be based on speculation.²

More recently the United Nations High Commissioner for Refugees (UNHCR) in its 1985 Durable Solutions report noted that:

In the last analysis, voluntary repatriation remains - despite many successes - the most difficult of durable solutions to achieve. ... Even in the best of circumstances, only a proportion may repatriate, and instances such as the return of virtually an entire refugee population from Bangladesh to Burma in the late 1970s or from neighbouring countries to Zimbabwe in the early 1980s are more often the exception than the rule.³

Simpson in his time, and UNHCR and others⁴ today reflect common misconceptions about voluntary repatriation. Substantial voluntary repatriation frequently occurs but is not clearly perceived. Part of the reason for this is the millions of unrepatriated refugees who are highly visible but who represent a minority of all those who have been refugees. Also, one's conception of the problem depends on the types of refugee movements one is examining. Simpson's pessimistic assessment

of repatriation as a solution was basically right when applied to the racial and religious refugees of the inter-war period-- Turkish Christians, German Jews--but not to other categories of refugees at other times. As Coles has noted:

If, however, a broad interpretation is given to embrace all forms of displacement, particularly those as a consequence of armed conflict, serious internal disturbance or famine or drought, this view is reverse of the truth. In regard to displacement generally, return is, on the whole, the rule rather than the exception.⁵

Although voluntary repatriation is more common than is generally realized it is by no means easy to achieve. The changing nature of refugee problems brings peaks and valleys in the prospects for return. For a while, during the 1960s and early 1970s, many refugees were able to repatriate after the successful conclusion of struggles for independence and liberation from colonial rule. In recent years, the rise of refugee-producing conflicts--nation-building, revolutionary change, and conflicts with neighbors--involving the newly independent states has caused 'the massive arrivals of refugees in low-income countries where often no durable solutions are at hand.'⁶ In order to return refugees to their newly independent homelands, particularly without changes in the regime or conditions that caused flight, will require some new thinking about voluntary repatriation and ways of promoting it.

In this chapter we will examine the contemporary challenge of voluntary repatriation along with some aspects of spontaneous repatriation.

SPONTANEOUS VOLUNTARY REPATRIATION

A prominent feature of today's refugee problems is that there are not necessarily more refugees; rather there are more without solutions or awaiting solutions. Certain unfortunate refugee groups for whom no durable solution is ever found become a semi-permanent part of refugee problems. There are still Palestinian refugees from the forties; Eritrean and Rwandese refugees from the sixties; Indochinese, Saharawi, Burundian, Afghan, and Ogaden Somalis from the seventies. Today, three-quarters of the world's ten million or so refugees date from conflicts that are at least five years old.

Half a decade ago, the High Commissioner informed the Executive Committee of the presence in the world of some ten million refugees in need of international protection. The overwhelming majority of the refugee situations which had arisen at that time remain because effective durable solutions have so far not been found.

In some refugee situations, flows have now lasted for over a decade.⁷

Although many refugee situations may endure on the political landscape and etch themselves in our consciousness, we should not conclude that progress is not possible. 'The first half of the present decade has continued to see similar movements of return to Argentina, Chad, Ethiopia, The Lao People's Democratic Republic, Uganda, Uruguay, Zaire, Zimbabwe and elsewhere, in all of which UNHCR has been intimately involved.'⁸ However, these successes illustrate some of the contemporary difficulties with voluntary repatriation. In many cases where UNHCR has been intimately involved only a small proportion of the refugees returned home--for example, 2,898 Laotian returnees from

an estimated total of 89,000 refugees as of mid-1986--and in only a few cases--Chad from the Central African Republic, Uganda from Rwanda and Zaire, and Zimbabwe from neighboring countries--was the return relatively complete.⁹

Most voluntary repatriation today occurs without, and despite UNHCR involvement. Each year tens or hundreds of thousands of refugees decide to repatriate spontaneously without the assistance of international organizations and outside of the framework of protection afforded by international agreements and protective accords. Spontaneous repatriation frequently occurs without a promised amnesty; without a change of regime or other decisive event; without a repatriation agreement or program; without the permission of the authorities in the country of asylum or origin; without international knowledge; without an end to the conflict that caused the exodus. It is based on the decision of countless individual refugees that they can return home, even in the face of lowered but continued risk. It is also influenced by the conditions the refugees exist under in their refuge. There are many examples of spontaneous voluntary repatriation:

some 400,000 Ethiopian refugees may have returned to Ethiopia from Somalia and Djibouti from 1984 to 1986. Ethiopia in early 1986. ... some 75,000 Ugandan refugees fled southern Sudan ... to return with surprising ease to Uganda and to begin the process of reintegration.

When word came that the Obote government had been overthrown in July 1985, the Uganda [Banyarwandan] refugees were jubilant, almost 29,000 refugees returned to Uganda [from Rwanda].¹⁰

A recent report on voluntary repatriation¹¹ noted that the vast majority of all repatriation occurs without aid from

international organizations. In some cases where spontaneous and organized repatriation occur simultaneously, the spontaneous flow may be 100 to 200 times greater than the UNHCR assisted return.¹² This disparity suggests that a combination of current conditions and UNHCR operating principles are presenting difficulties in giving full assistance to repatriating refugees. Indeed, in some circumstances such as the return of Tigrayans from Sudan in 1985, UNHCR has been more of a hinderance than a help to repatriation.

To illustrate some of the contemporary problems of repatriation, it is useful to look at the contrast between an ideal voluntary repatriation and some examples of current repatriation situations.

In the best of circumstances, voluntary repatriation will follow a basic change in the conditions that caused flight, the feared regime will be gone, and the refugees will be welcomed home. Zimbabwe in 1980 comes close to an ideal organized repatriation scenario. As a result of the 1979 Lancaster House agreement, the refugees were returning in victory to their liberated homeland. UNHCR was requested to undertake the overall coordination of the international effort to assist the repatriation. The operational arrangements for the refugees in Botswana and Zambia were done through the Lutheran World Federation and in Mozambique by government authorities. In several phases, both before and after Zimbabwe's independence, 51,000 refugees returned home through the organized program while a larger number, approximately 150,000, returned on their own but within the framework of the program.

Over the years, UNHCR has established three pre-conditions for its participation in an organized repatriation.

First and foremost, it must be voluntary Secondly, there must be clear and unequivocal agreement between the host country and the country of origin both on the modalities of the movement and the conditions of reception; thirdly, it is vitally important that returnees be allowed to return to their places of origin - ideally to their own former homes, their villages, their land.¹³

UNHCR's overriding concern is the physical safety and socio-economic reintegration of the returnees. UNHCR rightly insists on these formal procedures so as to fulfil its protection mandate. However, as the following sketches of recent and current repatriations illustrate, reality may mean these formalities relegate UNHCR to the sidelines.

FIVE REPATRIATIONS

Many contemporary repatriations are far from ideal; they are messy and ambiguous, do not fulfil all or any of UNHCR's pre-conditions, and raise serious questions of coercion and protection. The following five refugee situations which were critical in mid-1987--Ethiopia, Cambodia, Mozambique, Uganda, and El Salvador--indicate that efforts to promote or assist voluntary repatriation take place in a context of reluctant, hostile, or unsettled hosts; low-intensity protracted conflicts; repatriation regions controlled by insurgents or by uncertain legal regimes; and pressures on refugees to choose from amongst unsatisfactory choices. New thinking about promoting and assisting repatriation needs to confront the realities these examples represent.

Tigray

As a result of separate liberation movements in Eritria and

Tigray provinces, there have been Ethiopian refugees in Sudan since the 1960s. In 1984, several hundred thousand additional refugees from the war-torn northern provinces poured into Sudan due to drought and famine in Ethiopia.

In 1985, after the resumption of rains in their home province, some 54,000 Tigrayan refugees left eastern Sudan and returned to Tigray Province of Ethiopia at the height of the drought and famine and during a period of stepped-up military activity. The return was aided by the Relief Society of Tigray (REST) and 'covered' by the Tigray People's Liberation Front (TPLF). Despite widespread fears that many would die enroute, either from starvation or bombing, it appears that most arrived home in good health and have done well since their return. Indeed, in 1986 even larger numbers returned and the spontaneous repatriation continues in 1987. The three phases of return are likely to total almost 200,000 refugees. UNHCR did not assist the 1985 repatriation; in fact, both UNHCR and the United States actively opposed the return. 'In Sudan, far from promoting repatriation, UNHCR and other agencies have found it impossible to dissuade infirm and elderly refugees from setting out on the arduous trek back into Ethiopia!'¹⁴ Only limited assistance was made available, principally by the Government of Sudan. Limited international assistance has been given to the later returnees.

Cambodia

In 1979, after the Vietnamese invasion overthrew the Khmer Rouge regime, approximately 170,000 Khmer refugees found safety in camps in Thailand. An additional 250,000 Khmer refugees have

been confined to camps on the border since 1979. Thailand has long insisted that all Khmer refugees in Thailand must be resettled to third countries. To demonstrate its resolve regarding resettlement, in June 1979, Thailand forcibly repatriated 44,000 Khmer refugees with a great loss of life. This action led to an international commitment to resettle the refugees. By early 1987, only 20,000 of the original 170,000 Khmer refugees remained in Thai camps. Most of these refugees had already been rejected by the several resettlement countries.

In March 1987, Thailand threatened to force these 20,000 Cambodian refugees to move from the Khao-I-Dang camp to the Thai-Cambodian border camps. Less than one thousand refugees were forced back to the border camps, but the threat remains. These border camps are subjected to attacks from Cambodia and are under the control of various Khmer guerrilla armies including the Khmer Rouge. The relocated refugees, and the 250,000 other Khmer refugees who have been confined to the border since 1979, are vulnerable to abuses by both the liberation movements and Thai 'protecting' forces. Although UNHCR continues to have a protection role regarding those moved from Khao-I-Dang, it does not have a permanent presence in the border camps.

Mozambique

Mozambique's internal peace has been shattered by the guerrilla activities of the Mozambican National Resistance (RENAMO) which was established in 1977 with the aid of Rhodesia's white-minority government and is currently aided by South Africa. Approximately four million Mozambicans have been internally

displaced and, since 1984, 300,000 have fled to South Africa, Swaziland, Zimbabwe, Zambia, and Malawi. The Government of Mozambique is trying to arrange for the return of 95,000 of its citizens 'externally displaced' in Malawi in 1986. [Mozambique has 'repeatedly accused Malawi of providing a haven for Mozambican insurgents.'¹⁵] These refugees have not fled from the actions of their government but from a famine caused by civil conflict. Mozambique, when approaching UNHCR for assistance:

made it clear that it prefers 'Mozambicans to be displaced in Mozambique than in Malawi and therefore be assisted in their home country (as returnees) than in Malawi (as refugees)'. ... The government's strategy is to facilitate the return of refugees [to areas] ... which may not be their original homesteads but are safer as regards security ... all efforts will be made to guarantee that maximum security prevail in these [returnee] areas.¹⁶

However, by mid-1987, rather than returning home, the exodus from Mozambique was continuing and the number of Mozambican refugees in Malawi had increased to 200,000.

Uganda

The initial flow of Ugandan refugees into Sudan began after the fall of Idi Amin in 1979. Through 1982, the number of Amin supporters and other refugees in southern Sudan grew to more than 350,000 as civilians fled from abuses and reprisals by the forces of the Uganda National Liberation Army (UNLA). In 1984 and 1985 approximately 100,000 refugees spontaneously repatriated to Uganda. In January 1986, the UNLA forces were defeated by Museveni's National Resistance Army and the prospects for further refugee repatriation improved.

In 1986 there were approximately 250,000 Ugandan

refugees in southern Sudan. Although many of the refugees were considering a return home because of 'one of the few periods of genuine peace and security in Uganda in the last decade,'¹⁷ their return was impelled by a widening civil war in their host country that led to a breakdown of authority. In April 1986 there were 'armed attacks on Ugandan refugee settlements on the East Bank of the Nile.'¹⁸ Over 100,000 Ugandan refugees fled southern Sudan and returned to Uganda. UNHCR and other agencies assisted the returnees with transport and reception facilities. Another 150,000 Ugandan refugees may be forced to flee southern Sudan in 1987. Fortunately, the timing allows them a somewhat safe return to their homeland. However, Uganda is still troubled by economic difficulties and political turmoil. One mission noted that 'The relief programme for returnees has not been a success. ... The [UNHCR] office was crippled by lack of transport and communication.'

El Salvador

Since the early 1980s about 20,000 refugees from the Salvadoran civil war have taken refuge in Honduras. Recently, some of the refugees have been returning spontaneously and with UNHCR assistance.¹⁹ The Salvadorans live in closed camps in Honduras and are viewed with hostility. There are 'officially-sponsored campaigns of villification depicting the Salvadoran refugees and the voluntary agencies which help them as threats to Honduran national security. ... Violent crimes against the refugees have been committed with apparent impunity.'²⁰ In 1985, the Salvadoran camp at Colomoncagua was attacked by the Honduran

army and several refugees were killed, wounded, or seized. Not surprisingly, 'a sizeable number of Salvadoran refugees in Honduras have now realized that they cannot reasonably hope for local integration' and that 'repatriation is their only hope of one day returning to a normal way of life.'²¹

After a December 1986 visit by J. P. Hocke, the United Nations High Commissioner for Refugees, approximately 4,500 Salvadoran refugees at the Mesa Grande camp indicated their willingness to return to their places of origin in El Salvador.

Another element in El Salvador which is of critical importance to the refugees in Honduras is the process of 'repopulation' which is now going on. ... After a number of years and even though the war continues in several parts of the country, groups of displaced persons have begun to return to their home communities. ... many groups of refugees are risking the uncertainty by returning to their home communities.

It is in this context - growing weariness of life in the camps and increasing awareness of the re-population movement in El Salvador that 4,500 refugees in Mesa Grande for repatriation.²²

As of mid-1987, however, due to reluctance on the part of the Armed Forces of El Salvador to permit a mass return to the original areas, only individual repatriations were being arranged by UNHCR. The frustrated refugees at Mesa Grande 'have unilaterally declared that they intend to return to their home areas ... with or without the cooperation of the Honduran or Salvadoran governments, '²³ or of UNHCR.

As these sketches indicate, UNHCR's three preconditions for participating in an organized repatriation--voluntary return, agreement between the host country and country of origin, and

return to place of origin within homeland--are not easily met. In three of the situations, pressures in the countries of asylum --Thailand, Honduras, and Sudan [for the Ugandans]--impelled the refugees to leave and made the returns less than fully voluntary. Indeed, the return of the Khmer refugees to the border was forced by Thailand and only good timing made the flight from Sudan back to Uganda relatively safe.

Agreement between the host and the country of origin is only likely in the return from Malawi to Mozambique. Indeed, in several of the returns--to Cambodia, Tigray, and El Salvador--the refugees are going to areas not fully controlled by the central governments of their homelands. UNHCR prefers to operate within the framework of a tripartite agreement between itself and the host and home countries, but in an era of low-intensity conflicts, returns often take place in disputed regions. As a part of the United Nations system, UNHCR must deal through sovereign governments and is disadvantaged in the many situations involving liberation fronts and governments not seated in the UN. These so-called 'non-recognized entities' play an important role in spontaneous repatriations. Insurgents may control large areas; some even maintain effective civil administrations in their areas. It can be relatively safe for refugees to return to homes in such zones, and given some assistance many might go home, especially if they perceive few other options for ending their refugee status.

Oddly, as is clear in the five sketches, return to the refugees' place of origin is more likely in those situations

where governments and UNHCR are not involved. The proposed Mozambique return is specifically not to their original homesteads and the Cambodian return was to the border zones. In Tigray, El Salvador and Uganda the refugees were able to go back to their homes.

Failure to satisfy UNHCR's three preconditions for return is not necessarily a sign of a flawed return. In the five returns outlined above, only Thailand's forced return of the Cambodians to the border zone appears not to be in the refugees best interests. Ironically this forced repatriation has the most governmental and international agency involvement. Although the other returns are less than ideal, they do achieve the 'most desirable' goal of getting the refugees back home.

THE NATURE OF CONTEMPORARY REFUGEE PROBLEMS

UNHCR's 1985 Note on International Protection indicates that 'the majority of today's refugees are persons who do not fall within the "classic" refugee definition in the UNHCR Statute.' Rather they are 'persons who have fled their home country due to armed conflicts, internal turmoil and situations involving gross and systematic violations of human rights.'

'Classic' refugees are caused by government action and there is a strong political element inherent in their situation. Refugees flee because of a controversy between themselves and their government. Because the basic bond between citizen and government has been broken, 'fear has taken the place of trust, and hatred the place of loyalty.'²⁴ Trifles do not cause refugees, and refugees cannot easily pick up and go home until

substantial changes occur or until there is a change in the regime that originally caused them to flee. A continuing controversy over politics, race or religion may mean that prospects for the refugees' return will remain poor for a considerable length of time.

But today, most refugees are externally displaced persons rather than 'classic' refugees. They are not necessarily fleeing a controversy that personally involves them. Often they are getting out of harm's way rather than fleeing from persecution. Many who flee from a land suffering from a protracted, low-intensity conflict may be fleeing from a proximate cause rather than the conflict itself. Years of conflict lead to adjustments and experience that provide some degree of safety for individual civilians. The final push toward a mass exodus is not generally the direct result of the familiar conflict, but a last straw change in conditions such as a famine, drought or other natural calamity, or increased fighting that is too close for comfort. Such displaced persons may not fear their government, or whoever normally controls their region. They may well be unafraid and willing to return home to an insecure land if the proximate cause has eased even though the low-intensity conflict persists.

For example, the basic bond between citizen and government has apparently not been broken in the case of the refugees from Mozambique. They are fleeing the atrocities of RENAMO whose raids have prevented farming activities and caused famine in a fertile land. The Mozambican proposal²⁵ to return the refugees from Malawi to areas of Mozambique other than their original

homesteads thus is not contingent on a change of regimes or of fundamental conditions. The refugees may worry that the government cannot protect them adequately, but apparently they do not fear the government itself.

ORGANIZED AND SPONTANEOUS REPATRIATION

Both organized and spontaneous repatriation are desirable methods of achieving a durable solution. However, there is a major difference in the effort and resources that are devoted to the two methods, with almost all thought and effort being devoted to organized repatriation. Oddly, the results are strongly inversely related to the resources; the lion's share of refugees return by the spontaneous route.

Because it is a humanitarian, non-political agency UNHCR takes a mostly passive stance with regard to promoting repatriation. Organized repatriations with agreements between the parties normally must wait for a decisive event. UNHCR does not have power to resolve the root cause of a refugee exodus. It does not arrange peace conferences or negotiations, these are the responsibility of the Secretary-General and other political arms of the United Nations, or of bilateral efforts.

UNHCR relies heavily on tripartite agreements--country of origin, host country and UNHCR--as a method of promoting voluntary repatriation. However, this government-to-government approach with UNHCR in the middle is ponderous, time-consuming and produces meagre results. Without denying the occasional success, such as Djibouti in 1983,²⁶ the overall record of tripartite commissions does not justify UNHCR's heavy reliance on

host government and homeland government agreement as a precondition for repatriation. More typical of tripartite commissions is the Uganda-Rwanda-UNHCR commission from 1983 to 1985. It met, talked, processed, detailed, screened and achieved little. When southern Uganda was liberated by Museveni's advancing forces, the commission temporized. Eventually 30,000 refugees returned spontaneously from Rwanda in late 1985 with little international assistance. UNHCR's second precondition for organized movements--'agreement between the host country and the country of origin on the modalities of the movement and the conditions for reception'--is often irrelevant in contemporary refugee situations involving displaced persons. The time-lag between the onset of improved conditions and the implementation of agreements can be frustrating to refugees.

The difference in scale between side-by-side spontaneous and organized repatriations can be striking. In many situations UNHCR arranges for the return of dozens or hundreds of refugees while tens of thousands return on their own initiative.

Spontaneous voluntary repatriation from the Sudan continued on a much larger scale than organized movements. While the repatriation of some 518 Ethiopians was organized in 1985 - almost twice as many as in 1984 - more than 55,000 Tigrayans returned spontaneously ... During the same period of 1986, another 65,000 returned to Ethiopia in the same manner.²⁷

This difference in scale of more than 100 to 1 between spontaneous and organized repatriations suggests that the refugees and UNHCR hold different standards of safety and perceptions of timing with regard to repatriation.

Voluntary repatriation is a troubling business. People are

returning to a place where once they feared or suffered persecution. Not surprisingly, judging from the reactions of voluntary agencies active in the field, the greatest worries accompany organized voluntary repatriations when there has been no change of government in the homeland. Refugees fear that going home through official channels and being 'turned over' to their government would put them in danger or mark them as suspect. There is a danger that the country of origin will assume the returnees have supported an anti-government movement. Additionally, many organized returns are suspect as being at the convenience or pressure of the host government which is more than pleased to be rid of an unwanted burden and is less concerned about protection questions.

Spontaneous voluntary repatriation may occur in response to certain host pressures or displeasure about the refugees' continued presence but in its essentials it represents the refugees' judgement of their predicament and their best interests and gives the refugees some control over their own fate rather than relying on a tripartite commission or trusting their own government. It is well to note that spontaneous repatriation restores the refugee's sense of his own effectiveness and importance while organized repatriation excludes refugees from tripartite commissions and gives them little voice in the modalities and conditions of return.

Indeed, the powerlessness of the refugees when dealing with the international system is sometimes displayed when they choose to go home spontaneously. In 1985, when tens of thousands of

Tigrayans decided to go home to Ethiopia, attempts were made to block their return. These obstacles were well-intentioned, motivated by a belief that the risks were too great. But this raises a question about the international system's obligations to refugees who want to return spontaneously against the advice of the system. The vastly greater numbers of refugees favoring spontaneous return indicate that refugees make their decisions on criteria other than those of concern to the international community. It is the refugees who must evaluate the risks and make the choice. From border camps they will often have better communications with home and can more effectively evaluate the safety of return. Once they have made the evaluation that the risk is tolerable, the international community has an obligation to assist the return. It is counter-productive and a denial of the 'right ... to return to his country'²⁸ to provide aid if they will remain refugees but not give it if they want to go home.

ISSUES

Although everyone supports the idea of voluntary repatriation as the ideal and most desirable durable solution, there is little agreement on means of achieving or promoting it. Coles notes that voluntary repatriation 'has so far not been examined in any depth by experts or scholars. ... The absence of any adequate treatment of the general question of solution is a striking feature of the traditional approach to the refugee problem.'²⁹

In attempting to promote new thinking about voluntary repatriation, the most fruitful avenue of exploration is likely

to be spontaneous repatriation. These irregular returns raise major issues regarding the voluntary character of a repatriation, dealing with non-recognized entities, and matters of protection. Because these are issues that have been ignored rather than studied, what follows is more in the form of lines of inquiry than conclusions or recommendations.

Voluntary

Although many people think of voluntary repatriation as a purely 'voluntary' act reflecting the individual will of the refugee, in practice the decision to return is often externally initiated and brought about by outside persuasion, influence, and even pressure. Refugee status is not necessarily permanent, it is dependent on conditions in the homeland. The Cessation clause (Article I.C.(5)) provides that the Convention 'shall cease to apply' if the circumstances causing refugee status have ceased to exist and the refugee cannot refuse to avail himself of the protection of his country. But, as stated earlier, most of those called refugees are really displaced persons fleeing generalized conflict rather than individual persecution. Therefore they do not fit the Convention refugee definition, although they do satisfy the more generous terms of the OAU Convention on refugees. Once conflict subsides in the homeland, either temporarily or permanently, who--UNHCR, the host government, the refugees--decides that refugee status ought to cease?

Host countries have a definite interest in encouraging the return of refugees. However, non-political factors, such as poor economic conditions at home, may make refugees hesitant about

return. The 1986 overthrow of the Duvalier regime in Haiti opened the door for the potential return of one million exiles. But only a handful have gone back. 'Unwilling to face the uncertainty of a country whose economy remains mired in poverty and despair, most prefer to hang on to whatever opportunities they may have found abroad.'³⁰

The 1978-1979 return of 200,000 refugees from Bangladesh to Burma had some elements of compulsion, yet it is usually referred to as one of UNHCR's successful operations.

At the outset of the repatriation there was evidence of marked opposition among the refugees to returning. ... On the day that the repatriation officially began, only 58 refugees crossed the border. Two and half months later only 5,300 had returned. ... the number should have been 50,000. The reluctance to return stemmed from fear of what might await the refugees.

By the end of 1979, however, some 187,000 had suddenly returned to Burma. The return movement seems to have been precipitated towards the end by conditions in the camps and by a curtailment of food rations³¹ designed to encourage an early decision in favour of return.³²

There is clearly a gap between principle and practice that needs to be explored with regard to 'voluntary' repatriation. The principle as expressed by the 1985 UNHCR Executive Committee is that repatriation 'should only take place at their [the refugees'] freely expressed wish; the voluntary and individual character ... and conditions of absolute safety, ... should always be respected.' Practice, however, is not to sit back and wait for the refugees to express a desire to go home. A somewhat less individual and less voluntary standard has been accepted and lauded. Evidence of pressure is commonplace particularly when no other durable solution, settlement or resettlement, is possible.

Duress, with its implication of no free choice by the refugees, is clearly unacceptable, but it is not easy to determine the dividing line between acceptable and unacceptable pressure, encouragement, suggestion, persuasion, and inducement. Crisp writing about the 1983 return of Ethiopians to Djibouti notes:

Even if they still had doubts about returning, the refugees were aware that their future in Djibouti was at best a limited one. After four years of intermittent intimidation, the refugees morale was low, and the advantages of attempting to remain in Djibouti were difficult to perceive. ... It seemed preferable to live in poverty and danger in their own country than to remain as unwelcome guests in foreign country.³³

Non-Recognized Entities

There are levels of 'non-recognized entity' from a government in full but disputed control of its territory but denied international recognition (and its seat in the UN as in the case of Cambodia); to a guerrilla liberation movement on its way to victory and control, for example, Museveni controlling southern Uganda, then taking the capital, then controlling the north; to a guerrilla force in a long-term struggle that may have control of a varying 'liberated' area such as in Tigray or Eritrea.

The report of the 1985 meeting on Voluntary Repatriation at the International Institute of Humanitarian Law in San Remo which was reported to the Executive Committee's Subcommittee of the Whole on International Protection recommended 'the High Commissioner should not be unduly inhibited by the formal status of any particular entity. ... he should be prepared, wherever necessary, to deal with non-recognized entities.'³⁴ This

suggestion, however, was objected to in the Subcommittee's deliberations and was not included in the Executive Committee's Conclusions on International Protection.

The Executive Committee's reluctance to grant UNHCR authority to deal with non-recognized entities raises several questions about protection for those choosing repatriation. What protection can be offered to refugees returned to an area held by a liberation movement or even a de facto government? What control or sanctions are available if a non-recognized entity abuses refugees or recruits them for its military units. What protection if the other force captures the area?

It may well be politically impossible for an international organization such as UNHCR to deal with a non-recognized entity operating on the territory of a sovereign UN member state. Imagine the Moroccan reaction to UNHCR negotiating with the Polisario Front³⁵ to return people to Western Sahara. It may, however, be feasible for the International Committee of the Red Cross (ICRC) to deal with non-recognized entities. Its governing instruments and mandate may be more flexible and relevant within a sovereign state structure than those of UNHCR. In addition, it is clearly possible for a host government to deal with a non-recognized entity, although whether or not it is desirable is another matter.

Return to heavily contested areas would probably be impossible. However, low-intensity conflict has ebbs and flows and unevenly impacts a wide area. In some cases, as in Tigray, Eritrea, Western Sahara, Namibia, etc., the non-recognized entity

is a refugee-based organization. Beside its political expression as a party, front, or movement, the refugee-based organization will have aid societies, education programs, and other welfare-based agencies that can play an important role for returnees as the TPLF and REST have been doing for the returnees to Tigray.

Protection

In suggesting increased emphasis on spontaneous repatriation, the greatest problem is the issue of adequate protection of the refugees. In particular, in promoting spontaneous repatriation or in dealing with a non-recognized entity, what is the allowable level of risk? Certainly UNHCR must err on the side of caution and not risk the refugees lives. Moreover, does any other organization have the right to take greater risks? Spontaneous repatriation where the refugees have full knowledge of conditions and risks might be one way out of this dilemma. However, it is crucial that spontaneous repatriations be carefully examined for elements of coercion or danger. It is conceivable that spontaneous returnees could be relying on false or self-serving information, perhaps from a liberation movement wanting the return of its 'people', or be returning in haste without due consideration of the risks. Overall, the guiding principle ought to be respect for the wishes of the refugees, but the responsibility to protect them cannot be thereby abdicated.

There are many other issues concerning voluntary repatriation, such as the impact of assistance and the triggers to return, which cannot be covered in this short chapter but

which urgently need further study.

CONCLUSION

Voluntary repatriation is the durable solution least effectively promoted by the international community. Many disputes are too political to allow any humanitarian agency, such as UNHCR, to play a significant role. Often parties use refugees politically to score points on a territorial or Cold War rival who can be criticized as a persecutor. Sometimes refugees are used in connection with guerrillas to prevent a rival from consolidating a victory as in Nicaragua, Kampuchea and Afghanistan.

Voluntary repatriation has to be promoted in a charged political atmosphere of distrust and conflicting interests. Historically, voluntary repatriation is not easy to arrange, but it is possible.

While being a refugee should be a temporary state of affairs, there is a real danger of refugee situations and the problems of refugees becoming institutionalized and of people remaining refugees forever. The foremost challenge facing the international community today is to reverse this trend.³⁰

A glimmer of hope in this situation is the fact that many refugees, against great odds, spontaneously repatriate. Spontaneous repatriation is occurring on a large scale with little international understanding or assistance. It needs to be promoted, assisted and augmented without violating the fundamental principles of voluntary and safe return that are present in most organized returns. There is an opportunity here to assist many refugees to find their own durable solution.

FOOTNOTES

1. A durable solution involves the integration of the refugees into a society either through settlement in their land of asylum, resettlement in a third country, or re-integration in their homeland by means of repatriation.
2. Sir John Hope Simpson, The Refugee Problem: Report of a Survey (London: Oxford University Press, 1939).
3. United Nations High Commissioner For Refugees, Note on International Protection. Executive Committee, Thirty-sixth sess., (A/AC.96/660) July, 1985. Emphasis added.
4. Barry N. Stein, 'Durable Solutions for Developing Country Refugees,' International Migration Review, XX(2), Summer, 1986.
5. G. J. L. Coles, 'Voluntary Repatriation: Recent Developments,' Yearbook 1985 (San Remo: International Institute of Humanitarian Law, 1985). Emphasis added.
6. Poul Hartling, 'Opening Statement' to Meeting of Experts on Refugee Aid and Development, Mont Pelerin, Switzerland, 29 August 1983.
7. United Nations High Commissioner For Refugees, Note on International Protection. Executive Committee, Thirty-seventh sess., (A/AC.96/680) July, 1986.
8. United Nations High Commissioner For Refugees, UNHCR Activities Financed by Voluntary Funds: Report for 1985-86 and Proposed Programmes and Budget for 1987: Part I. Review of Developments in UNHCR Activities Relating to Assistance, Durable Solutions and Refugee Aid and Development, and Summary of Decisions Required. Executive Committee, Thirty-seventh sess., (A/AC.96/677 (Part I)) 1986. Hereafter cited as: UNHCR, UNHCR Activities, 1986.
9. The Chadian (25,000) return and the Ugandan (84,000) return from Rwanda were spontaneous.
10. U. S., Department of State, World Refugee Report, A Report Submitted to the Congress as Part of the Consultations on FY 1987 Refugee Admissions to the United States (Washington, D.C.: Bureau for Refugee Programs, 1986).
11. G. J. L. Coles, Voluntary Repatriation: A Background Study, [for Round Table on Voluntary Repatriation, San Remo: International Institute of Humanitarian Law] (Geneva: UNHCR, July, 1985).
12. UNHCR, UNHCR Activities, 1986, op. cit., 8.
13. United Nations High Commissioner For Refugees, Durable Solutions, Executive Committee, Thirty-sixth sess., (A/AC.96/663) July, 1985.
14. Jeff Crisp, 'Refugee Repatriation: New Pressures and Problems,' Migration World, XIV(5) 1987.
15. Tom Brennan, Refugees From Mozambique: Shattered Land, Fragile Asylum, U.S. Committee for Refugees Issue Paper (New York: American Council for Nationalities Service, 1986).
16. United Nations High Commissioner For Refugees, 'Mission to Mozambique (12 to 22 January 1987),' First Draft, Technical Support Services, TSS Mission Report 87/02, 1987.

17. U. S., Department of State, op. cit.
18. Ibid.
19. Washington Post, 'Salvadoran Refugees are Taking Their Hearts and Minds Home', Washington Post, 11 August 1986.
20. Gil Loescher, 'Humanitarianism and Politics in Central America,' Kellogg Institute, University of Notre Dame, Working Paper #86, November, 1986.
21. Refugees, 'Voluntary Repatriation: What are the Prospects?' Refugees, March, 1987.
22. Elizabeth Ferris, "Voluntary Repatriation - Central America," Refugees, no. 88E, September 1987.
23. The Mustard Seed, Newsletter of the Jesuit Refugee Service, Washington, D.C., 22, July 1987.
24. Atle Grahl-Madsen, The Status of Refugees in International Law, Vol. I: Refugee Character (Leyden: A.W. Sijthoff, 1966).
25. UNHCR, 'Mission to Mozambique', op. cit.
26. Some observers feel the organized repatriation from Djibouti was a forced, or, at least, a compelled repatriation. See n. 31, below.
27. UNHCR, UNHCR Activities, 1986, op. cit.
28. Universal Declaration of Human Rights, Article 13 (2).
29. Coles, Voluntary Repatriation: A Background Study, op. cit.
A bibliography--'Voluntary Repatriation for Refugees in Developing Countries: A Bibliographical Survey'--compiled by Jeff Crisp for the United Nations Research Institute for Social Development in early 1987 indicates that Coles' judgement is essentially correct.
30. Tala Skari, 'France: The Dilemma,' Refugees, March, 1987.
31. There were reports that the rations in the refugee camps in Bangladesh were insufficient and many excess deaths resulted. See Cato Aall, 'Disastrous International Relief Failure: A Report on Burmese Refugees in Bangladesh from May to December 1978,' Disasters, 3(4) 1979.
32. Coles, Voluntary Repatriation: A Background Study, op. cit.
33. J. Crisp, 'Voluntary Repatriation Programs for African Refugees: A Critical Examination', Refugee Issues, I/2, 1985.
34. United Nations High Commissioner For Refugees, Voluntary Repatriation, Executive Committee, Sub-committee of the Whole on International Protection, Thirty-sixth sess., (EC/SCP/41) August, 1985.
35. The Polisario Front governs the Sahrawi Arab Democratic Republic (SADR) which is recognized by over sixty-six countries and by the Organization of African Unity.
36. United Nations High Commissioner For Refugees, Note on International Protection, Executive Committee, Thirty-seventh sess., (A/AC.96/680) July, 1986.

BIBLIOGRAPHY

- Aall, Cato
'Disastrous International Relief Failure: A Report on Burmese Refugees in Bangladesh from May to December 1978,' Disasters, 3(4) 1979.
- Brennan, Tom
Refugees From Mozambique: Shattered Land, Fragile, Asylum. U.S. Committee for Refugees Issue Paper. (New York: American Council for Nationalities Service, 1986).
- Coles, G. J. L.
Voluntary Repatriation: A Background Study. (for Round Table on Voluntary Repatriation. San Remo: International Institute of Humanitarian Law, July.) - (Geneva: UNHCR, 1985).
- _____ 'Voluntary Repatriation: Recent Developments,' Yearbook 1985. (San Remo: International Institute of Humanitarian Law, 1985).
- Crisp, Jeff
'Voluntary Repatriation Programs for African Refugees: A Critical Examination', Refugee Issues, I/2, 1985.
- _____ 'Refugee Repatriation: New Pressures and Problems,' Migration World, XIV(5) 1987.
- _____ 'Voluntary Repatriation for Refugees in Developing Countries: A Bibliographical Survey,' United Nations Research Institute for Social Development, 1987.
- Department of State, U. S.
World Refugee Report. A Report Submitted to the Congress as Part of the Consultations on FY 1987 Refugee Admissions to the United States. (Washington, D.C.: Bureau for Refugee Programs, 1986).
- Ferris, Elizabeth
'Voluntary Repatriation - Central America,' Refugees, no. 88E, September 1987.
- Hartling, Poul
'Opening Statement' to Meeting of Experts on Refugee Aid and Development, Mont Pelerin, Switzerland, 29 August 1983.

- Grahl-Madsen, Atle
The Status of Refugees in International Law. I: Refugee Character. (Leyden: A.W. Sijthoff, 1966).
- Loescher, Gil
'Humanitarianism and Politics in Central America,' Kellogg Institute, University of Notre Dame, Working Paper #86, November, 1986.
- Refugees
'Voluntary Repatriation: What are the Prospects?' Refugees, March, 1987.
- Simpson, Sir John Hope
The Refugee Problem: Report of a Survey. (London: Oxford University Press, 1939).
- Skari, Tala
'France: The Dilemma,' Refugees, March, 1987.
- Stein, Barry N.
'Durable Solutions for Developing Country Refugees'. International Migration Review. XX(2), Summer, 1986.
- United Nations High Commissioner for Refugees [UNHCR]
Note on International Protection. Executive Committee, Thirty-sixth sess., (A/AC.96/660) July, 1985.
- _____ Voluntary Repatriation. Executive Committee, Subcommittee of the Whole on International Protection, Thirty-sixth sess., (EC/SCP/41) August, 1985.
- _____ Durable Solutions. Executive Committee, Thirty-sixth sess., (A/AC.96/663) July, 1985.
- _____ Note on International Protection. Executive Committee, Thirty-seventh sess., (A/AC.96/680) July, 1986
- _____ UNHCR Activities Financed by Voluntary Funds: Report for 1985-86 and Proposed Programmes and Budget for 1987: Part I. Review of Developments in UNHCR Activities Relating to Assistance, Durable Solutions and Refugee Aid and Development, and Summary of Decisions Required. Executive Committee, Thirty-seventh sess., (A/AC.96/677 (Part I)) 1986.
- _____ 'Mission to Mozambique (12 to 22 January 1987),' First Draft, Technical Support Services, TSS Mission Report 87/02, 1987.
- Washington Post
'Salvadoran Refugees are Taking Their Hearts and Minds Home', Washington Post, August 11, 1986.