

Fact Sheet No.20, Human Rights and Refugees

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Introduction

The problem of the world's refugees and internally displaced is among the most complicated issues before the world community today. Much discussion is taking place at the United Nations as it continues to search for more effective ways to protect and assist these particularly vulnerable groups.

While some call for increased levels of cooperation and coordination among relief agencies, others point to gaps in international legislation and appeal for further standard-setting in this area. Everyone, however, agrees that the problem is both multidimensional and global. Any approach or solution would therefore have to be comprehensive and to address all aspects of the issue, from the causes of mass exodus to the elaboration of responses necessary to cover the range of refugee situations from emergencies to repatriation.

In this debate some facts remain beyond dispute. The first is that while some mass displacements may be preventable, none are voluntary. No one likes or chooses to be a refugee. Being a refugee means more than being an alien. It means living in exile and depending on others for such basic needs as food, clothing and shelter.

Information on the number of the world's refugees, their geographical distribution, and the causes of their exodus is generally available. Seen from a chronological perspective, this information suggests that the refugee problem has undergone drastic quantitative and qualitative changes in the past five decades.

Since its creation, the United Nations has worked to protect refugees around the world. In 1951, the year in which the Office of the United Nations High Commissioner for Refugees (UNHCR) was established, there were an estimated 1 million refugees within UNHCR's mandate. Today that number has grown to an estimated 17.5 million refugees, an additional 2.5 million refugees cared for by the United Nations Relief and Works Agency for Palestine refugees in the Near East (UNRWA) and more than 25 million internally displaced persons.

In 1951 most of the refugees were European. The majority of today's refugees are from Africa and Asia. Current refugee movements, unlike those of the past, increasingly take the form of mass exoduses rather than individual flights. Eighty per cent of today's refugees are women and children.

The causes of exodus have also multiplied and now include natural or ecological disasters and extreme poverty. As a result, many of today's refugees do not fit the definition contained in the Convention relating to the Status of Refugees. This refers to victims of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

The United Nations system has also been very concerned by the rise in the number of mass internal displacements in recent years. The "internally displaced" are persons who are forced to flee their homes but remain within the territory of their own country.⁽¹⁾ Since they remain inside their own countries, these persons are excluded from the present system of refugee protection. Most of the internally displaced populations are in developing countries and are composed largely of women and children. In some countries, the internally displaced make up more than 10 per cent of the population.

The refugee situation has become a classic example of the interdependence of the international community. It fully demonstrates how the problems of one country can have immediate consequences for other countries. It is also an example of interdependence between issues.

There is a clear relationship between the refugee problem and the issue of human rights. Violations of human rights are not only among the major causes of mass exoduses but also rule out the option of voluntary repatriation for as long as they persist. Violations of rights of minorities and ethnic conflicts are increasingly at the source of both mass exoduses and internal displacements.

Disregard for the minimum rights of refugees and internally displaced persons is another dimension of the relationship between the two issues. During the process of seeking asylum, a growing number of people are faced with restrictive measures which deny them access to safe territories. In some instances asylum-seekers and refugees are detained or forcibly returned to areas where their lives, liberty and security are threatened. Some are attacked by armed groups, or recruited into armed forces and forced to fight for one side or the other in civil conflicts. Asylum-seekers and refugees are also victims of racist aggression.

Refugees have rights which should be respected prior to, during, and after the process of seeking asylum. Respect for human rights is a necessary condition for both preventing and resolving today's refugee flows. In the words of the United Nations High Commissioner for Refugees, Sadako Ogata, "[the refugee issue must be put to all governments and peoples as a test of their commitment to human rights".

The United Nations and refugees

Revolutionary technological developments in transportation and communications have led to the mass flows of people, goods and information across frontiers throughout the twentieth century.

However, not all human movements of the century have been voluntary. Modern technology has also brought about the development of weapons of mass destruction. As a result, violence has become the greatest factor in instigating involuntary departures from homelands. Two World Wars, and some 130 armed conflicts since 1945 have given rise to millions of mass displacements and exoduses in the world.

Those who drafted the Charter of the United Nations had in mind the painful memories of generalized violence and mass sufferings and called upon its signatories to save succeeding generations from the scourge of war". They asked the United Nations to help achieve "international cooperation in solving international problems of an economic, social, cultural, or humanitarian character" and to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

One of the first issues on the agenda of the United Nations was the fate of refugees, displaced persons, stateless persons and "returnees," all uprooted by war and in need of assistance. The problem was clearly both international and humanitarian.

International Refugee Organization

At its second session in the latter part of 1946, the General Assembly established the International Refugee Organization (IRO). The Organization took over the tasks of the United Nations Relief and Rehabilitation Agency (UNRRA). It received a temporary mandate to register, protect, resettle, and repatriate refugees.

The refugees came from some 30 countries mainly Eastern European. From July 1947 to January 1952, the IRO helped to resettle over 1million refugees in third countries, repatriated 73,000, and made arrangements for 410,000 who remained displaced in their home countries.

As a result of post-war political tensions, IRO operations were both controversial and inadequately funded. Only 18 of the 54 member States contributed to the budget of the Organization. In addition, the cost of financing operations was rapidly increasing and by 1951 had reached US\$ 400 million.

It soon became evident that the responsibility for refugees deserved further international effort under the auspices of the United Nations itself. Consequently, discussions about the establishment of a successor organization began long before the expiration of IRO's mandate.

United Nations High Commissioner for Refugees (UNHCR)

In its resolution 319 A (IV) of 3 December 1949, the General Assembly decided to establish the Office of the United Nations High Commissioner for Refugees. The Office was set up as a subsidiary organ of the General Assembly on 1January 1951, initially for a period of three years.

The mandate of UNHCR has since been routinely extended for successive periods of five years and the current term ends on 31 December 1993. It now cares for over 17 million refugees around the world. The Office is located at Geneva, Switzerland, and is represented in over 100 different countries. In 1991 it had a staff of about 2,300 persons and an overall expenditure, under general and special programmes, of some US\$ 862.5 million.

According, to article 1of the Statute of the Office, the main task of the High Commissioner is to provide international protection to refugees and to seek durable solutions for refugees by assisting Governments to facilitate the voluntary repatriation of refugees, or their integration within new national communities. The High Commissioner's function is qualified as "entirely non-political" and "humanitarian and social."

In fulfilling its protection function, the tasks of the High Commissioner as set out in the Statute, include:

- (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments;
- (b) Promoting measures to improve the situation of refugees and to reduce the number requiring protection;
- (c) Assisting efforts to promote voluntary repatriation or assimilation within new national communities;
- (d) Promoting the admission of refugees to the territories of States;
- (e) Facilitating the transfer of the assets of refugees; obtaining from Governments information concerning the number and conditions of refugees in their territories, and the relevant laws and regulations;
- (f) Keeping in close touch with Governments and intergovernmental organizations;
- (g) Establishing contact with private organizations dealingwith refugee questions;
- (i) Facilitating the coordination of private efforts.

Protection tasks have diversified even further over the years since the drafting of the Statute.

International refugee law

A number of international instruments establish and define basic standards for the treatment of refugees. The most important are the 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol relating to the Status of Refugees.

The 1951 Convention relating to the Status of Refugees

The 1951 Convention, which was drafted as a result of a recommendation by the newly established United Nations Commission on Human Rights, was a landmark in setting standards for the treatment of refugees.

The Convention, in its article 1, provides a general definition of the term "refugee". The term applies to any person who "as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling, to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

The Convention sets the minimum standards of treatment of refugees, including the basic rights to which they are entitled. It also establishes the juridical status of refugees and contains provisions on their rights to gainful employment and welfare, on the issue of identity papers and travel documents, on the applicability of fiscal charges, and on their right to transfer their assets to another country where they have been admitted for the purposes of resettlement.

The Convention prohibits the expulsion or forcible return of persons having refugee status. Its article 33 stipulates that "no Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Article 34 concerns the naturalization and assimilation of refugees. Other provisions deal with such rights as access to courts, education, social security, housing and freedom of movement.

1967 Protocol relating to the Status of Refugees

The 1951 Convention could benefit only persons who had become refugees as a result of events occurring prior to 1 January 1951. However, the years following 1951 showed that refugee movements were not merely the temporary results of the Second World War and its aftermath.

Throughout the late 1950s and 1960s new refugee groups emerged, in particular in Africa. These refugees were in need of protection which could not be granted to them under the limited time-frame of the 1951 Convention.

The 1967 Protocol extended the application of the Convention to the situation of "new refugees", i.e. persons who, while meeting the Convention definition, had become refugees as a result of events that took place after 1 January 1951.

As of 1 April 1992, 111 States were party to the 1951 Convention and/or the 1967 Protocol.

Other international instruments

Other Conventions and Declarations, some of which are mentioned below, contain provisions which may be relevant to refugees.

The 1949 *Fourth Geneva Convention Relative to the Protection of Civilian Persons in time of War*: article 44 of this Convention, whose aim is the protection of civilian victims, deals with refugees and displaced persons. Article 73 of the 1977 *Additional Protocol* stipulates that refugees and stateless persons shall be protected persons under parts I and III of the Fourth Geneva Convention.

The *1954 Convention relating to the Status of Stateless Persons*: defines the term "stateless person" as a person who is not considered as a national by any State under the operation of its law. It further prescribes the standards of treatment to be accorded to stateless persons.

The *1961 Convention on the Reduction of Statelessness*: a State party to this Convention agrees to grant its nationality to a person born in its territory who would otherwise be stateless. The State also agrees, subject to certain conditions, not to deprive a person of his nationality if such deprivation would render him stateless. The Convention specifies that a person or groups of persons shall not be deprived of their nationality on racial, ethnic, religious or political grounds.

The *1967 United Nations Declaration on Territorial Asylum*: this Declaration of the United Nations General Assembly lays down a series of fundamental principles in regard to territorial asylum. It states that the granting of territorial asylum "is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State." It upholds the basic humanitarian principle of non-refoulement and recalls articles 13 and 14 of the Universal Declaration of Human Rights, which spell out, respectively, the right to leave any country and to return to one's country and the right to seek and enjoy asylum.

Regional instruments

Africa

The growing number of refugees fleeing wars and internal conflicts in Africa, starting in the late 1950s, led to the adoption of what is generally considered the most comprehensive and significant regional treaty dealing with refugees. The Organization of African Unity, on 10 September 1969, adopted the OAU Convention governing the specific aspects of refugee problems in Africa. The primary importance of this Convention is its expanded definition of the term refugee. African States felt that "well-founded fear of persecution" was not sufficiently wide a criterion to cover all the refugee situations in Africa.

The second paragraph of article 1 of the African Convention provides that "the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality".

The OAU Convention complements rather than duplicates the 1951 Convention. Apart from the broad refugee definition, the OAU Convention regulates the question of asylum (art. II). It also contains important provisions on voluntary repatriation (art. V) and on the prohibition of subversive activities by refugees (art. III).

As of February 1992, the OAU Convention had been ratified by 42 States.

Europe

The Council of Europe has adopted several instruments concerning refugees. Some of the most important are:

- (a) European Agreement on the Abolition of Visas for Refugees (1959);
- (b) Resolution 14 (1967) on Asylum to Persons in Danger of Persecution;
- (c) European Agreement on Transfer of Responsibility for Refugees (1980);
- (d) Recommendation on the Harmonization of National Procedures Relating to Asylum (1981);
- (e) Recommendation on the Protection of Persons Satisfying the criteria in the Geneva Convention who are not Formally Refugees (1984);

(f) Dublin Convention (1990), which lays down criteria for determining which member State is responsible for examining an asylum request when the applicant has filed an application for asylum with one or more member States of the Community.

European Conventions on extradition and social security also contain provisions on refugees. Other instruments concluded by European Community member States are listed below.

Latin America

Latin America has a long tradition of asylum. The Montevideo Treaty on International Criminal Law, signed in 1889, was the first regional instrument which dealt with asylum. It was followed by the Caracas Convention on Territorial Asylum, signed in 1954, and other instruments on asylum.

In the 1980s, the outbreak of civil strife in Central America resulted in massive exoduses of close to a million persons, posing serious economic and social problems for the countries towards which this massive flow was directed.

In 1984, these "host" countries adopted the Cartagena Declaration on Refugees which laid down the legal foundations for the treatment of Central American refugees, including the principle of non refoulement, the importance of integrating refugees and undertaking efforts to eradicate the causes of the refugee problem.

The definition of "refugee" in the Declaration is similar to that of the OAU Convention-including, as it does "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" (part III, para. 3).

The Cartagena Declaration is not binding on States. It is, however, applied in practice by a number of Latin American States and, in some cases, has been incorporated into domestic legislation.

Human rights and refugees

Asylum seekers and refugees are entitled to all the rights and fundamental freedoms that are spelled out in international human rights instruments. The protection of the refugee must therefore be seen in the broader context of the protection of human rights. The creation by States, in the aftermath of the Second World War, of two separate organizations to deal with human rights and refugees respectively, does not mean that these issues are not interrelated.

The work of the United Nations in the field of human rights and that of the High Commissioner for Refugees is inextricably linked in the sense that both entities share a common purpose which is the safeguarding of human dignity. The human rights programme of the United Nations deals with the rights of individuals in the territory of States. The refugee organization was established in order to restore minimum rights to persons after they leave their countries of origin.

The substantive link between human rights and refugees raises several questions:

In the first place, who is a refugee and what are his or her rights under international law? What are the rights of those asylum seekers who fail to qualify as refugees under the 1951 Convention and the 1967 Protocol? How can refugees be distinguished from economic migrants? Can the international community deny protection to those who claim not to receive protection from their country of origin?

Moreover, what exactly is the link between violations of human rights and movements of refugees? To what extent are those violations the causes of mass exoduses? In what ways can the rights of refugees be violated in the process of asylum-seeking in host countries?

Finally, what is the relationship between repatriation and human rights? Can repatriation be truly voluntary when the country of origin is unable, or unwilling, to guarantee respect for the civil, political, economic, social and cultural rights of its citizens?

Rights of refugees

The present concept of international protection has evolved gradually and today implies a series of institutional and legal responses. Protecting refugees and seeking durable solutions to their problems are the two main functions of the High Commissioner for Refugees.

In practical terms, the task of international protection includes the prevention of refoulement, assistance in the processing of asylum seekers, providing legal counsel and aid, promoting arrangements for the physical safety of refugees, promoting and assisting voluntary repatriation, and helping refugees to resettle (article 8 of the Statute of the Office of the UNHCR).

Thus, the international protection function has a legal basis, and its exercise is mandatory for the High Commissioner. The right to protection, although not defined as a separate right as such, is implicit in the 1951 Convention and its fundamental provisions, particularly the principle of non-refoulement.

In addition, many universally recognized human rights are directly applicable to refugees. These include the right to life, protection from torture and ill-treatment, the right to a nationality, the right to freedom of movement, the right to leave any country, including one's own, and to return to one's country, and the right not to be forcibly returned.

These rights are affirmed, among other civil, political, economic, social and cultural rights, for all persons, citizens and non-citizens alike, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights which together make up the International Bill of Human Rights.

(a) "*No one shall be subject to arbitrary arrest, detention or exile*" (Universal Declaration of Human Rights, article 9);

(b) "*Everyone has the right to seek and to enjoy in other countries asylum from persecution.*" (Universal Declaration of Human Rights, article 14);

(c) "*Everyone has the right to a nationality*" (Universal Declaration of Human Rights, article 15);

(d) "*Everyone has the right to freedom of movement and residence within the borders of each State*" (Universal Declaration of Human rights, article 13; International Covenant on Civil and Political Rights, article 12).

Non-refoulement

Not all of the important rights for refugees are mentioned specifically in the International Bill of Human Rights. A central element of international protection is the right not to be forcibly returned or expelled to a situation which would threaten one's life or freedom. This is the principle of non-refoulement which is embodied in article 33 of the 1951 Convention.

The principle of non-refoulement finds further expression in article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which stipulates that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (para. 1). Furthermore, "for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights" (para. 2).

Refugee or economic migrant?

Some countries contend that the majority of asylum seekers are in fact not refugees but economic migrants. Currently, only an estimated 10 to 20 per cent of asylum seekers are granted refugee status in these countries.

Contemporary refugee movements are different from those of the period immediately following the Second World War. Reasons for leaving are very often complex and not simply the result of immediate persecution. Persons flee because of civil conflicts, massive violations of their human rights, foreign aggression and occupation, poverty, famine, disease and ecological disasters. Many do not qualify as refugees on the basis of the United Nations definition.

In order to qualify, the person must be a "political" refugee. The 1951 Convention relating to the Status of Refugees places emphasis on "fear of persecution" but it does not define the term clearly. Its article 33 refers to threats to life and freedom of the individual "on account of his race, religion, nationality, membership of a particular social group or political opinion". This definition was drawn up in the context of the post-war years and does not correspond to many of today's refugee situations.

As a result some countries, especially in Africa and Latin America have expanded the definition of the term "refugee". In many other countries, however, the majority of applications for asylum are rejected on a strict reading of the 1951 definition.

From a human rights perspective, this situation raises great concern. It will not always be possible to distinguish, with certainty, between a refugee and an economic migrant. It may be argued that if the emphasis is placed on threats to life and freedom, there is little to distinguish between a person facing death through starvation and another threatened with arbitrary execution because of her political beliefs.

These considerations aside, the fact remains that regardless of whether a person is a refugee or an economic migrant, a citizen or a non-citizen, whether he or she is fleeing persecution, armed conflict, threats to his or her life or abject poverty, that person is entitled to minimum humanrights and minimum standards of treatment.

Violations of human rights and refugees

Violations of human rights as origins of mass exodus

Since 1980, both the United Nations General Assembly and the Commission on Human Rights have focused on ways to prevent mass exoduses. The Commission has included the question of human rights and mass exoduses in its agenda annually and in a number of resolutions it has emphasized the linkage between human rights violations and refugee movements. In recent years the Commission has also considered the plight of the internally displaced.

These two bodies, through various resolutions, have requested the Secretary-General to prepare reports on "International Cooperation to Avert New Flows of Refugees", appointed a Special Rapporteur to study the question of human rights and mass exoduses. and set up a 17 member Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees.

The Special Rapporteur presented his study⁽²⁾ to the thirty-eighth session of the Commission on Human Rights in 1982. According to the report, mass exoduses do not only cause human deprivation and misery, but also place increasingly heavy burdens on the international community. In the light of the changing nature of refugee problems, the three traditional solutions of voluntary repatriation, local settlement and resettlement continue to be viable but must also be supplemented by other approaches.

The Special Rapporteur highlighted the multiplicity and complexity of the origins of mass exoduses. He identified violations of human rights as a major cause of mass exoduses:

"It is abundantly clear that unless ways can be found to counteract the withholding, of, or outright violations of, human rights, unless there is a more equitable sharing of the world's resources, more restraint and tolerance, the granting to everyone, regardless of race, religion, membership of a particular social group or

political party, the right to belong or alternatively to move in an orderly fashion to seek work, decent living conditions and freedom from strife the world will continue to have to live with the problem of mass exodus. This problem, if left unchecked, will increasingly pose a threat to peace and stability around the globe.⁽³⁾

The final report of the Group of Governmental Experts⁽⁴⁾ also stressed the complex and often interrelated political, economic, social and natural causes of mass exoduses. In its recommendations, the Group proposed that the General Assembly call upon Member States to avert new massive flows of refugees by respecting the principles of the Charter, in particular by not resorting to the threat or use of force, by settling their disputes peacefully, by promoting human rights and refraining from creating conditions which could lead to massive flows of refugees, by cooperating with one another in order to prevent future flows of refugees, and by respecting international laws governing the treatment of refugees.

Following a recommendation by the Special Rapporteur in his report, the Secretary-General set up the Office for Research and the Collection of Information (ORCI) from 1987 to 1991. The Office served as a focal point for undertaking early warning activities to avert new and massive flows of refugees, for monitoring factors related to possible flows of refugees and displaced persons and comparable emergencies, as well as for preparing plans for possible responses. These functions are now being undertaken by the United Nations Department of Political Affairs.

Such activities are an important part of the new and comprehensive approaches being considered by the international community to prevent massive flows of refugees. Prevention requires dealing with the root causes of problems. There is now increasing focus on political and economic conditions of countries of origin of refugees, including internal and external conflict, violations of human rights and level of development and economic performance. These issues are all interrelated. States have repeatedly emphasized that human rights are interdependent and include not only civil and political rights, but also economic, social and cultural rights. Respect for all these rights is the necessary condition for the attainment of human development and the preservation of human dignity.

In addition to its work on preventing mass exoduses, the Commission on Human Rights has, in recent years, also considered the plight of the internally displaced. In 1992, a representative of the Secretary-General was appointed inter alia to gather information on the human rights issues related to internally displaced persons and to examine existing international human rights, humanitarian and refugee laws and standards and their applicability to internally displaced persons. The Representative's report was presented to the Commission the following year, at its forty-ninth session.⁽⁵⁾

The report recommended that a comprehensive mechanism be established within the international system to address the problems of displaced persons recognizing that the human rights aspect of this issue intersects with the humanitarian, the political and the economic dimensions. One important function of this mechanism would be the monitoring of situations with a view to detecting early signs of displacement. This early warning system could be the first step in a coordinated process aimed at ameliorating the suffering of displaced masses and averting further displacements.

Violations of rights of refugees

The international community has now recognized that human rights violations are a major cause of mass exoduses. While efforts continue to remedy the problem at its source, attention is turning to the difficulties that asylum-seekers encounter after they leave their countries of origin. Three issues are giving rise to concern. The first is the disturbing tendency to close doors to asylum-seekers. The second relates to violations of the minimum rights of asylum-seekers during the process of applying for asylum and also after refugee status has been granted. Intolerance, racism, xenophobia, aggression, national and ethnic tensions and conflicts are on the rise in many places and affect many groups, in particular asylum-seekers and refugees. The third issue is the persistence of human rights violations in countries of origin and the need to address those violations before refugees can be voluntarily repatriated.

Restrictive measures

There is a growing tendency to close doors to asylum-seekers. Some Governments, faced with an influx of asylum-seekers, economic migrants and illegal aliens, have introduced restrictive measures that hinder

access to their territories. These measures include complicated or burdensome visa requirements for nationals of some countries and fines imposed on airlines that carry undocumented aliens.

Ill-treatment of asylum-seekers

In some cases the minimum standards of treatment of asylum seekers are not respected. Inadequate refugee-determination procedures and refoulement at airports and borders cause enormous problems for some asylum-seekers. At times refoulement takes inhumane forms such as the forcible return of asylum-seekers to the countries of origin where their lives, liberties and security may be threatened. Boats of asylum-seekers have even been pushed back to sea to die of hunger or make an easy prey for pirates and sharks when they have attempted to land on certain shores.

Other examples of ill-treatment include physical assaults, the detention of asylum-seekers for extended periods and without legitimate reasons and harsh interrogation procedures. A Government may also fail to provide adequate protection to refugees and asylum-seekers- thereby exposing them to physical danger from racist and xenophobic aggression.

Denial of rights of asylum-seekers

The problems of asylum-seekers do not end when they finally cross borders and go through the first phase of seeking asylum, which, as mentioned above, often involves periods of detention and/or interrogation. While their application for asylum is being processed, and even after their refugee status has been determined, they may be confronted by numerous restrictions and obstacles.

In some instances refugees are confined to camps and refused access to courts and legal aid. Moreover, refugees may find themselves unable to obtain employment, own businesses or purchase land. In fact, in many cases where refugees are not forcibly returned they may feel compelled to leave owing to the degrading conditions of life to which they are subjected in host countries.

Violations of the rights to life, liberty and security

In some places refugees are regularly subjected to attacks and abuse. Many have died in military or armed attacks on refugee camps and settlements. Young males and minors are frequently recruited into armed or guerrilla bands and forced to fight in civil wars.

Attacks on refugee camps have been condemned by the United Nations General Assembly in numerous resolutions. The Commission on Human Rights has also been concerned with specific cases, such as attacks on Palestinian refugees in Lebanese camps and attacks on the Thai-Cambodian border. Refugee women and children are a particularly vulnerable group. The Convention on the Rights of the Child (1989) makes a specific provision for giving "appropriate protection and humanitarian assistance" (art. 22) to the refugee child. Women make up a large proportion of the world's refugee population. They are very frequently subjected to physical and sexual abuse in countries of refuge.

Refugees and xenophobic or racist aggression

There has been a marked increase in violent attacks against refugees and asylum-seekers in recent years. Today, refugees in some countries, where such phenomena have reached large proportions, live with the constant fear of physical assaults and threats to their lives and security.

Refugees, as a particularly vulnerable group of foreigners, often become the primary targets of racist hatred. Political debates in some countries have tended to blur all the issues that relate to foreigners. Asylum-seekers, refugees, economic migrants, immigrants and seasonal workers are often lumped together as foreigners.

The consequences have been threefold. First, the principles of protection and non-refoulement of refugees have been repeatedly violated. Secondly, the number of violent incidents perpetrated against refugees has increased. Thirdly, the refugee issue has come to be seen in political, rather than humanitarian terms and the lines between immigration policy and refugee policy have started to blur.

Violations of human rights and voluntary return

The final link between human rights and refugee problems lies in the issue of durable solutions. Article 1, paragraph C, of the Convention relating to the Status of Refugees stipulates that refugee status is not permanent and enumerates the conditions under which the Convention can cease to apply.

Exile is neither a durable nor a truly humanitarian solution for refugees. Exile, as a form of compelled separation from the homeland, is only a temporary respite. Repatriation, however, is feasible and humanitarian only when it is carried out on a voluntary basis and when it takes into account respect for the human rights of refugees.

As long as violations of human rights persist in countries of origin, it is doubtful whether any refugee would decide to return voluntarily. Hence, the restoration of respect for and the promotion of all categories of human rights and the cessation of violent conflict in countries of origin are the necessary conditions for the voluntary return of refugees.

Conclusions

The refugee problem continues to challenge the international community. While refugee-receiving States should maintain their commitment to the protection of refugees and encourage tolerance towards diversity, refugee-producing States have the duty to prevent acts that produce mass exoduses of their populations.

At the same time the world needs to reach an agreement on how best to prevent new flows of refugees. The root causes of these situations should be further studied and rectified. If poverty is the major cause of refugee flows, some solutions could be found in development aid or technical assistance. If human rights violations are the principal causes of mass exoduses, solutions may lie in continuous monitoring by United Nations human rights bodies, condemnation of violations by the international community and the appointment of Special Rapporteurs to study specific situations and to make suggestions. If violent conflicts are the causes of flows, solutions may be found in preventive diplomacy, in the promotion of mediation as the means to conflict resolution and in respect for provisions of humanitarian law.

At all times, however, the international community should be prepared to meet demands in cases of emergency. In this respect, the early warning system set up by the United Nations Secretary-General could be of immense value. It could play an important role in predicting which situations are likely to generate large numbers of refugees. A coordinated and system-wide response will always be the most effective way of dealing with emergencies.

Another new challenge is posed by the internally displaced, those who are unable to cross borders and reach a territory in which they could receive the protection and assistance which they desperately need. It is estimated that there are over 24 million internally displaced persons in the world. The situation of many of them is excruciating, as they are often forced to remain within combat zones, are undernourished and have no access to clean water or medical supplies. The internally displaced will perhaps constitute the greatest challenge for the international community in coming years.

Notes:

1. Analytical report of the Secretary-General on internally-displaced persons, document E/CN.4/1992/23, p. 4.
2. Document E/CN.4/1503.
3. Ibid., para.9.
4. Document A/41/324, annex.
5. Document E/CN.4/1993/35.

