

THE UNITED NATIONS AND FUTURE REFUGEE CHALLENGES

PIERRE-MICHEL FONTAINE*

[This paper briefly examines the history of international efforts to protect refugees and prevent refugee flows, before turning to a more detailed examination of the changing nature of the world's refugee problem. In particular, the problem of internally displaced persons is discussed, gaps in the international mandate to deal with refugees are noted, and the importance of cooperation between the various bodies that work in this area is emphasised.]

We are today at the threshold of a new century, indeed of a new millennium, at the end of a century and millennium filled with violence and devastation on a large scale. The 20th century is giving way to the 21st and one millennium to another in about six years from now. History will soon record, for posterity, the achievements and failures of this era. For us, a time has therefore come when we should introspect, take stock of the past and prepare ourselves for the coming era.

The world has seen several remarkable trends emerge on the international scene. On the one hand, developments in science and technology, commerce and trade, have led to the evolution of newer methods and newer areas of cooperation amongst nations. On the other hand and at the same time, newer causes of friction have arisen both from within States and between them. The peaceful existence of States has been threatened by internal strife, the causes of which vary from ethnic differences to religious incompatibility, leading to discrimination and exclusion, terrorism and insurgency. In some countries, booming economies with their concomitant rises in per capita wealth stand in stark contrast with increasing populations and larger numbers of the poor. High-rise structures and well developed commercial structures contrast with a backdrop of ecological devastation. The finite availability of natural resources, particularly in the field of energy, has on occasions led to hostilities among nations. The thirst for power has led individuals and groups to oppress their fellow human beings.

The scene at the end of this century and this millennium is, therefore, in many quarters one of chaos and confusion. In this century, on the one hand, the issue of human rights has acquired a new dimension of relevance and become one of the standards by which state action is assessed. Yet ironically, in this same century, the world has witnessed some of the grossest and most severe violations of human rights. Since the creation of the United Nations in 1945, we

* Regional Representative United Nations High Commissioner for Refugees Regional Office for Australia, New Zealand and the South Pacific. The views and ideas contained in this paper do not necessarily reflect those of the UNHCR or of the United Nations system. The assistance of Arvind Gupta, UNHCR Legal Officer in Canberra, is gratefully acknowledged.

have experienced over 100 major conflicts which have produced millions of refugees. At the last count there were about 23 million refugees around the world. Even larger numbers have been displaced from their homes and regions within their own countries.

The concern for human life and human dignity, particularly of refugees, led to the creation of the United Nations High Commission for Refugees (UNHCR) in 1951. From 1921 until that time, the problem of refugees had been dealt with by a succession of agencies with limited mandates. Beginning with the Balkan wars of 1912-13, the turmoil of that period created mass movements of Greeks, Bulgarians and Turks, followed by Poles, Balts, ethnic Germans and Armenians. Welfare agencies were overwhelmed with the flood of people in need of assistance. In 1921, at the behest of the Red Cross, the League of Nations had appointed Fridtjof Nansen to the post of High Commissioner for Russian Refugees, but his mandate as indicated by his full title was to protect and assist the Russian refugees only. Gradually his mandate was expanded to cover refugees of other nationalities as well. The flow of refugees peaked in 1933, and in that year the League of Nations created a High Commissioner, who was independent of the Nansen Office, to deal with German refugees. By 1938 the League decided to deal with the global refugee problem under one specialised body and created the Office of the High Commissioner for Refugees. This Office had a mandate for five years only and had a very limited budget. Its work suffered seriously during the Second World War. Parallel to the High Commissioner's Office, the Intergovernmental Committee for Refugees (IGCR) was created in 1938 by States which were not members of the League of Nations. In 1947 the United Nations created a larger single body for dealing with the refugee problem and called it the International Refugee Organisation (IRO). In 1951 the IRO's functions were assumed by the UNHCR.¹

This short account of the evolution which led to the creation of the UNHCR was meant to show that the problem of refugee movements has been growing in magnitude since the beginning of the 20th century. The global concern for refugees and their plight prompted the community of nations to devise ways to address the problem, albeit in an *ad hoc* manner. At the turn of the new century, the same concerns are as valid today as they were then. As Mr Michel Moussalli, the UNHCR's former Director of International Protection, wrote in 1991:

Today, as in the past, refugees are persons fleeing human rights violations, international armed conflict, serious internal disturbance or intolerable internal repression which severely prejudice their possibilities for a life in freedom and dignity.²

¹ Yefime Zarjevski, *A Future Preserved: International Assistance to Refugees* (1988) 5-17; Atle Grahl-Madsen, *The Emergent International Law Relating to Refugees: Past-Present-Future* (1985) 1-18.

² Michel Moussalli, 'International Protection: The Road Ahead' (1991) 3 *International Journal of Refugee Law* 606, 607.

While the concerns remain the same, the magnitude of the problem has grown. The scale of exodus causes large problems for all concerned. It is a massive problem for the host country that receives the refugees.³ For those who escaped their countries for refugee-related reasons, the problem is even worse. For the international community it is a problem of providing assistance both to the host government and to the refugees directly. The increasing burden is causing governments to strengthen border controls in an attempt to prevent such arrivals. The UNHCR has often had to work in conditions of scarce resources. The immediate response to refugee movements in Third World countries has been to establish camps and provide on-the-spot assistance in the form of housing, medical care, nutrition and education. In its role of protection, the UNHCR has had to work closely with governments to find solutions to individual cases.

Finding a durable solution for refugees has not been an easy task. The most favoured solution, that of a refugee being able to return to his or her country of origin in safety and dignity, has been fraught with difficulties due to an absence of material means, or a sense of State responsibility, or both, on the part of the country of origin.

The problem of refugees is growing. Available resources in the UNHCR are inadequate to meet the growing challenge. The exodus of refugees and displaced persons is taking place over shorter periods of time. Instead of slower and longer-term assistance action, the UNHCR has been called upon to respond in the emergency mode. The end of the century has thus seen a change both in the nature of the problem of refugees and in the kind of action required on the part of the UNHCR. As was recently noted:

Whether it be meeting 'winterization' needs, providing humanitarian assistance in the midst of conflict, or undertaking liaison relationships with United Nations peacekeeping forces, UNHCR's programmes have had to address an increasing variety of circumstances. This includes concerted efforts to promote voluntary repatriation in the midst of situations of fragile peace.⁴

All this has brought into stark relief the fact that neither the UNHCR, nor any other United Nations agency, has a mandate to protect and/or assist internally displaced persons. The General Assembly or the Secretary-General of the United Nations has charged the UNHCR with this responsibility on an *ad hoc* basis. In an earlier period, in fact, the General Assembly had to adopt similar resolutions to enable the UNHCR to extend its protection and/or assistance even to internationally displaced persons and other persons in refugee-like situations who did not fall under the extant refugee definition.⁵

³ An aspect of this burden that is seldom recognised is its ecological dimension. See K Ghimire, 'Refugees and Deforestation' (1994) 32 *International Migration* 561.

⁴ Arthur Helton, 'UNHCR and Protection in the 90s' (1994) 6 *International Journal of Refugee Law* 1, 1.

⁵ See General Assembly Resolutions: GA Res 1167, 12 UN GAOR (723rd plen mtg), UN Doc A/Res/1167 (1957) relating to the Chinese refugees in Hong Kong where the UNHCR was authorised to use its good offices in dealing with refugees both within the mandate and those who are

The foregoing should not of course obscure the fact that there have been some real success stories in recent years, including the resolution or near resolution of long-standing refugee problems in various parts of the world. The most spectacular cases have been Namibia, South Africa, Ethiopia, Malawi and even Mozambique, and perhaps soon Angola in Africa; Cambodia, Laos and Vietnam in Southeast Asia; and the Central American countries. One could also cite the Afghanistan countryside, in spite of the continuing chaos in Kabul. It is important to remember that things are not getting worse everywhere. Nonetheless, new and more devastating refugee and internal displacement situations have emerged in the post Cold-War era which threaten to continue into the 21st century and need to be confronted.

I CHANGING FOCUS

As the problem changes its complexion, it is becoming imperative to look deeper into its causes. Often real solutions can be worked out only with a fuller understanding of the root causes of the problem. The age-old adage of prevention being better than cure applies in today's context with great force. Finding ways to avoid problems that have yet to manifest themselves is perhaps less costly than dealing with complex problems once they have arisen. As an agency of the United Nations' system, the UNHCR's future aims are set in the overall context of the larger role of the United Nations itself. Dr Boutros Boutros-Ghali, Secretary-General of the United Nations, identified these aims in his 1992 report to the United Nations as follows:

- i. To seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results;
- ii. Where conflict erupts, to engage in peacemaking aimed at resolving the issues that have led to conflict;

beneficiaries of the good offices of the UNHCR; GA Res 1671, 16 UN GAOR (1081st plen mtg), UN Doc A/Res/1671 (1961) extending the UNHCR's good offices to Angolan refugees in Congo; GA Res 1673, 16 UN GAOR (1081st plen mtg), UN Doc A/Res/1673 (1961) where the good offices work of the UNHCR was commended and he was asked to continue the work; GA Res 1784, 17 UN GAOR (1187th plen mtg), UN Doc A/Res/1784 (1962) reaffirming the role of the UNHCR in relation to Chinese refugees in Hong Kong; GA Res 2958, 27 UN GAOR (2107th plen mtg), UN Doc A/Res/2958 (1972) relating to the rehabilitation of Sudanese refugees returning from abroad (in terms of ECOSOC resolutions 1655(LII) and 1705(LIII)); GA Res 3453, 30 UN GAOR (2433rd plen mtg), UN Doc A/Res/3453 (1975) reaffirmed the entirely humanitarian character of UNHCR's activities in relation to refugees and displaced persons; and GA Res 3455, 30 UN GAOR (2433rd plen mtg), UN Doc A/Res/3455 (1975) relating to humanitarian aid to the Indo-Chinese displaced persons. Some of the Economic and Social Council (ECOSOC) Resolutions relating to the subject are: ESC Res 1655(LII) (1816th plen mtg, 1 June 1972) concerning assistance in the relief, rehabilitation and resettlement of Sudanese refugees; ESC Res 1705(LIII) (1835th plen mtg, 27 July 1972) regarding assistance to Southern Sudanese refugees returning from abroad; ESC Res 1741(LIV) (1854th plen mtg, 4 May 1973) with respect to assistance to Southern Sudanese returnees and displaced persons; ESC Res 1799(LV) (1874th plen mtg, 30 July 1973) on the same subject; ESC Res 1877(LVII) (1915th plen mtg, 16 July 1974) on the same subject; and ESC Res 2011(LXI) (2028th plen mtg, 2 August 1976) reaffirming the eminently humanitarian character of UNHCR activities for the benefit of refugees and displaced persons.

- iii. Through peace-keeping, to work to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the peace-makers;
- iv. To stand ready to assist in peace-building in its differing contexts: rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war;
- v. And in the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression. It is possible to discern an increasingly common moral perception that spans the world's nations and peoples, and which is finding expression in international laws, many owing their genesis to the work of this Organisation.⁶

As can be seen from this statement, the focus has shifted, and in my view rightly so, from an almost exclusive emphasis on assistance to refugees after their departure from their country of origin to prevention of crisis and disaster within the country of origin; from operations dealing with manifest crisis to peacemaking operations; from mere assistance at time of breakdown of the peace to peacebuilding. Thus, a more pro-active role is foreseen for all agencies within the United Nations system within the scope of their own particular mandates and in terms of their cooperation with each other to achieve these aims.

II IMPLICATIONS FOR THE UNHCR

What does this entail for the UNHCR? It implies, at the very minimum, an adaptation of the scope of the UNHCR's functions which, technically, are limited by the mandate given by the General Assembly to the UNHCR under its Statute, which is to provide international protection to refugees and seek permanent solutions to their problems. It implies going beyond the classical 'outside the country of origin' parameters and going 'into' the country of origin and coming to grips with a situation which may potentially produce refugees. It implies a far greater challenge to the notion of sovereignty of the State. It implies a capability to diffuse tension and act as a safety valve to prevent a disaster. Legally speaking, however, can the UNHCR undertake such a changed and enlarged role and responsibility? Given the limitations of the mandate, the answer, perhaps, is in the negative.⁷ However, historically, as stated above, examples exist where the United Nations has, by special resolution, entrusted tasks to the UNHCR which would not strictly fall within the scope of its mandate. A particular gap is the limitation on the kind of people who fall within the mandate of the High Commissioner. Of special consideration are

⁶ Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*, UN Doc A/47/277, S/24111 (1992) 7-8.

⁷ The mandate of the UNHCR is contained in the Statute of the Office of the United Nations High Commissioner for Refugees (paras 6A and 6B). See GA Res 428(v), UN Doc A/Res/428 (1950). It applies only to persons who are 'outside their country of origin', thus effectively restricting the operation of the UNHCR to those persons who have been able to leave their countries and have sought refuge elsewhere.

persons who are not refugees under the UNHCR mandate or the 1951 Convention relating to the Status of Refugees, but are internally displaced persons for reasons similar to those affecting refugees:

The new emphasis on preventive diplomacy and early humanitarian action implicate the situation of internally displaced persons. The vast magnitude of the population in need of assistance and protection, along with a new emphasis on work in countries of origin and prevention of the causes of refugee flight, underscore the need for a new conceptual framework.⁸

Until now, as indicated above, the problems of these displaced persons have been brought within the competence of the UNHCR by special General Assembly resolutions or Secretary-General requests on a 'case-by-case basis' and 'under specific circumstances'.⁹ There are those who argue, therefore, that a much wider scope of competence for the UNHCR is needed in order to deal effectively with problems of persons who are in refugee-like situations but are not, strictly-speaking, refugees. Therefore, they argue, in the changing world scenario, there is need for a fresh look at the UNHCR mandate itself. Perhaps the scope of the mandate, in this view, needs enlargement by an amendment in order to provide the UNHCR with the capacity to respond to impending crisis in a concerted way, in cooperation with the other organs and agencies of the United Nations family. An alternative approach would be a special General Assembly resolution to empower the UNHCR towards the same goal, for the time being, as was done with regard to stateless persons in two General Assembly resolutions of 1974 and 1976.¹⁰ These gave special directives to the UNHCR to deal with the problems of stateless persons in the terms of the 1961 Convention on the Reduction of Statelessness.¹¹ There is still another option, namely the creation of a special United Nations agency with a specific mandate designed to achieve these goals. Whichever option prevails, there will have to be an emphasis on preventive action. What does preventive action mean? How can it be undertaken?

III CRISIS AND DISASTER PREVENTION

Prevention is a tri-level proposition. It involves the following:

- a) *preventing tensions and confrontations from arising*: preventing State action from being arbitrary, discriminatory or persecutory against its citizens or other people on its territory;

⁸ Helton, above n 4, 3.

⁹ GA Res 48/135.

¹⁰ GA Res 3274, UN Doc A/Res/29/3274 (1974); GA Res 36, 31 UN GAOR (83rd plen mtg), UN Doc A/Res/31/36 (1976).

¹¹ Convention on the Reduction of Statelessness, opened for signature 30 August 1961, UN Doc A/CONF 9/15.

- b) *preventing existing tensions and confrontations from escalating into conflict and exodus*: preventing arbitrary, discriminatory or persecutory State action from increasing to such an extent as to cause exodus of refugees or displacement of people; and
- c) *limiting the spread of conflicts when they occur*: ending or containing arbitrary, discriminatory or persecutory State action within limits so as to make a peaceful resolution of the conflicts possible.

Beyond these levels, the refugee problem manifests itself and goes beyond resolution at the country of origin level. The problem then has to be dealt with at the reception end and entails the operation of the UNHCR in a classical fashion. A prevention strategy includes various approaches which will be explored below.

A *Promotion of Human Rights*

An important contributor to the prevention of refugee-producing situations is a State's commitment to respecting the human rights of its people, with a special sensitivity to those of minorities (ethnic, religious, social or linguistic). The current High Commissioner, Ms Sadako Ogata, has observed that:

human rights concerns go to the essence of the cause of refugee movements, as well as to the precepts of refugee protection and the solution of refugee problems....The heart of refugee protection - asylum and non-refoulement - stems from the basic right of all individuals to seek and enjoy asylum from persecution, as clearly embodied in the 1948 Universal Declaration of Human Rights.¹²

Respect for human rights imposes limitations upon State action, but contributes to establishing the legitimacy of the State in the eyes of the population. Confidence in the State and its welfare action for the people goes a long way in preventing refugee flows. It is essential, therefore, that there be wide-based education in human rights undertaken by all agencies whose concern is human rights. There has to be active and extensive promotion of human rights. More than that, States must be held accountable for the protection of the rights of their citizens. The concept of State responsibility needs to be developed to encompass such accountability, including the obligation to pay compensation to citizens forced to become refugees.¹³

B *Development of International Norms Relating to the Internally Displaced*

The increasing problem of internally displaced persons has brought to light the need to develop a set of new norms, rules, principles or laws to help deal with them. However, existing norms of human rights and humanitarian law

¹² UNHCR, *Statement of Sadako Ogata, United Nations High Commissioner for Refugees, to the 51st Session of the United Nations Commission on Human Rights, 7 February 1995.*

¹³ See Luke Lee, 'The Declaration of Principles of International Law on Compensation to Refugees: Its Significance and Implications' (1993) 6 *Journal of Refugee Studies* 65.

should not be overlooked. They need to be examined in order to determine their applicability, and how to adapt them to the needs of the internally displaced to ensure their safety and dignity. Quite clearly, while a positive effort has been made, albeit in an *ad hoc* manner, to deal with the internally displaced, the time is ripe for new institutional developments and fresh legal thinking in order to establish a more effective and efficient mechanism to deal with this growing problem. The appointment of a Representative of the Secretary-General on Internally Displaced Persons was a first step in that direction. The Representative of the Secretary-General, Mr Francis Deng, does the preliminary work of gathering information, identifying legal standards, institutional mechanisms and other capacities applicable to the internally displaced, as well as examining strategies, especially those of a preventive nature, related to addressing the root causes of forced displacement. As the Representative of the Secretary-General put it:

The goal would be to develop a doctrine of protection specifically tailored to the needs of the internally displaced. This requires first a compilation/commentary of the existing norms and a further elaboration of the relevant standards (in the form, for instance, of a code of conduct) and eventually a declaration or other authoritative document.¹⁴

Keeping in view the gravity of the problem, the need to afford protection/assistance to the internally displaced and the existing norms of international refugee law, in 1993 the UNHCR formulated criteria for its involvement with internally displaced persons. The UNHCR specified primary and supplemental responsibility, respectively, in the following situations:

- (a) Situations of internal displacement where there is a direct link with the UNHCR's activities under its basic mandate to protect refugees and seek solutions to refugee problems, including:
 - (i) those where internally displaced populations are mingled with groups of returnees or are in areas to which refugees are expected to return; or
 - (ii) those where the same causes have produced both displacement and refugee flows or there is a significant risk of cross-border movement of some or all of the internally displaced.

In these situations, the UNHCR will favourably consider assuming primary responsibility for the internally displaced, assessing in each case the benefits of its involvement in terms of protection and solutions as well as the need for assistance and protection.

- (b) Other situations where the link with mandated UNHCR activities is not present or is less direct. In these situations, the UNHCR may nevertheless consider involvement to relieve the causes of internal displacement and to

¹⁴ United Nations Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr Francis Deng*, UN Doc E/CN4/1994/44, 28; see UN Doc E/CN4/1995/CRP.1 (1995) and E/CN4/1995/50 (1995). For an analysis of the relevant legal and institutional framework, see Richard Plender, 'The Legal Basis of International Jurisdiction to Act with Regard to the Internally Displaced' (1994) 6 *International Journal of Refugee Law* 345.

contribute to conflict resolution through humanitarian action, but UNHCR activities would normally be supplementary to the humanitarian efforts of other international organisations.¹⁵

The General Assembly has reiterated its support for the UNHCR's involvement with internally displaced persons.¹⁶

An attempt is clearly visible, on the part of international agencies concerned with refugees and displaced persons, particularly the UNHCR, to find ways to reach the internally displaced. A link is being drawn between activities relating to persons to whom the competence of the High Commissioner extends, and those relating to persons not falling within that competence. Where the two categories are intermingled, the UNHCR is willing to assume *primary responsibility* for protection and assistance. In other cases, however, where the link does not exist, the UNHCR will assume *secondary responsibility* and undertake activities supplemental to those of other humanitarian organisations.

C Cross-Border Operations Aimed at the Internally Displaced and Other Affected Groups

The increasing recognition of the fact that internally displaced persons are as much in need of international protection as persons outside their country of origin has led to the adoption of responses on the part of the UNHCR and concerned bodies which have hitherto been seen as beyond the scope of such agencies. During the Iraqi invasion of Kuwait in April 1991, 1.7 million Kurds fled their homes. Half a million of them were trapped at the Turkish border with no possibility of asylum. The Security Council took an unprecedented stand and adopted Resolution 688 which linked human rights violations to threats to international peace and security.¹⁷ The resolution prompted the Coalition forces to intervene and create a 'safety zone' in northern Iraq for providing relief to all those who could not obtain asylum in Turkey. The legal restriction against providing assistance to people who have not crossed the border of their country of origin was overcome by the High Commissioner's interpretation of the term 'border' not in legal terms as a 'dividing line', but pragmatically as an 'area in which there was no Iraqi sovereign authority willing or able to assist the people.' This made it possible to extend assistance to those who had been judged to be in need of international protection. The consent for this action was given by Iraq later after a memorandum of understanding was signed between Iraq and the United Nations.

In the former Yugoslavia in 1991, the UNHCR was requested by the then Yugoslav government and the Secretary-General to assist and protect persons

¹⁵ UNHCR, *Note on International Protection*, UN Doc A/AC.96/815 (1993) 46.

¹⁶ GA Res 116, 48 UN GAOR (85th plen mtg), UN Doc A/Res/48/116 (1993).

¹⁷ SC Res 688, 46 UN SCOR (2982nd mtg), UN Doc S/Res/46/688 (1991). The full text of the resolution is reprinted at (1991) 3 *International Journal of Refugee Law* 357. For an analysis of the advantages and pitfalls of this approach see Christopher Tiso, 'Safe Haven Refugee Programs: A Method of Combating International Refugee Crises' (1994) 8 *Georgetown Immigration Law Journal* 575.

displaced by the war in Croatia. Following the independence of Croatia, the UNHCR was involved not only in helping internally displaced persons, but also refugees who crossed the newly-formed borders. In 1992 when the fighting spread to Bosnia-Herzegovina, the UNHCR found itself, for the first time, working in the midst of a war, not only for refugees and displaced persons, but also for the besieged population.

It can therefore be seen from the above that an expanding role is being foreseen for humanitarian agencies, including the UNHCR. The major conflicts in these times have shown the futility of distinguishing between refugees, displaced persons and other non-combatants caught in internal conflicts when all affected population are in need of humanitarian assistance. In future, therefore, such operations will have to be refined and put on a stronger legal and material basis to meet the most emergent of concerns, namely the protection of all people caught in conflict situations. The UNHCR does not have such a mandate. It will have to be developed by the international community.

D *The Future of Asylum*

With regard to the people properly under the UNHCR's mandate, and notwithstanding the UNHCR's *ad hoc* activities on behalf of the internally displaced, the issue of asylum remains a central preoccupation. In recent years, however, States have tightened border controls to prohibit, as far as possible, people from coming to their doors and seeking asylum. Strict visa requirements, border controls and immigration laws have made it more difficult to access asylum.¹⁸ There is, however, a need to remember that every individual has the right to seek asylum from persecution. It is incumbent upon States to maintain an attitude of generosity and willingness to grant asylum to those in need. After all, the right to seek asylum is a human right proclaimed by Article 14 of the Universal Declaration of Human Rights (1948).¹⁹ A peremptory norm is that of *non-refoulement*. Article 33 of the 1951 Convention Relating to the Status of Refugees²⁰ prohibits the return of refugees (*refoulement*) by a State to a country in which his or her life or freedom is threatened for reasons of race, religion, nationality, political opinions, or membership of a particular social group. States are expected to abide by this peremptory norm and therefore to protect refugees until a durable solution is found for the person concerned.

E *Temporary Protection*

The concept of 'temporary protection' had already taken shape in the context of persons fleeing Croatia in 1991. In July 1992 the UNHCR formally requested

¹⁸ Morten Kjaerum, 'Temporary Protection in Europe in the 1990s' (1994) 6 *International Journal of Refugee Law* 444.

¹⁹ GA Res 217A, 3 UN GAOR 135, UN Doc A/810 (1948).

²⁰ Convention Relating to the Status of Refugees, opened for signature July 28 1951, 189 UNTS 137 (entered into force 1954).

States to extend temporary protection to persons who were in need of international protection as a result of the conflict and human rights abuses in the former Yugoslavia.

The grant of temporary protection is a recognition of the need for concerted international action in the spirit of humanitarian burden-sharing and solidarity in the face of a recognised humanitarian need. It ensures international protection on an emergency basis for people involved in large-scale movements, while favouring their eventual return home as the most desirable solution. Even prior to the events in the former Yugoslavia, the grant of temporary protection had been discussed and used, *inter alia*, in connection with the Vietnamese refugees in Hong Kong, Thailand and elsewhere in South-East Asia, with Afghan refugees in Pakistan and Iran, and with Iranian refugees in Turkey. The expectation inherent in the grant of temporary protection is that it will be only of short duration and that conditions permitting the refugees to return home in safety and dignity may be attained within a reasonable period of time.²¹

While temporary protection is not a part of the international law relating to refugees as yet, there is a growing practice to that effect amongst States receiving large numbers of refugees. The usefulness of the concept is now being considered by all concerned, and its application is being promoted in contexts beyond the former Yugoslavia in comparable large-scale displacements resulting from armed conflicts and/or massive human rights abuses as a component of any comprehensive measures taken to deal with emergencies and crises.

Already in 1980, the Executive Committee of the UNHCR (EXCOM) adopted a conclusion on temporary refuge in which the principle of *non-refoulement* was reaffirmed in the case of large-scale influx of asylum-seekers in the following terms:

in the case of large scale influx, persons seeking asylum should always receive at least temporary protection; and ... States which, because of their geographical situation or otherwise, are faced with a large-scale influx, should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with the principle of equitable burden sharing.²²

F *Securing Cooperation of Other Agencies and Organisations as well as Influential States*

While the UNHCR remains the body primarily responsible for refugees, the problems of refugees has also been the direct concern of other international bodies and agencies. In the Rwandan crisis, apart from the UNHCR, other United Nations' agencies, international organisations and Non-Government Organisations (NGOs) from all over the world contributed their own special resources and expertise to assist in alleviating, in a concerted way, the plight of

²¹ Kjaerum, above n 18, 448.

²² UNHCR, *Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme* (1994), Conclusion No 19(XXX) 1980, 414.

the refugees. A number of NGOs operate with the UNHCR as implementing partners of its assistance programs. All concerned have to work in tandem and avoid being at cross purposes. Cooperation is the key to the success of the humanitarian programs. A unified effort is needed to resolve a conflict of common concern towards the agreed goals of peace, safety and dignity for those affected. The UNHCR has taken the lead in the area of enhanced cooperation with NGOs by undertaking in cooperation with the International Council of Voluntary Agencies (ICVA) a program called Partnership in Action (PARINAC) which involved a series of practically-oriented regional consultations with NGOs culminating in a world conference in Oslo in June 1994. The recommendations adopted in Oslo are now being implemented and reassessed through a new series of regional consultations with NGOs.

The High Commissioner has put in concrete terms the issue of inter-agency cooperation for the internally displaced:

The magnitude of the problem (of internal displacement) far exceeds the capacity and resources of any single agency. It calls for a comprehensive and concerted effort of the United Nations and other humanitarian organisations.²³

In 1992 an effort was made to develop a more effective response to the assistance and protection needs of the internally displaced. The Inter-Agency Standing Committee (IASC), chaired by the Emergency Relief Coordinator, created an Inter-Agency Task Force on Internally Displaced Persons. This Task Force has been holding discussions on the designation of responsibility for internally displaced persons as well as for more effective and comprehensive coordination among international agencies. In 1994 the IASC approved a recommendation of its Task Force to the effect that the Emergency Relief Coordinator serve as the reference point in the United Nations System to receive requests for assistance and protection on actual or developing situations of internally displaced persons, that require a coordinated international response.²⁴

1 *Powerful and Influential States*

In shifting its focus to *prevention*, the UNHCR will have to solicit cooperation of several influential actors, namely other United Nations agencies, the principal organs of the United Nations, other international organisations, States and NGOs. *States* are influential by virtue of factors such as size, military capability, economic strength, common defence, common ethnic, linguistic, social, religious, or political composition or origin. For a State to influence another, however, it does not have to be powerful in terms of its weapons capability or prowess in war. A small nation could well influence a larger nation due to its economic and trade potential. It is this influence that the UNHCR will have to elicit from the influential States as a tool in preventive diplomacy. Likewise, a

²³ UNHCR, *Statement by the United Nations High Commissioner for Refugees to the World Conference on Human Rights*, Vienna, 15 June 1994.

²⁴ United Nations Commission on Human Rights, above n 13.

strengthening of the role of the General Assembly, the Security Council and the Economic and Social Council can only be helpful.

2 The Cooperation of States

While the UNHCR has to draw upon reserve resources in emergencies, and has to rely on donations to meet the exigencies of the situation, a greater involvement of individual States in assisting refugees can help reduce the burden. In the context of the Rwandan crisis, many countries offered what is called a 'service package scheme'. This is a set of integrated services provided by one country. In other words, in the spirit of burden sharing, the country concerned undertakes a set of tasks and provides a set of assistance-related services leaving others concerned in the crisis to concentrate more effectively on the remaining issues of the crisis. This kind of service package reduces the requirements of urgent fund raising, mobilisation of staff (personnel) and provision of infrastructure, depending upon the kind of services undertaken by the country offering the service package.

3 The Principal Organs and Other Bodies of the United Nations

The power of the veto in the Security Council of the United Nations has been widely criticised over the years, but it is not likely to be abolished in the foreseeable future. Peacekeeping and peacemaking operations require that the United Nations be given the power to meet the challenge created by the breakdown of peace. In recent decades, the world has seen more and more peacekeeping operations being undertaken by the United Nations (in Somalia, in Kuwait, in former Yugoslavia, etc). The burden is on the principal organs of the United Nations, in particular the Security Council, to provide leadership and resources for the prevention of crises leading to the production of refugees and displaced persons. However, this role is not limited to the principal organs. Success on the part of the human rights machinery of the United Nations, such as the Committee on Human Rights and the Human Rights Commission, will also go a long way toward relieving flows of refugees and internally displaced persons.

4 Economic Agencies of the United Nations System and the Bretton Woods Institutions

The economic agencies of the United Nations have proved influential over States, especially among developing countries. Where the UNHCR's role extends to assisting the reintegration of returned refugees in their countries of origin and in the future role of trying to nip the potential problem in the bud, and where the country of origin concerned shows a willingness to cooperate, the economic agencies of the United Nations and the Bretton Woods institutions (World Bank and International Monetary Fund) could assist with their financial force in ensuring the economic foundations for peace. Even more importantly, they have a significant preventative role in removing the economic causes of internal conflict.

5 *Other United Nations Bodies and International Organisations*

The need for a concerted and unified effort on the part of all the agencies of the United Nations has been stressed earlier in this paper, first to prevent an emergency or crisis from arising, and second in dealing with the crisis when it occurs. While all agencies of the United Nations have their own special fields of activity and responsibility it is essential that all of them come together in a common United Nations effort to deal with crises of refugees and displaced persons. The role of the Inter-Agency Standing Committee (IASC) will become more pivotal under its leader, the Emergency Relief Coordinator, in responding to a crisis. In General Assembly Resolution 48/57 the strengthening of the coordination of humanitarian emergency assistance of the United Nations has been stressed. It has been recognised that there is need for relevant development organisations to strengthen their capacities to implement rehabilitation, and in particular basic infrastructure programs. In addition, there is a need to promote consideration of issues relating to the continuum from emergency relief to rehabilitation and development in appropriate development forums.²⁵

In recognising this major and important role of the United Nations family, the Executive Committee of the UNHCR had, at its 45th regular session, requested the UNHCR, in accordance with the conclusions on agenda item 2(a) of the coordination segment of the Economic and Social Council (ECOSOC) 1993, to continue to cooperate fully, within the framework of the Inter-Agency Standing Committee and with the Department of Humanitarian Affairs. It was also requested to cooperate with UNICEF, UNDP, WFP and other funds, agencies and programs of the United Nations system, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, the International Organisation for Migration and NGOs.²⁶

In line with this focus on Inter-Agency cooperation, UNHCR has already set in motion its machinery to enter into operations-oriented arrangements with the other agencies in the United Nations system. In the future the United Nations system is expected to work less and less as distinct agencies and more and more as a unified response to human suffering, with all its resources and expertise in all its fields of work.

6 *Regional Organisations/Associations for Cooperation*

As with the United Nations, regional cooperative organisations and associations have also developed their own mechanisms for dealing with internal peace-keeping. The Organisation of African Unity, the Organisation of American States, the North Atlantic Treaty Organisation and the Association of Southeast Asian Nations, are all examples of influential regional cooperative organisations. Some of them need technical, financial and other support to

²⁵ GA Res 57, 48 UN GAOR (78th plen mtg), UN Doc A/Res/48/57 (1993).

²⁶ Executive Committee of the High Commissioner's Programme, *Report of the Forty-fifth session of the Executive Committee of the High Commissioner's Programme, Forty-fourth session*, UN Doc A/AC.96/821 (1993) para 29(u).

enhance their capabilities in the political, economic and humanitarian fields.²⁷ It is relevant in this context that Chapter VIII of the United Nations Charter provides for such regional initiatives in the area of peace and security.

7 *Regional Arrangements*

Increasingly States are resorting to specific regional arrangements to solve international refugee problems. The Comprehensive Plan of Action on Indochinese Refugees, adopted in 1989 was designed to deal with the problem of Indo-Chinese refugees in South-East Asia.

There was commitment on the part of the host countries of first asylum to carry out refugee status determination of the asylum-seekers. There was commitment on the part of the other countries to resettle all those recognised as refugees. There was commitment on the part of the country of origin to take back their citizens who returned home voluntarily. The exercise brought together several NGOs who ran essential services for the asylum seekers. Thus, a package of arrangements was worked out which had the participation of the international community and has been monitored by a Steering Committee made up of interested States, including Australia, in an attempt to resolve a long-standing problem of Indo-Chinese refugees. Other examples are available elsewhere in the world. For example, the International Conference on Central American Refugees could well become precedent for the future. A more recent initiative in Africa is the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region.²⁸

IV CONCLUSION

The twenty-first century will begin with a mixed scenario of growing concern for human rights on the one hand and a growing picture of the complexity of refugee problems on the other. While much expertise has been developed by the UNHCR over the years of its existence and operation in dealing with such crises, there is a need for the world community now to act in unison to meet the challenges of emergencies around the world. Better still, a concerted effort should be made by all in order to ensure that crisis does not occur. Preventive action is the order of the day. The UNHCR has set into motion a series of efforts to ensure cooperation with all agencies of the United Nations and with NGOs. Regional agencies and organisations must come together to assist in the global effort. Human rights have to be better understood.

States recognising this larger proposition must come forth and accede to the 1951 Convention. National legislation has to be developed to conform to this international standard and enable States to respond to a call for emergency

²⁷ For a critical assessment of the OAU's involvement in African refugee situations see Joe Oloka-Onyangu, 'The Place and Role of the OAU Bureau for Refugees in the African Refugee Crisis' (1994) 6 *International Journal of Refugee Law* 34.

²⁸ See OAU/UNHCR, *Report on the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Regions, Bujumbura, Burundi* (1995).

assistance. In short, a full scale effort involving all concerned has to be devised in a pro-active manner to prevent a breach of the peace and to deter persecution and communal violence.

Needless to say, a restructuring of the international economic system is part and parcel of a global strategy of prevention. Even more crucial, but least appreciated, however, is the need for vision and leadership within the troubled countries themselves to help come to terms with their own demons. No amount of help from the United Nations or the rest of the international community can ultimately substitute for local leadership and self-help.