
REFUGEES

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50TH ANNIVERSARY

THE WALL BEHIND WHICH REFUGEES CAN SHELTER

THE 1951 GENEVA CONVENTION



UNHCR
The UN Refugee Agency



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4 The international community adopted the 1951 Geneva Refugee Convention mainly in response to the atrocities committed in World War II and to help the millions of people uprooted by that conflict. Refugee crises spread around the world in the following decades.



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The Refugee Convention at 50...

When delegates from 26 countries as diverse as the United States, Israel and Iraq gathered in the elegant Swiss city of Geneva in 1951, they had some unfinished business to attend to.

World War II had long since ended, but hundreds of thousands of refugees still wandered aimlessly across



the European continent or squatted in makeshift camps. The international community had, on several occasions earlier in the century, established refugee organizations and approved refugee conventions, but legal protection and assistance remained rudimentary.

After more than three weeks of tough legal wrangling, delegates on 28 July adopted what has become known as the Magna Carta of international refugee law, the 1951 Convention relating to the Status of Refugees.

This resulting instrument was a legal compromise “conceived out of enlightened self-interest,” according to one expert. Governments refused to “sign a blank check” against the future, limiting the scope of the Convention mainly to refugees in Europe and to events occurring before 1 January 1951.

It was hoped the ‘refugee crisis’ could be cleared up

quickly. The United Nations High Commissioner for Refugees, the guardian of the Convention, which had been created shortly before, was given a three-year mandate and was then expected to ‘go out of business’ with the problem solved.

Fifty years later, the treaty remains a cornerstone of protection. There have been momentous achievements and changes along the way. Regional conventions were created in its image. Some provisions such as the definition of the term ‘refugee’ and the principle of non-forcible return of people to territories where they could face persecution (*non-refoulement*) have become fundamental international law. With the treaty’s help, UNHCR assisted an estimated 50 million people restart their lives.

The global crisis outgrew parts of the original document and a 1967 Protocol to the Convention eliminated the time constraints. Issues which the original delegates, all males, never even considered such as gender-based persecution became major problems.

This refugee world also became more crowded, with millions of refugees, economic migrants and others on the move. All of this, some critics argue, has made the Convention outdated and irrelevant.

On the 50th anniversary of its adoption, a lively debate is underway. British Prime Minister Tony Blair says though the treaty’s “values are timeless” it is now time to “stand back and consider its application in today’s world.” Many jurists say the Convention has shown extraordinary longevity and flexibility in meeting known and unforeseen challenges.

Whatever the outcome of these discussions, it is certain that millions of uprooted people will continue to rely on the Convention for their protection.

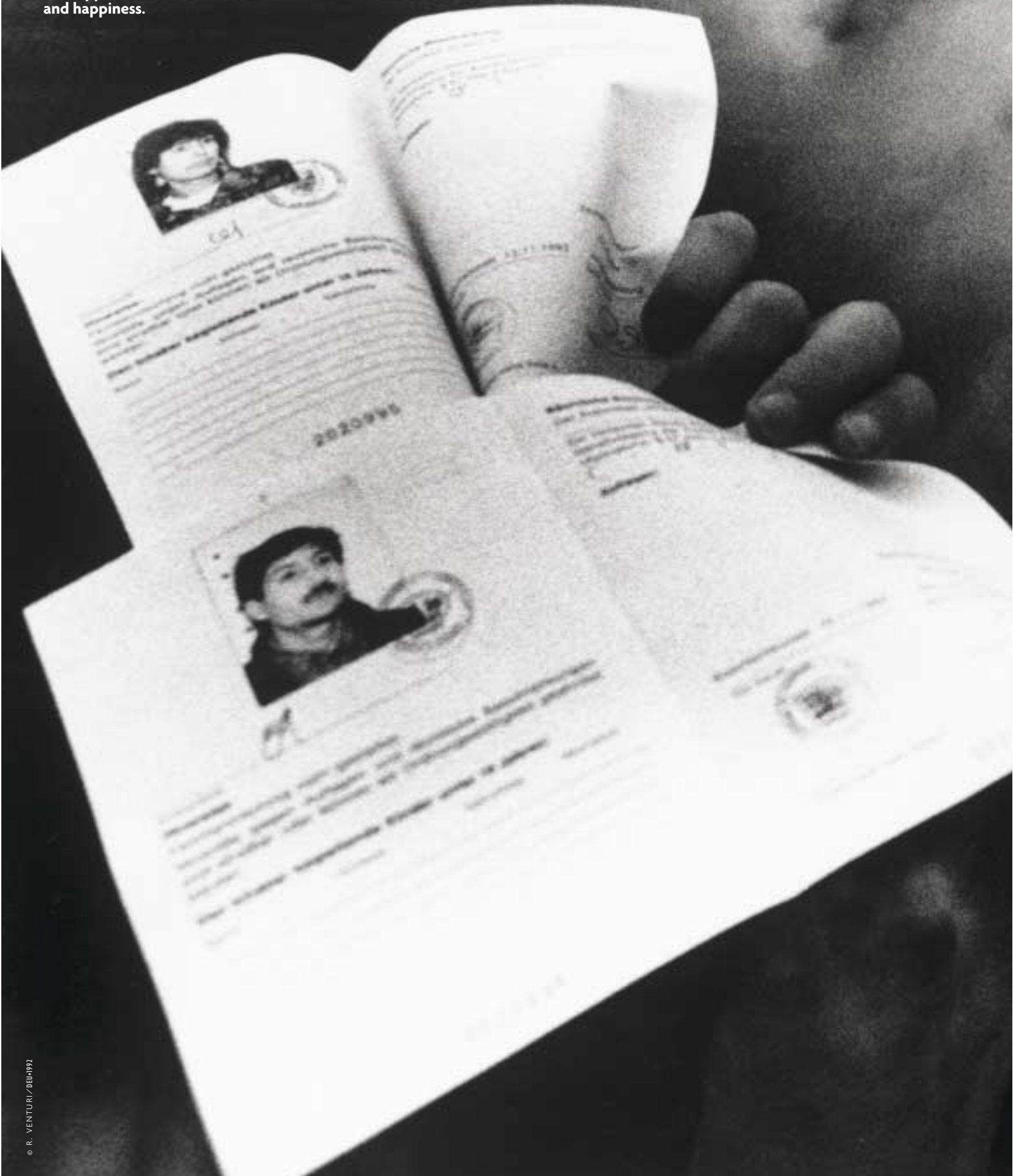


| COVER STORY |

A 'TIMELESS' TREATY UNDER ATTACK

The Geneva Refugee Convention is 50 years old. It has helped millions of the world's downtrodden, but faces continued criticism.

Protection: Travel or identity documents for refugees equal new opportunities and happiness.



▶ **A 'TIMELESS' TREATY UNDER ATTACK**

by Marilyn Achiron

The images were stark and shocking: in the heart of Europe, tens of thousands of people were fleeing terror and murder, inflicted by their own government, because of their ethnic background. Men, women and children, bundled in blankets and carrying whatever possessions they could fit into bags or, if they were lucky, broken down carts and rusting tractors, staggered into neighboring countries in search of safety.

These images were eerily reminiscent of an earlier era, though they were not in the grainy black-and-white of the mid-1940s; rather, they were in color and transmitted live into every TV-owning household around the world just two years ago from Kosovo and the Balkan region.

Five decades earlier the international community had faced a similar tragedy in the aftermath of World War II when millions of uprooted peoples wandered hungry and aimlessly through devastated landscapes and cities. In a spirit of empathy and humanitarianism, and with a hope that such widespread suffering might be averted in the future, nations came together in the stately Swiss city of Geneva and codified binding, international standards for the treatment of refugees and the obligations of countries towards them.

The resultant, groundbreaking, 1951 Convention relating to the Status of Refugees subsequently helped millions of



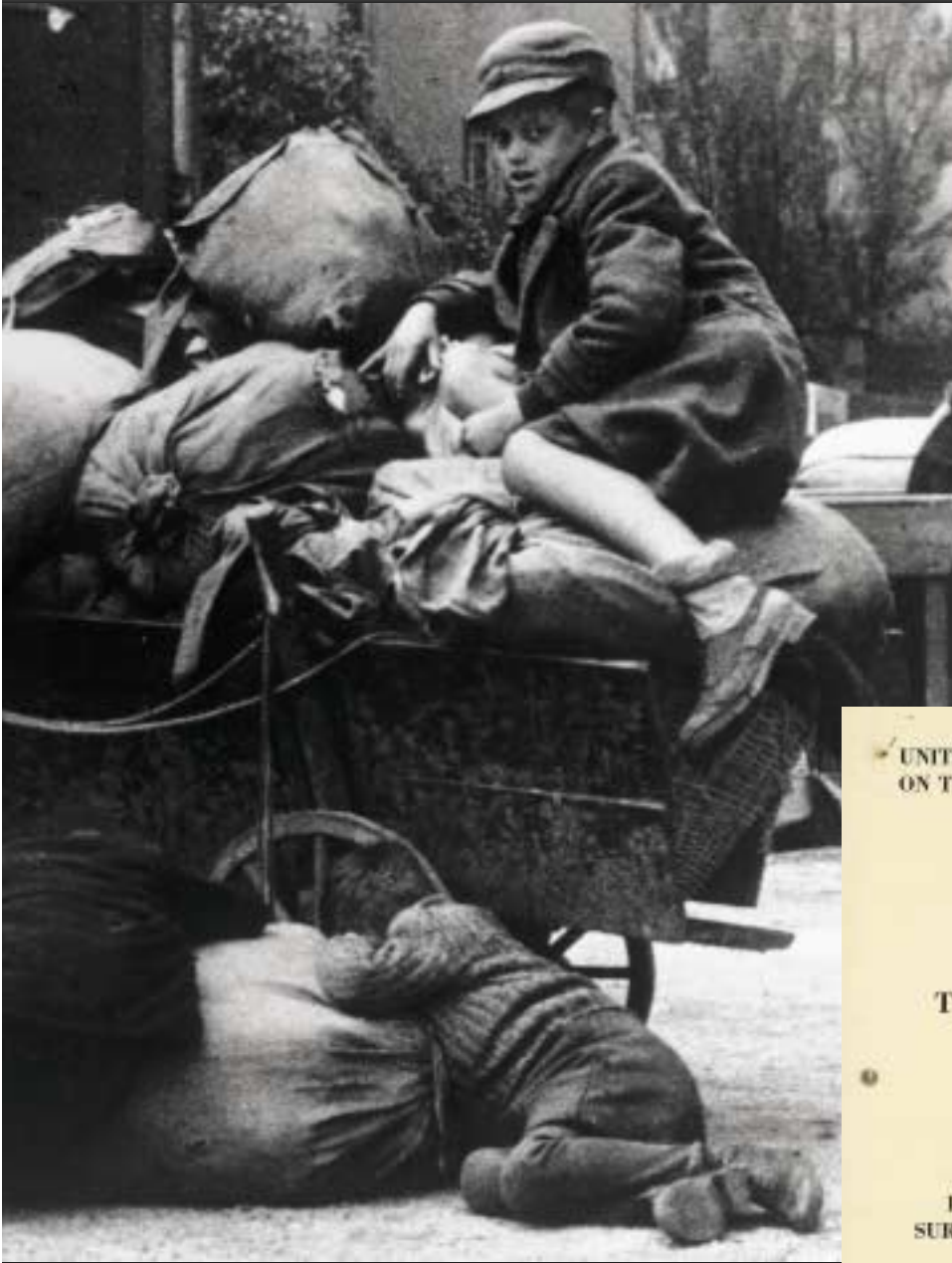
Scenes like this led to the 1951 Refugee Convention.

A REFUGEE IS A PERSON WITH A “WELL-FOUNDED FEAR OF BEING PERSECUTED FOR REASONS OF RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION...” Article 1A (2)

civilians to rebuild their lives and has become “the wall behind which refugees can shelter,” says Erika Feller, director of the Department of International Protection of the United Nations High Commissioner for Refugees (UNHCR). “It is the best we have, at the international level, to temper the behavior of states.”

But on the 50th anniversary of its adoption, the Convention is coming apart at the seams, according to some of the same capitals which had breathed life into the protection regime a half century ago. Crises such as Kosovo have multiplied, spilling millions of people into headlong flight in search of a safe haven. Intercontinental

travel has become easy and a burgeoning business in human trafficking has swelled the number of illegal immigrants. States say their asylum systems are being overwhelmed with this tangled mass of refugees and economic migrants and are urging a legal retrenchment. The Convention, they say, is outdated, unworkable



parties. Where it will all lead remains unclear.

DEVELOPING PROTECTION

People have fled persecution from the moment in earliest history when they began forming communities. A tradition of offering asylum began at almost the same time; and when nations began to develop an international conscience in the early 20th century, efforts to help refugees also went global. Fridtjof Nansen was appointed in 1921 as the first refugee High Commissioner of the League of Nations, the forerunner of the United Nations.

The United Nations Relief and Rehabilitation Agency (UNRRA) assisted seven million people during and after the Second World War and a third group, the International Refugee Organization (IRO),



and irrelevant.

The treaty’s “values are timeless,” British Prime Minister Tony Blair insisted recently. But he added that “with vastly increasing economic migration around the world and most especially in Europe, there is an obvious need to set proper rules and procedures... The United Kingdom is taking the lead in arguing for reform, not of the Convention’s values, but of how it operates.”

Ruud Lubbers, a former Dutch Prime Minister and recently appointed High Commissioner, has warned, however, that “many prosperous countries with strong economies complain about the large number of asylum seekers, but offer too little

to prevent refugee crises, like investing in conflict prevention, return, reintegration.” In Europe, he said, “It is a real problem that Europeans try to lessen obligations to refugees... In any case, no wall will be high enough to prevent people from coming.”

This debate is already taking place within the context of a series of meetings, termed ‘global consultations’, which UNHCR, as the guardian of the Convention, is holding with the 140 countries that have acceded to the original instrument and a subsequent Protocol, and other interested

created in 1946, resettled more than one million displaced Europeans around the world and helped 73,000 civilians to return to their former homes.

A body of refugee law also began to take root. The 1933 League of Nations’ Convention relating to the International Status of Refugees and the 1938 Convention concerning the Status of Refugees coming ▶



In the beginning: The Geneva Refugee Convention was adopted on 28 July 1951 and opened for signature.

► from Germany provided limited protection for uprooted peoples. The 1933 instrument, for instance, had introduced the notion that signatory states were obligated

Conspicuously absent, with the exception of Yugoslavia, was the Soviet-dominated communist bloc.

For three weeks, in the United Nations

European Office overlooking Lake Geneva, delegates hammered out a refugee bill of rights. It involved long and hard bargaining, interminable legal wrangling and a

“CONTRACTING STATES SHALL APPLY THE PROVISIONS OF THIS CONVENTION TO REFUGEES WITHOUT DISCRIMINATION...” Article 3

not to expel authorized refugees from their territories and to avoid “non-admittance [of refugees] at the frontier.” But that Convention lacked teeth: only eight countries ratified it, several of them after imposing substantial limitations on their obligations.

But none of these early refugee organizations were totally successful, legal protection remained rudimentary and leading members of the newly created United Nations, formed to “save succeeding generations from the scourge of war”, determined that a stronger refugee regime was necessary.

With nearly one million refugees still milling hopelessly around Europe long after the end of the war, UNHCR was created in 1950 and the following year the Refugee Convention, the major legal foundation on which UNHCR’s work is based, was adopted. The 26 participating countries were heavily western or liberal in orientation, though they were joined by other states such as Iraq, Egypt and Colombia.



After helping settle World War II era refugees, Hungary was the first major challenge for UNHCR and the Convention. An amputee in the mid-1950s waves good luck to fellow refugees in Austria.

constant eye cocked to protect the rights of sovereign states. “The modern system of refugee rights was... conceived out of enlightened self-interest,” James C. Hathaway, professor of law and director of the Program in Refugee and Asylum Law at the University of Michigan has written.

One heated debate was sparked over the refusal of some delegates to commit themselves to open-ended legal obligations. In elaborating one of the Convention’s core definitions—who could be considered a refugee—some countries favored a general description covering all future refugees. Others wanted to limit the definition to then existing categories of refugees.

In the end, inevitably, there was a compromise. A general definition emerged, based on a “well-founded fear of persecution” and limited to those who had become refugees “as a result of events occurring before 1 January 1951.”

This temporal limitation—and the option to impose a geographical limitation ►

The Convention: Britain's view

The need for debate is now

by Jack Straw

Man's inhumanity to man. A trite phrase, often quoted, but one that sums up the reason for the existence of the 1951 Refugee Convention. And 50 years later—50 years of torture, persecution, violence and human rights abuse—the Convention is as important as ever for protecting those who have no other source of protection.

It is a commonly repeated truth that in the 50 years since the signing of the 1951 instrument, the world has moved on. In a very real sense, the world is smaller than it was in 1951. Information travels between continents in seconds, and the technologies that enable this are becoming more and more accessible. All of us can benefit from the eclectic mixture of cultures which has resulted from globalization.

But just as we have become more aware of ways of life in other countries, so too have the inhabitants of developing countries become aware of the advantages of life in developed countries.

The complex set of technological, institutional, organizational, social and cultural changes, which are summed up in the term 'globalization' have created a world where the prospect of travelling many hundreds of miles to seek out a new life seems not an impossible dream, but rather an achievable reality.

So I can understand why so many people want to leave their own countries and settle in the United Kingdom and other developed countries, in the hope of achieving a better life for themselves and their families.

But they are not refugees. Our asylum processes were set up in order to administer the international protection afforded to refugees under the 1951 Convention. Those who are not truly refugees do nothing but harm by seeking to circum-

vent lawful immigration controls. It is in the interests of genuine refugees, as much as anyone else, for the United Kingdom and other countries to take strict measures to maintain the integrity of our asylum system

TAKING ACTION

With this in mind, we have taken action to improve the administration of our domestic asylum system. This has included speeding up the initial decision making and appeals process and reducing the backlog of undecided cases to its lowest level for a decade. There is much still to be done on the domestic front, but we have made a strong beginning to the process of putting our own house in order.

As well as looking at domestic systems, we need to look more generally at the international system of protection.

We need to reconsider the ways in which we seek to protect those genuinely in need. While developed countries such as the United Kingdom are devoting resources to dealing with applications for asylum, so many of which are unfounded, we are not paying enough attention to the large numbers of refugees who are living in their regions of origin in hardship, and sometimes in danger. But having recognized this, we need to do something about it.

Most genuine refugees want nothing more than an opportunity to return in safety and dignity to their homes. They do not wish to entrust themselves and their families to criminal traffickers and

agents but sometimes, mistakenly, think that is the only way of achieving their goals.

I have made some key proposals which focus on the importance of supporting refugees in their regions of origin, while helping the minority who cannot safely remain in those regions to gain access to the international protection regime. I also welcome the European Commission proposal to carry out a study of the feasibility of an EU resettlement program. These

proposals have received across Europe more support than I anticipated.

We have a long road to travel before we can achieve a protection regime which is genuinely fair and effective and not subverted by criminal traffickers. We can only properly make this journey through open and frank debate about these issues. This debate needs input from all interested parties; refugee producing countries, countries which host refugees, countries of first asylum, UNHCR

and other interested organizations.

In this 50th anniversary year, the time is right to have this debate. I am very glad that UNHCR has recognized this and acted upon it by instigating the global consultations exercise. The United Kingdom is keen to make a full contribution to the consultation exercise as part of a journey to a modern international protection regime. ■

JACK STRAW was, until recently, Britain's Home Secretary in charge of immigration and asylum issues. He is now Foreign Secretary.

“We have a long road to travel before we can achieve a protection regime which is genuinely fair and effective...”

► by interpreting the word ‘events’ to mean either ‘events occurring in Europe’ or ‘events occurring in Europe or elsewhere’—was incorporated because the drafters felt “it would be difficult for governments to sign a blank check and to undertake obligations towards future refugees, the origin and number of which would be unknown.”

Arguably the Convention’s most important provision—the obligation by governments not to expel or return (*refouler*) an asylum seeker to a territory where (s)he faced persecution—was also fought over at length. Diplomats questioned whether *non-refoulement* applied to persons who had not yet entered a country and, thus, whether governments were under any obligation to allow large numbers of persons claiming refugee status to cross their frontiers.

Though the principle of *non-refoulement* is now generally recognized as so basic it is considered part of customary law, the particular debate continues. In a controversial 1993 decision, the United States Supreme Court concluded that immigration officials did not strictly contravene the Convention when they seized and

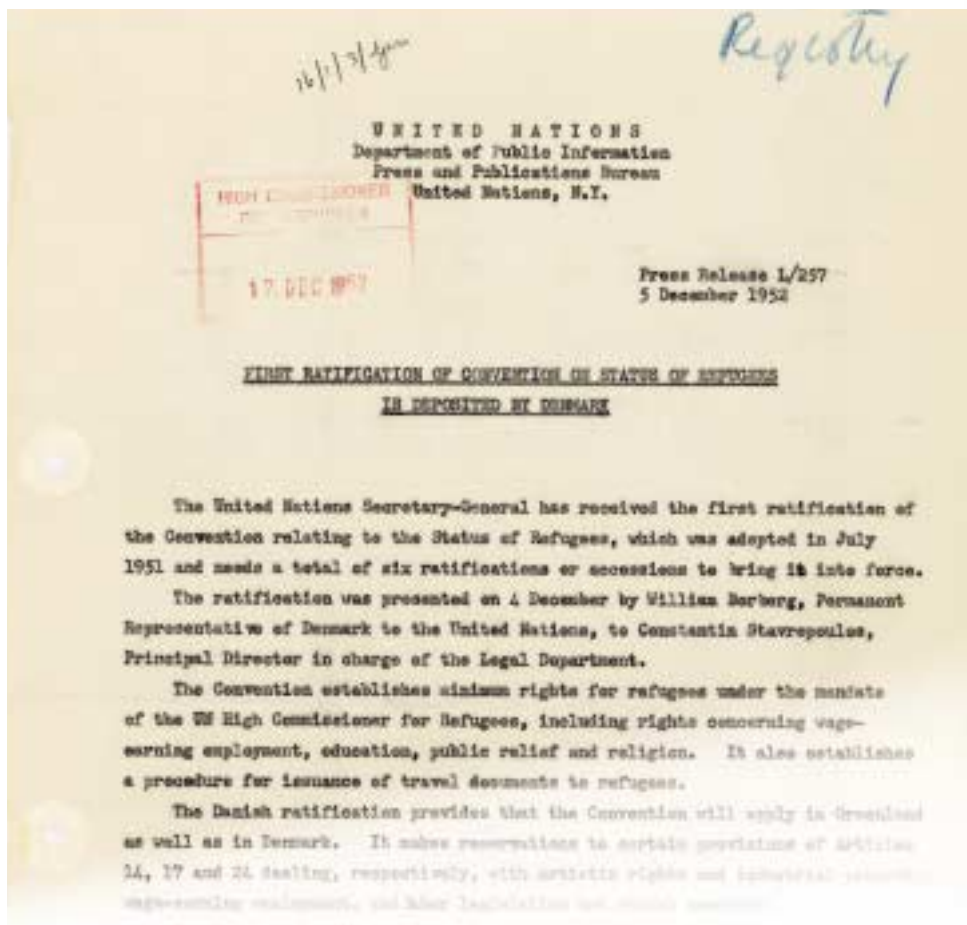
repatriated boatloads of Haitian asylum seekers in waters outside U.S. territory. But in the type of intricate legal opinion that might baffle anyone but a lawyer, the Supreme Court also acknowledged that the Convention’s drafters “may not have contemplated that any nation would gather fleeing refugees and return them to the one country they had desperately sought to escape; such actions may even violate the spirit of Article 33”, which forbids forcible return.

The conference ended on 25 July 1951 and the Convention was formally adopted three days later, but much hard work still lay ahead. There was interminable fine tuning and hard bargaining. As late as 1959, UNHCR’s representative in Greece cabled Geneva in despair: “I doubt whether I have ever in my life asked so many times the most different persons for one and the same thing as I have pressed in Greece for the ratification of the Convention. Still the prospects are not brilliant.”

In a letter to UNHCR in 1956, India outlined its domestic refugee concerns and concluded, “In view of this, the government of India do not propose to become a party to the above mentioned Convention



One of the key provisions of the Convention is



for the present.” India, the second most populous country in the world, has still not acceded to the Convention, though it is, ironically perhaps, a member of UNHCR’s Executive Committee, which helps establish global refugee policy.

Despite the hiccups and hesitations, in December 1952, Denmark became the first country to ratify the Convention. After five additional states—Norway, Belgium, Luxembourg, the Federal Republic of Germany and Australia—had also acceded, the Convention officially came into force on 22 April 1954.

For the first time, there was a global instrument that represented a major improvement on pre-World War II treaties



is *non-refoulement* or the non-forcible return of people to conditions such as these in Central Africa in the mid-1990s.

and advanced international law in several important ways.

The 1951 Convention contains a more general definition of the term refugee and it accords them a broader range of rights. Influenced by the 1933 Refugee Conven-

tion and the 1948 Universal Declaration of Human Rights, the 1951 instrument allows refugees the freedom to practice religion and provide religious education to their children, access to courts, elementary education and public assistance. In the field of housing and jobs, a refugee should be treated at least as favorably as other nationals of a foreign country.

Conversely, the Convention also spelled out the obligations of refugees toward host countries. "Too often, the refugee was far

covered by its provisions in its 'exclusion clause' (people who commit war crimes, for instance) and when the Convention ceases to apply in its cessation clauses.

For the first time it created a formal link between the treaty and an international

"A REFUGEE SHALL HAVE FREE ACCESS TO THE COURTS OF LAW..." *Article 16*

tion and the 1948 Universal Declaration of Human Rights, the 1951 instrument allows refugees the freedom to practice religion and provide religious education to their children, access to courts, elementary education and public assistance. In the field

from conforming to the rules of the community," a French delegate said at the time of the drafting in pushing for such an outline. "Often, too, the refugee exploited the community."

The instrument stipulated who is not

agency, UNHCR, which was given authority to supervise its application.

Crucially, more states helped draft the treaty—and have since ratified it—than have supported any other refugee instrument.

Despite its compromises and its limi- ▶

tations “what was done for refugees through the Convention was a major achievement in the humanitarian field,” according to Ivor C. Jackson, who worked for UNHCR for 30 years, including as deputy director of the organization’s Department of International Protection.

A NEW PHASE

The original framers had not expected refugee issues to be a major international



The Convention is all about providing protection. UNHCR officials help a newly returned couple to Guatemala with their papers and documentation.

UNHCR/B. PRESS/ANIPA

problem for very long. UNHCR had been given a limited three-year mandate to help the post-World War II refugees and then, it

was hoped, go out of business. Instead, the refugee crisis spread, from Europe in the 1950s to Africa in the 1960s and then to Asia and by the 1990s back to Europe.

The Convention obviously needed strengthening to remain relevant for these new waves of exiles. In 1967 the U.N. General Assembly adopted the Protocol relating to the Status of Refugees, which effectively removed the earlier 1951 deadline and the geographical restrictions while re-

GENDER: Persecution in the

“Where, after all, do universal human rights

by Judith Kumin

In 1989 Mihai and Maria fled the brutal regime of Romanian strongman Nicolae Ceausescu, floating on inner tubes across the Danube River, before applying for refugee status at UNHCR’s Belgrade office. “I can’t find any grounds for recognition,” a troubled male colleague told me “but I think you should talk to the wife. I have the feeling she has something to say, but she won’t say it to me. She won’t even look at me.”

Over a cup of coffee, out of earshot of her husband, Maria told a chilling story of humiliation and sexual abuse at the hands of Romania’s secret police, the *Securitate*, who were convinced her husband was involved in an underground opposition group, and were determined to get Maria to admit it.

Soon after Maria’s interview, the couple were resettled to the United States. We have stayed in touch over the years, and I have often thought about how close we came to denying their application and handing them over to the Yugoslav police, who would, in turn, have re-

turned them to the *Securitate*.

When the fathers of the 1951 Convention—all men—drew up what would become the Magna Carta of international refugee law, they crafted a refugee definition which required a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, and political opinion. They did not deliberately omit persecution based on gender—it was not even considered.

Although it was recognized that women may be refugees in their own right, in practice they had difficulty asserting claims. Often, wives were not given a chance to tell their own stories. Sometimes, like Maria, they hesitated to do so in front of male interviewers. Little thought was given to forms of persecution which might only affect women.

The Magna Carta of international refugee law... did not deliberately omit persecution based on gender... it was not even considered.

Gender-based persecution started to surface in the 1980s, during the first U.N. Decade for Women. In 1984, the European Parliament passed what was then a revolutionary resolution, asking states to consider women who transgress religious or so-

cial mores as a “particular social group” for the purpose of refugee status determination.

Some critics saw this as western impingement on cultural traditions of non-western societies. Others felt it was too broad, and argued that persecution had to be personal and specific. In 1985, UNHCR’s Executive Committee adopted its first Conclusion on Refugee Women and International Protection, and in 1988, UNHCR organized its first Consultation on Refugee Women.

TURNING POINT

But the real turning point came in the 1990s. Human rights violations of women gained visibility, and the movement to recognize the universality of human rights gained credibility. There was growing consensus that certain gender-related claims can and do fall within the 1951 Convention. In 1991, UNHCR issued its “Guidelines on the Protection of Refugee Women.” In 1993, Canada’s Immigration and Refugee Board published groundbreaking guidelines on “Women Refugee Claimants fearing Gender-Related Persecution.” The United States, Australia and the United Kingdom followed with their own guidelines. Today, states are increasingly hesitant to deny claims from women using the age-old argument of ‘cultural relativism,’ that is, that violations of women’s rights are private in-

STATES “SHALL ACCORD TO REFUGEES THE SAME TREATMENT AS IS ACCORDED TO NATIONALS WITH RESPECT TO ELEMENTARY EDUCATION...” *Article 22*

taining other main provisions of the instrument.

This was only one response as refugee problems became more complex in the following decades, as the number of people seeking safety swelled from less than one million to a high of more than 27 million in

1995, and as new categories of exiles, such as so-called internally displaced people, were created.

In one innovative and relatively benign approach, some countries resorted to home-grown ‘temporary protection’ arrangements to accommodate large-scale

influxes of asylum seekers, such as the hundreds of thousands of civilians who fled Bosnia and, later, Kosovo during the 1990s.

These schemes had both benefits and drawbacks. They allowed civilians to enter a country speedily and with a mini- ▶

spotlight

begin? In small places, close to home.” —ELEANOR ROOSEVELT



UNHCR/AV. STONE/ETHIOP

Somali refugees attend a campaign against female genital mutilation, a protection problem the Convention did not envisage.

cidents specific to a particular religion or culture.

A handful of countries, led by Germany, still argue that, for an individual to be recognized as a refugee, the persecution feared must be perpetrated by the state, or by an agent of the state. But UNHCR, and the

majority of asylum countries, insist that what is important is not who perpetrates the harm, but whether the state is willing and able to protect the victim.

Another contentious issue is whether there must be malicious intent to harm the victim. This is particularly important in the context of traditional practices such as female genital mutilation, where it is certainly not the intent of the perpetrators to harm girls, even though it is widely accepted that the practice results in serious damage.

Political opinion is a complex area. Women may be persecuted not only because of their own opinions, but also because of those of their spouses. Females can face discriminatory treatment because of religious strictures including travel, dress, or employment more often than men.

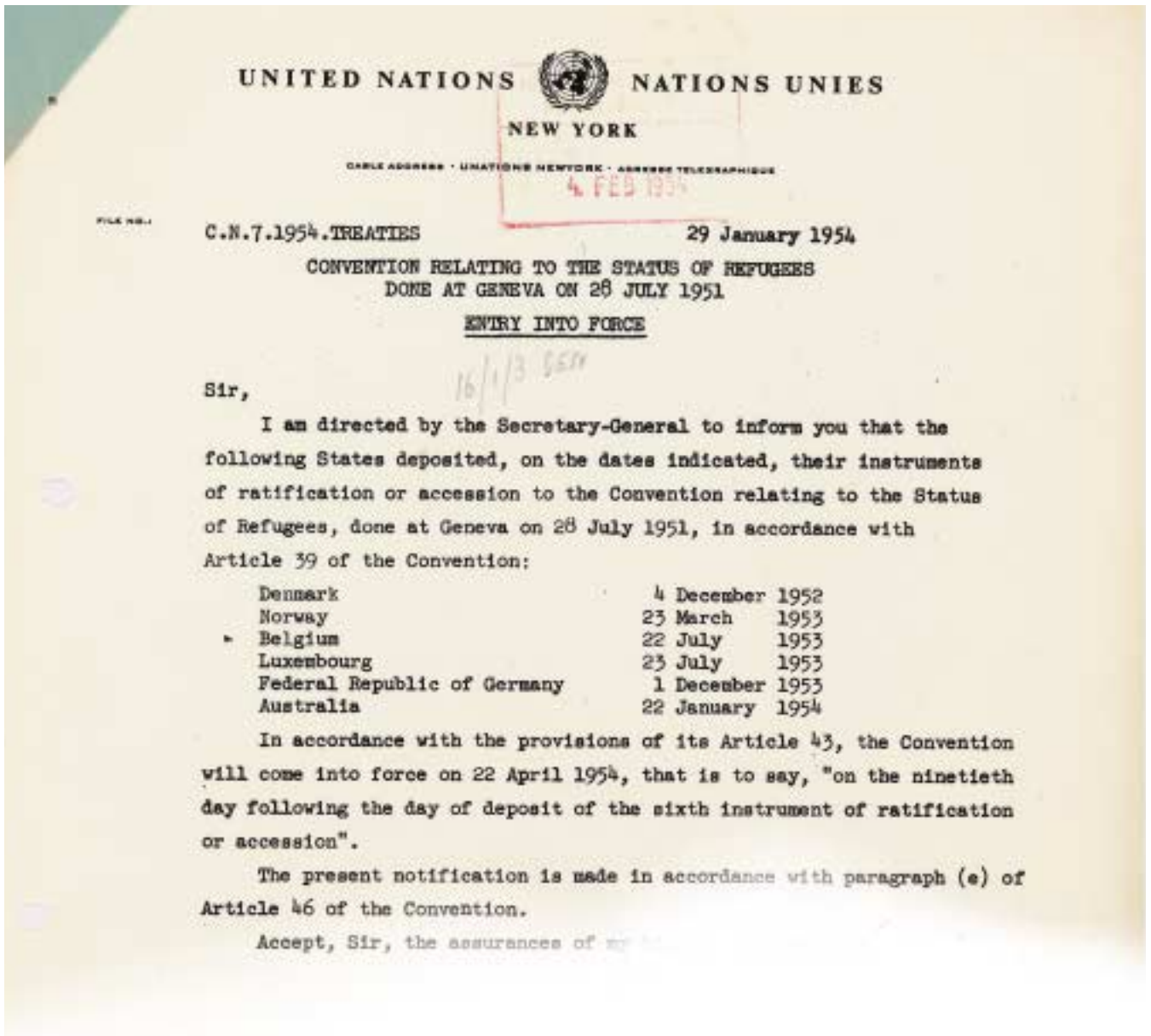
But it is ‘membership in a particular social group’ which has generated the most debate. Though it is widely accepted that some women may be considered part of a ‘particular social group’ for the purpose of status determination, there is less agreement about how far that argument should go, in particular in connection with women who are victims of domestic abuse—the leading cause of injury to women worldwide. Must

the state be unwilling to protect the woman? Or simply unable to protect her? How effective must state protection be?

U.S. Attorney General Janet Reno grappled with these issues just hours before leaving office in January 2001. She subsequently ordered the Board of Immigration Appeals to review a 1999 decision to deny asylum to a severely battered Guatemalan woman who had sought protection in the U.S. from abuse by her former husband.

A historic development came with the adoption in Rome in July 1998 of the Statute of the International Criminal Court which will adjudicate a broad spectrum of gender-related acts: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization. In February 2001, the International Criminal Court for the former Yugoslavia handed down its first convictions of Bosnian Serb officers for rape as a crime against humanity.

Fifty years after the Refugee Convention was adopted, it still contains just five grounds for recognizing someone as a refugee. There have been suggestions that a sixth ground—gender—should be added. But case law from around the world provides ample evidence that gender-related claims can be handled within the framework of the existing text. Gender-based persecution, and the persecution of women in particular, has emerged from the shadows. ■



► mum of red tape, but since there were no binding universal standards that apply to temporary protection, the rights accorded to asylum seekers were often fewer in number and less generous in scope than those provided for under the Convention. In addition, beneficiaries were usually

not, and should not be used as, a substitute for the treaty.

There were also many negative developments. Countries which earlier had welcomed limited numbers of refugees or had accepted large groups for political as well as humanitarian considerations (people

were formulated to try to stem the flow of asylum seekers when politically expedient.

Because the 1951 instrument does not define the term ‘persecution’ the definition itself has been subject to wildly differing—and increasingly restrictive—interpreta-

STATES “SHALL ISSUE **IDENTITY PAPERS** TO ANY REFUGEE IN THEIR TERRITORY...” *Article 27*

granted only ‘temporary’ residence, as the term implies, and governments could end their protection arrangements at their own discretion. Thus temporary protection may be a practical complement to the Convention, but according to UNHCR, it is

fleeing to the West from European communist countries, for instance) began to close their doors. The term ‘Fortress Europe’ was coined.

Inevitably, the Convention came under closer scrutiny and convoluted legal argu-

tions. Some capitals argued that the nature of persecution has changed over the past 50 years, and that people who flee civil war, generalized violence or a range of human rights abuses in their home countries, and

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CESSATION: When is a refugee not a refugee?

Applying the Convention's 'cessation clauses'

When a radical group of young officers overthrew Ethiopia's ailing Emperor Haile Selassie in 1974, they ushered in nearly two decades of mayhem. Thousands of people were killed during the infamous Red and White Terror campaigns and hundreds of thousands of civilians fled to surrounding East African states.

The discredited military was itself ousted in 1991. The majority of refugees willingly returned home as a new civilian government instituted democratic reform and in 2000, UNHCR applied the so-called 'cessation clauses' of the 1951 Geneva Convention toward several thousand Ethiopians who had left home before 1991.

NO LONGER ELIGIBLE

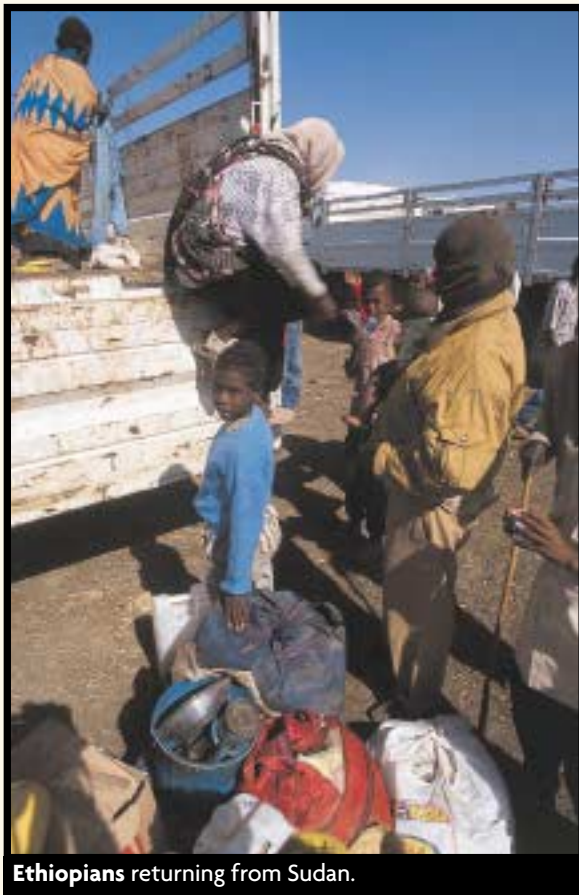
Effectively, the refugees were told they were no longer eligible for international protection because they could go back freely without fear of facing any type of persecution.

During any crisis, world attention normally focuses on the 'front end' of the problem—the flight of civilians, their attempts to find asylum and the reaction of governments. The cessation clauses, which receive far less attention, were designed to help tidy up the 'loose ends' and find long-term solutions in the aftermath of crises.

As the Convention was being framed, UNHCR's first High Commissioner G.J. van Heuven Goedhart made clear that both approaches were necessary. Protection was obviously vital, but it should last only as long as absolutely necessary. "Refugee status," he said, "should not be granted for one day longer than is absolutely necessary."

TWO AREAS

The cessation clauses were born in 1951. They cover two broad areas. Four clauses relate to major changes in the personal circumstances of a refugee, for instance, if (s)he willingly returns home or obtains a passport or residency in another state.



Ethiopians returning from Sudan.

The second area, 'ceased circumstances' clause is applied following a fundamental change in the circumstances in which a civilian was forced to flee in the first place, an example being if his or her country of origin returns to a state of democracy after a period of war.

In this last category, UNHCR declared

cessation for 15 national groups in the last 20 years including the Ethiopians who fled the country before 1991, Chileans following democratic developments in that country and Namibians following independence in their southern African state.

A low-key cessation debate continues about when and how the clauses should be implemented, especially during mass flight or when states provide so-called 'temporary protection' to fleeing civilians rather than full Convention rights.

European and other nations offered hundreds of thousands of civilians who fled the Balkans in the 1990s this kind of temporary shelter. To ensure that governments continue such 'open door' policies in the future, some officials argue that the cessation clauses must be applied swiftly and liberally to encourage them.

Opponents counter that states are already reluctant to extend full Convention rights during 'temporary protection' situations and might take such 'flexibility' as a green light to apply the clauses arbitrarily against individuals.

There are other debates. Could not, for instance, many of an estimated 3.5 million Afghan refugees, who are of the same ethnicity as the ruling Taliban, return safely to peaceful parts of that devastated country after spending years in exile? UNHCR has argued forcefully that "where one type of civil war replaces another

as in the case of Afghanistan, cessation cannot be invoked."

Some officials shudder at the consequences of such thinking. "The system has worked well until now and must be used sparingly," one expert said. "We cannot run the risk of opening a Pandora's box and all kinds of nasty surprises jumping out." ■

Most frequently asked questions :

Why is the Convention important?

It was the first truly international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of basic human rights which should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises and the necessity of international cooperation, including burden-sharing among states, in tackling the problem.

What is contained in the 1951 Convention?

It defines what the term 'refugee' means. It outlines a refugee's rights including such things as freedom of religion and movement, the right to work, education and accessibility to travel documents, but it also underscores a refugee's obligations to a host government. A key provision stipulates that refugees should not be returned, or refouled, to a country where he or she fears persecution. It also spells out people or groups of people who are not covered by the Convention.

What is contained in the 1967 Protocol?

It removes the geographical and time limitations written into the original Convention under which mainly Europeans involved in events occurring before 1 January 1951, could apply for refugee status.

Who is a refugee?

Article 1 of the Convention defines a refugee as a person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.

What is protection?

Governments are responsible for enforcing a country's laws. When they are unable or unwilling to do so, often during a conflict or civil unrest, people whose ba-

sic human rights are threatened flee their homes, often to another country, where they may be classed as refugees and be guaranteed basic rights.

Who protects refugees?

Host governments are primarily responsible for protecting refugees and the 140 parties to the Convention and/or the Protocol are obliged to carry out its provisions. UNHCR maintains a 'watching brief', intervening if necessary to ensure bona fide refugees are granted asylum and are not forcibly returned to countries where their lives may be in danger. The agency seeks ways to help refugees restart their lives, either through local integration, voluntary return to their homeland or, if that is not possible, through resettlement in 'third' countries.

Is the Convention still relevant for the new millennium?

Yes. It was originally adopted to deal with the aftermath of World War II in Europe and growing East-West political tensions. But though the nature of conflict and migration patterns have changed in the intervening decades, the Convention has proved remarkably resilient in helping to protect an estimated 50 million people in all types of situations. As long as persecution of individuals and groups persists, there will be a need for the Convention.

Is the Convention meant to regulate migratory movements?

No. Millions of 'economic' and other migrants have taken advantage of improved communications in the last few decades to seek new lives in other, mainly western, countries. However, they

should not be confused, as they sometimes are, with bona fide refugees who are fleeing life-threatening persecution and not merely economic hardship. Modern migratory patterns can be extremely complex and contain a mix of economic migrants, genuine refugees and others. Governments face a daunting task in separating the various groupings and treating genuine refugees in the appropriate manner—through established and fair asylum procedures.

How are refugees and economic migrants different?

An economic migrant normally leaves a country voluntarily to seek a better life. Should he or she elect to return home they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the circumstances then prevailing.

Does the Convention cover internally displaced persons?

Not specifically. Refugees are people who have crossed an international border into a second country seeking sanctuary. In-



about the *Refugee Convention*

ternally displaced persons (IDPs) may have fled for similar reasons, but remain within their own territory and thus are still subject to the laws of that state. In specific crises, UNHCR assists several million, but not all of the estimated 20-25 million IDPs worldwide. There is widespread international debate currently underway on how this group of uprooted people can be better protected and by whom.

Can the Convention resolve refugee problems?

People become refugees, either on an individual basis or as part of a mass exodus, because of political, religious, military and other problems in their home country. The Convention was not designed to tackle these root causes, but rather to alleviate their consequences by offering victims a degree of international legal protection and other assistance and eventually to help them begin their lives anew. Protection can contribute to an overall solution, but as the number of refugees increased dramatically in recent decades, it has become clear that humanitarian work cannot act as a substitute for political action in avoiding or solving future crises.

What obligations does a refugee have?

Refugees are required to respect the laws and regulations of their country of asylum.

Is a Convention obligatory required to give permanent asylum to all refugees?

The Convention does not provide automatic or permanent protection. There will be situations where refugees will integrate permanently in their country of asylum, but alternatively a person

may cease to be a refugee when the basis for his or her refugee status ceases to exist. Voluntary repatriation of refugees to their country of origin is UNHCR's 'preferred' solution, but only when conditions in that state permit their safe return.

Who is not covered by the Convention?

Persons who have committed crimes against peace, a war crime, crimes against humanity or a serious non-political crime outside the country of refuge.

Can a soldier be a refugee?

A refugee is a civilian. Former soldiers may qualify, for instance, but a person who continues to take part in military activities cannot be considered for asylum.

Can non-Convention countries refuse to admit would-be refugees?

The principle of *non-refoulement*—the forcible return of people to countries where they face persecution—is part of customary international law and is binding on all states. Therefore no government should expel a person in those circumstances.

Who or what is an 'agent of persecution'?

This refers to a person or organization—governments, rebels or other groups—which force people to flee their homes. The origin of the persecution, however, should not be decisive in determining whether a person is eligible for refugee status. What is important is whether a person deserves international protection because it is not available in the country of origin.

What is 'temporary protection'?

Nations at times offer 'temporary protection' when they face a sudden mass influx of people, as happened during the conflict in the former Yugoslavia in the early 1990s, and their regular asylum systems would be overwhelmed. In such circumstances people can be speedily admitted to safe countries, but without any guarantee of permanent asylum. Thus 'temporary protection' can work to the advantage of both governments and asylum seekers in

specific circumstances. But it only complements and does not substitute for the wider protection measures, including refugee asylum, offered by the Convention.

Are some countries, such as those in Europe, being swamped by asylum seekers?

Countries around the world, including some in Europe, believe they are being overwhelmed by asylum seekers. And while it is true that numbers have increased inexorably in the last few decades in many areas, the concerns of individual states are all relative. The bottom line is that some nations in Africa and Asia—states with far fewer economic resources than industrialized countries—sometimes host larger numbers of refugees for far longer periods of time.

But does the very fact of accession to the Convention provide a 'pull' factor for increasing numbers of asylum seekers?

No. Some states hosting the largest refugee populations are not parties to refugee instruments. Geopolitical considerations or family links play a more crucial role as far as 'attractiveness' of destination is concerned.

Does accession infringe upon state sovereignty?

Sovereignty is never absolute. International relations imply a reasonable and acceptable level of compromise. The refugee instruments reconcile state interests with protection. The granting of asylum, for instance, has not been incorporated into the refugee instruments and continues to be at the discretion of individual governments.

Can a country be declared 'safe' in the sense that it cannot produce refugees?

No. Even in states where there is generally no serious risk of persecution, claims by nationals must still be considered. These may be channeled through an 'accelerated procedure' provided that the asylum seeker is given a fair hearing. ■



► *Continued from page 14*
who usually do so in large numbers, are not fleeing persecution per se.

UNHCR says that war and violence have been used increasingly as instruments of persecution according to the Convention. In conflicts in the former Yugoslavia, the Great Lakes region of Africa and Kosovo, for instance, violence was deliberately used to persecute specific communities; ethnic or religious ‘cleansing’ was the ultimate goal of those conflicts.

THE BAD GUYS

In 1951, so-called ‘agents of persecution’ were generally assumed to be states. Now, refugees more often flee areas where there is no functioning government, where they are victims of shadowy organizations, rebel movements or local militia. A few governments insist that actions by these ‘non-state agents’ cannot be considered ‘persecution’ under the Convention. Others reason that if a country tolerates, is complicit in, or cannot prevent persecution by non-



Innovative programs such as ‘temporary protection’ are employed in cases of mass influxes of people. Here civilians fleeing Kosovo arrive in the United States under one such initiative.

EXCLUSION: To exclude or not to exclude

When can a person be excluded from protection?

When a hijacked Afghan airliner touched down at London’s Stansted airport in early 2000, the incident touched off an international furor. Britain’s media initially greeted the Afghan passengers as innocents escaping the wrath of the vengeful Taliban rulers.

But in an atmosphere of rising xenophobia, the welcome quickly turned into condemnation and even women and children were denounced by some newspapers as frauds, so-called ‘bogus’ asylum seekers staying in luxury hotels at the taxpayers expense.

Britain’s government insisted no Afghan would stay in the country a moment more than absolutely necessary. European governments watched as the drama developed into a test case of sorts on the issue of protection.

The hijackers claimed they had escaped Afghanistan only one step ahead of the

Taliban who had already tortured some of their group. The government set aside their asylum claims and put 12 of them on trial. Nearly 80 civilians, including some family members of the hijackers, claimed asylum. Two claims were approved and 37 rejected cases are being appealed. The crew and other passengers returned home.

Which is where the story becomes interesting. Persons involved in hijacking normally could be denied refugee status under the so-called ‘exclusion clauses’ contained in the 1951 Convention. UNHCR has insisted, however, despite mounting pressure from governments worried about increased terrorism, that even seemingly clear cut exclusion situations must be treated with the utmost delicacy, an approach vindicated in the hijack drama.

Though members of the airline crew initially were treated as heroes, they were subsequently harassed and threatened.

Three crew members escaped to neighboring Pakistan. The fate of the civilian passengers is unclear.

BARRING CLAIMANTS

The Convention’s exclusion clauses bar a person from refugee status for a variety of reasons including crimes against humanity, war crimes, serious non-political crimes committed outside the country of refuge and acts contrary to the purposes and principles of the United Nations. These include a wide range of offenses from murder and rape to the wanton destruction of cities.

The clauses were designed “to deprive perpetrators of heinous acts of refugee protection and to safeguard the receiving country from criminals who present a danger to that country’s security,” according to a UNHCR briefing note on the issue and “from this perspective, exclusion

state agents, then refugee status should be granted to the victims.

Given the Convention's silence on the issue, UNHCR believes the source of the persecution is less a factor in determining refugee status than whether mistreatment stems from one of the grounds stipulated

therefore, the provisions of the Convention do not apply to large groups of people seeking asylum in a country en masse, which is increasingly the case. Humanitarian jurists say that nothing in the definition implies that it refers only to individuals and underline that when the Con-

sharing, has ignited heated debate in recent years among governments, legal scholars and UNHCR.

Although the Universal Declaration of Human Rights asserts the right of persons to seek and enjoy asylum, the Convention makes no mention of such a right, nor of

STATES "SHALL NOT IMPOSE PENALTIES, ON ACCOUNT OF THEIR ILLEGAL ENTRY OR PRESENCE, ON REFUGEES..." Article 31

in the Convention. Last year, the European Court of Human Rights reaffirmed that persecution by non-state agents is still persecution by ruling that returning asylum seekers to situations in which they could face persecution violates the European Convention of Human Rights, whatever the origin of the persecution.

Some states argued that the Convention only applies to individuals ("...the term 'refugee' shall apply to any person who...");

vention was drafted, its intended beneficiaries were, in fact, large groups of people displaced by World War II.

The Convention's provisions present a complex legal challenge. While some articles are absolute, many are flexible enough to allow the treaty to live and evolve, through interpretation, as times and circumstances change. Equally, the Convention's silence on a number of issues, including asylum, gender and burden-

any obligation on countries to admit asylum seekers. The Convention does protect those refugees who lost, left behind or could not obtain proper documentation and so entered a potential asylum country unlawfully. States are obliged not to impose penalties on those people as long as "they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

The only reference to states' responsi- ▶

clauses help to preserve the (overall) integrity of the asylum concept."

But widespread atrocities committed in the Balkans during the 1990s and the Rwandan genocide fueled concerns about international legal loopholes. Some governments feared terrorists could use the Convention as a shield and increasingly rely on anti-terrorism international in-

struments to combat what they perceive as the menace.

UNHCR has insisted that the Convention and its exclusion clauses are wide ranging and flexible enough to bar undesirable from achieving refugee status. The agency worried instead that "in a climate of numerous challenges to asylum, exclusion clauses should not become another

avenue by which deserving cases are denied international protection."

Even if a person has committed an offense serious enough to warrant exclusion, jurists say, the severity of the crime should still be 'balanced' against the likely fate of the claimant if (s)he is barred from the asylum process. For example, if a drug trafficker faces torture or execution upon return, he may be granted refugee status.

There are unresolved issues which have been explored during the current global consultations. The consequences of exclusion, for instance; whether a person excluded should be prosecuted by the host authorities or returned to the country of origin.

Humanitarian officials worry too about the forcible return (*refoulement*) of undesirable people from countries which have not acceded to international human rights instruments.

"This whole area is very sensitive," one lawyer said, "because we are generally dealing with a potential refugee who may also be a criminal. The bottom line, however, is that application of the exclusion clauses must also remain the exception rather than the norm." ■



"Take us to Stansted!"



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The Convention details people who are NOT eligible for refugee status, including soldiers.

strain imposed on asylum systems by the rise in uncontrolled migration and both real and perceived abuse of those systems. Cheap international travel and global communications are prompting increasing numbers of people to abandon their homes and to try to improve their lot elsewhere, whether for economic or refugee-related reasons.

Smugglers and traffickers have launched a multi-billion dollar trade in people. Economic migrants and genuine refugees often become hopelessly entangled in the race to reach 'promised land.' As the distinction between the two becomes blurred, sometimes intentionally so, the rhetoric against all those perceived as 'foreigners' and 'bogus refugees' and, increasingly, against the Refugee Convention, itself, has become more barbed.

There is no question that the number of those seeking asylum in developed countries increased substantially over the past two decades. In 2000, just over 400,000 persons applied for asylum in the 15 countries of the European Union (EU), double the number in 1980, but down from a high of 700,000 in 1992. With the increase in asylum seekers comes an increase in expenditures to pay for refugee status determination procedures and for the social assistance provided to asylum seekers. By

► bilities in admitting refugees appears in the drafters' Final Act. They recommended "that Governments continue to receive refugees in their territories and... act in concert in a true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlement."

GENDER VIOLENCE

The Convention doesn't mention gender in its list of grounds on which refugee status is based, but there is growing recog-

Burden-sharing has become one of the most contentious issues among receiving countries, one that involves not just people and money but competition for food, medical services, jobs, housing and the environment. Left unresolved, the issue could threaten the very existence of the international refugee protection regime.

The problem of internally displaced persons—people displaced by war and generalized violence but who remain within their home countries—demands urgent action. This group now numbers between

"EVERY REFUGEE HAS DUTIES TO THE COUNTRY IN WHICH HE/SHE FINDS HIMSELF/HERSELF..." *Article 2*

nition that gender-related violence under certain circumstances falls within the refugee definition (*see box*). In considering a case in 1999, Great Britain's House of Lords determined that women could be considered "a particular social group" when persecuted because of behaviors or attitudes at odds with prevalent social mores—mores, say, that discriminate against women or accord them less legal protection than men.

While the Convention is predicated on international cooperation and recognizes the need to share equitably the burdens and responsibilities of protecting refugees, it gives no prescription on how to do so.

20 and 25 million in at least 40 countries, compared with an estimated 12 million refugees. Although they may have fled their homes for the same reasons as refugees, because they have not crossed an international border, they still, at least in theory, enjoy the legal protection of their governments and so are not covered by the Refugee Convention. But given the minimal or non-existent protection accorded to most IDPs, the international community has begun considering how best to secure their rights.

The growing tendency among some governments to interpret the Convention's provisions restrictively is a reaction to the

one estimate, that expense among developed countries around the world reached \$10 billion in 2000. When only one-quarter of asylum seekers is ultimately granted refugee status, as happened in the EU in 1999, governments balk.

RECONSIDERING THE CONVENTION

British Prime Minister Blair said it was now time to "stand back and consider its [the Convention's] applications in today's world." British policy in future, he said, would be "asylum for those who qualify under the rules, fast action to deal with those who don't." British Home Secretary Jack Straw concurred that "the Conven-

tion is no longer working as its framers intended.” Citing a tenfold increase in the number of asylum seekers in Great Britain since 1988, Straw added that “would-be migrants are taking advantage of one aspect of the Convention—namely, that it places an obligation on states to consider any application for asylum made on their territory, however ill-founded.”

Australian Minister for Immigration and Multicultural Affairs Philip Ruddock

standard that elements of the UNHCR impose on developed countries and I don't think it can go on.” One casualty of this situation and the increasing number of people unilaterally arriving in Australia, Ruddock said, was the government might have to slash the numbers of refugees it admitted annually for permanent resettlement.

Lawmakers from Washington to Berlin have worried that the Convention was a convenient screen behind which everyone

problem of migration has to be addressed in tandem with the refugee problem, but using different tools,” says Feller. “The Convention can't be held responsible for failing to deal with situations it was never designed to address.”

It may be open to interpretation, but according to Feller a restrictive reading of the Convention is not the appropriate reaction. “There are provisions in the Convention that could be written better; the

THE CONVENTION “SHALL NOT APPLY TO ANY PERSON (WHO) HAS COMMITTED A CRIME AGAINST PEACE, A WAR CRIME, OR A CRIME AGAINST HUMANITY...” Article 1F (a)

has become an outspoken critic both of the Convention and UNHCR's overall performance. The agency, he said recently, “spends cents a day looking after people in Africa and we spend tens of thousands of dollars on people in developed countries who have been free enough to travel and had the money to engage people smugglers.” There appeared, he said “one standard for the UNHCR, and there is another

from terrorists to mass murderers and dope dealers could hide. Humanitarian lawyers insist that existing provisions are already strong and flexible enough to meet these challenges and already exclude such categories of persons.

Many of the arguments made by critics also miss or disregard a fundamental fact: the Convention was never intended to be a migration control instrument. “The

letter, the terms have, to some extent, worked against the instrument in today's world,” she said. “But you cannot interpret international law as though it is domestic legislation. It is in one sense an instrument of compromise, drafted by diplomats. The basis of the Convention is timeless.”

While some governments of developed countries are reading the Convention evermore restrictively, and jeopardizing the ►

Broadcasting to the world...

The BBC launches a landmark series on the world of refugees

The British Broadcasting Corporation (BBC) World Service radio network is producing one of its most ambitious series ever to coincide with the anniversary of the 1951 Refugee Convention. Entitled *The Right to Refuge*, the landmark package will cover every aspect of the complex world of the refugee—from flight, to asylum and eventual return home.

BBC teams were deployed worldwide for many weeks to gather material. Programs will be broadcast in a total of nine languages, some to a global audience, others to regional listeners, over a period of several months starting in June.

A special web site will carry audio of series programs, analysis, first person refugee testimonies and interactive maps. In a re-

lated program, *Talking Point*, World Service listeners will be able to put their questions to Ruud Lubbers, the United Nations High Commissioner for Refugees.

The BBC calls the refugee community “a hugely misunderstood and misrepresented group.” The series will present a “dispassionate and clear appraisal of an issue” which is surrounded by myths and obscured by a mounting controversy over ‘bogus asylum seekers’.

The programs will be designed to raise awareness of refugee issues, “cut through the claims and counter claims” about refugees, give uprooted peoples themselves a direct voice in talking about their lives and create a dialogue between refugees and various government and agency officials.

The main six programs, each 30 minutes long, will be broadcast in English. They will include a historical overview of the changing world of refugees, the increasing threats to refugee protection worldwide, ‘forgotten’ refugees in developing countries and asylum seekers in the West. Other programs will tackle the problem of when refugees should return home and the future of the Geneva Convention.

Twelve shorter, 15-minute programs aimed specifically for educational use, will tackle key themes and issues and eight series of up to 10 programs exploring regional problems will be broadcast in Persian/Pashto, French for Africa, Indonesian, Albanian, Serbian/Croatian, Urdu, Russian and Spanish for the Americas. ■

► safety of genuine refugees in the process, the quality of asylum in developing countries has been steadily deteriorating. Refugee camps have been attacked, armed militias have been allowed to mingle with, and intimidate, refugees with seeming im-

punity and civilians, including tens of thousands of children, have been forcibly recruited by the gunmen.

Many developing countries host large numbers of refugees for long periods of time, with ruinous consequences for their

already scarce economic and natural resources. Yet, they say, they receive little assistance from the developed world for doing so. Two countries in southwest Asia, Iran and Pakistan, host twice as many refugees as do all the countries of western

Desperately seeking

An official view of the daily drama behind the quest for refuge

by Peter Showler

Refugees can change the law. A man named Singh sought asylum in Canada in the early 1980s claiming fear of persecution in India. He was interviewed by an immigration officer and a verbatim record was sent to an official panel in another city. The decision-makers never saw him; they never heard him describe his experiences or speak about his fear of persecution if he were returned to India. They rejected his claim for asylum based solely on the record of his interview and other documentation.

Mr. Singh's story did not end there. He appealed his rejection and in 1985 the Supreme Court of Canada said that procedural fairness required that a refugee claimant must be allowed to speak directly to an asylum panel. This was particularly true if the credibility of the refugee claimant was at issue.

At the time (and still today in many western democracies) immigration or justice officials interviewed and made an initial decision on refugee claims. Courts or administrative law tribunals were reserved for reviewing the decisions of government officials by way of appeal. Some appellate bodies had the authority to hear the live testimony of the claimant, others were limited to a review of the writ-

“The most terrible reality is that it is often very difficult to distinguish between a genuine and false refugee.”

ten evidence.

Following the Singh decision, Canada chose a radically different way. All eligible claimants would now receive a hearing before a two-member panel of the Immigration and Refugee Board (IRB) to ensure that (s)he received a full opportunity to explain why (s)he feared persecution. If panel members disagreed, the claim would be decided in favor of the applicant.

The claimant was assured a wide range of protection including the right to counsel and an interpreter, the right to be heard, prior disclosure of all documentary evidence and written reasons justifying a negative decision.

No one was assigned the institutional role of opposing the claim. A neutral refugee hearing officer would assist board members by preparing documentary evidence and questioning the applicant. Both claimant and hearing officer would have full access to a world-class documentation center containing human rights and country information. The asylum seeker, as well as the refugee officer, could

make submissions on the evidence.

WORKING WELL

By and large, the Canadian system has been successful. Yet, despite all of the procedural protections, there are certain inherent qualities to the refugee experience that will always present a challenge to the



Canada's immigration court system in action.

most astute and conscientious decision-maker.

In addition to the relentless pressure of mounting caseloads demanding a rapid and efficient hearing, the decision-maker must address the unique realities of hearing refugee claims.

Every day board members hear stories of human suffering. Occasionally, it is horrific: rape, beatings, imprisonment, torture, threats of death to the claimant or their family. Sometimes it is unspeakable, beyond imagination. I recall a Tutsi sur-

Europe combined. Yet in 2000, the world's wealthiest nations contributed less than \$1 billion—one-tenth the amount they spent on maintaining their own asylum systems—to fund UNHCR's protection work around the world.

MAKING PROTECTION WORK

Balancing the interests of governments with the needs of refugees is difficult but essential. "We share states' concerns about the costs and misuse of the asylum system, the disproportionate and protracted bur-

den some nations have to bear, the unavailability of timely and appropriate solutions to refugees' problems," says Feller. "Of course, burden-sharing can never be a precondition for meeting responsibilities.

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safety



vivor of Rwanda's genocide whose home was invaded by a gang of machete-wielding men, and who was left for dead. She recovered consciousness to find the bodies of her family littered about her on the floor.

It is the member's job to decide the credibility and truth of each story and whether the claimant's fear conforms with the definition of a Convention refugee.

It is a wonderful privilege for board members, if a claimant is judged to be telling the truth, to inform someone who

genuinely fears persecution that they are safe and have found asylum.

Many refugees also earn the respect of officials. They tell more than a tale of oppression. Their stories are often a triumph of the human spirit, of the will to survive, to endure, to maintain a sense of personal dignity in the most debasing of circumstances.

Another reality in this day by day drama is less pleasant, when a member does not believe the claimant or finds his or her fear of persecution is not well-founded.

Sometimes their story does not fit the refugee definition, there has been a change of circumstances or the specific harm feared does not fit the definition of persecution. Sometimes the story is exaggerated and the applicant is simply fleeing poverty, squalor and general oppression. Some-

times the story is fabricated but contains the ring of truth because the claimant is the persecutor rather than the persecuted. Sometimes the story is simply false.

TERRIBLE REALITIES

The most terrible reality is that it is often very difficult to distinguish between a genuine and false refugee. Therein lies the ultimate challenge.

The majority of claims fall into a middle ground where the evidence is ambiguous and certainty is elusive. Board

members have several tools to assess credibility: they are well-trained, they have country expertise and country information and a research center for specific claimant information.

But the challenges remain formidable. Claimants are often not good witnesses. They may be poorly educated, confused, traumatized, inarticulate, frightened. Their cultural and social realities may be totally different from that of a board member.

They don't understand questions and appear evasive. They speak through an interpreter, which always blunts the immediacy of their testimony and occasionally causes real confusion. The events they describe occurred in far away countries in the middle of civil strife and are often impossible to document.

Both genuine and false asylum seekers use illegal means to come to Canada. Ironically, while many people lack adequate documents, some wealthy 'illegal' claimants may have all the necessary paperwork, having bribed corrupt officials or smugglers back home.

In summary, board members daily see people who tell imperfect stories of horrible personal abuse which may or may not be true and which are not easily verified by normal objective forms of evidence. Their job is to listen carefully and to make a well-reasoned decision promptly, within the law and rules of natural justice. It is a humbling and difficult task, but I am sure that Mr. Singh would agree, one well worth the effort. ■

PETER SHOWLER is the Chairman of Canada's Immigration and Refugee Board (IRB).

ASYLUM IN THE 'LAND OF THE FREE'

A 642-day journey through the American immigration courts

by Lisa Getter

One by one, the 10 men line up against a wooden rail in a Virginia federal courtroom, right hands raised, pledging to tell the truth, the whole truth and nothing but the truth. "I do," each replies—one after another after another.

This is America at its most basic: a chance for these men, eight of whom have fled persecution themselves, to tell an immigration judge what they know about Tialhei Zathang, a math teacher from Myanmar who is applying for political asylum.

U.S. Immigration Court is unique in American jurisprudence. There is no bailiff, no court reporter, no one to record the hearings but judge Joan V. Churchill, using a tape recorder that she can turn on and off at will. There isn't even a full day set aside for Zathang's case, which means the witnesses will come back again and again, workday after workday, some never getting a chance to testify.

For Zathang and his supporters, the wait will prove excruciating. From the time Zathang files his asylum application, 642 days will pass before Churchill issues her ruling. During those 21 months, documents

will be lost, attorneys will come and go and scheduling mistakes will multiply.

And the decision, when it finally comes, will appear to contradict much of what was said in court. While Zathang's case may be unusual, its tortuous path reflects broader problems with the nation's Immigration Court system. Congress defines the mission of the courts as "the expeditious, fair and proper resolution of matters coming before immigration judges." But in reality, the courts are often backlogged. It is difficult to find competent translators. And the identity of each of the 219 judges can affect the outcome. Statistics tell part of the story: only 20 judges granted asylum in more than 30% of their cases, while 69 judges approved fewer than 10% of the asylum cases.

To those immigrants who have experienced political or religious persecution firsthand, asylum is a cornerstone of America's image as the land of the free and the home of the brave. But relatively few of them ever get it. A Los Angeles Times computer analysis of Immigration Court statistics during a six-year period from 1994 to 2000 shows that judges approved asylum requests in about 14% of their cases.

This is the story of one case in one courtroom, before just one of the immigration judges who decide the fates of tens of thousands of asylum seekers each year.

DAY ONE: December 4, 1998

Tialhei Zathang shows up at an INS (Immigration and Naturalization Service) office in Arlington, Virginia, and applies for asylum. He says he had been persecuted in Myanmar, the southeast Asian nation formerly known as Burma.

He is a small, intense man with an indentation on the left side of his forehead. Zathang says it came at the hands of the Burmese military, who detained him for 11 days in 1988 and beat him until he was unconscious because he was a practicing Christian in a Buddhist country who actively fought for democracy.

Zathang left Myanmar on February 27,

Zathang, left, prays in his native Chin language at a church in Maryland.



PHOTO: DRENNER/LA TIMES

1998, after being warned he was about to be arrested again. He says he and his family reached India after walking through the jungle for 16 grueling days, clearing a path with a machete as they went. He carried his 5-year-old daughter on his back, while his 6-year-old son walked on his own and his 15-year-old son carried supplies. If he were to return to his homeland, he says, he would be killed.

Friends and a Baptist pastor in India collected money for him to buy a plane ticket to New York and an Indian passport issued illicitly by a local official willing to overlook the fact that Zathang was not a citizen of India. He arrived in the United States on November 1, 1998.

To win asylum under U.S. law, immigrants must prove they cannot return to their country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

Most applicants have little evidence to prove a well-founded fear of persecution. Often their only proof is the story they tell. Zathang’s interview is scheduled for Jan-

law. The Board of Immigration Appeals has been reluctant to overrule judges, even when some members believe they are wrong. Churchill, the toughest immigration judge in the Washington D.C. area, grants fewer asylum requests than the national average and awarded asylum in only 233 of the 2,302 cases since October 1994.

Churchill is buried in paperwork. While immigrants testify, she addresses, stuffs, then licks the back of an envelope. She shuffles documents. She schedules future hearings. She copies documents on a machine near her desk.

Zathang’s case file is 2 inches thick. His witnesses, some of whom have been granted asylum themselves, are eager to testify about the time he led a demonstration that angered the military, about the time he was imprisoned in his homeland for 11 days. They spend most of their time sitting in the lobby. As witnesses, they can’t listen to the testimony.

Under the U.S. Constitution, asylum seekers are not entitled to a government-paid lawyer. Law schools try to fill the gap by sponsoring immigration law clinics, which give students the chance to try cases.

lum. He says the case is “a house of cards.”

Although it is late afternoon, the student lawyers want to call retired Rutgers University political science professor Josef Silverstein as a witness. They have arranged for him to testify by phone, a common practice in Immigration Court because few immigrants can afford to pay their witnesses’ travel costs. Churchill is reluctant. “Why is it so urgent I hear the witness today?” she asks.

Silverstein has been waiting at his New Jersey home for hours. He has testified before Congress on Myanmar. He has also testified in Immigration Court. Most of his research has been about Myanmar’s ethnic minorities such as Zathang, who says he is from the Chin state near the border with India.

In his written affidavit, Silverstein urges the court to grant Zathang asylum. “Based on my professional and personal experience, I can attest that should Mr. Zathang be deported back to Burma, he would most certainly face imprisonment and torture, and even execution.”

Static crackles on the speaker phone, which makes it hard for Silverstein to hear.

U.S. IMMIGRATION COURT IS UNIQUE IN AMERICAN JURISPRUDENCE. THERE IS NO BAILIFF, NO COURT REPORTER, NO ONE TO RECORD THE HEARINGS BUT THE JUDGE HERSELF, USING A TAPE RECORDER THAT SHE CAN TURN ON AND OFF AT WILL.

uary 4, 1999. If the INS officer who interviews Zathang believes his story, he could be granted asylum immediately. But the officer turns the application down. It is referred to Immigration Court.

Six months go by. An INS lawyer misplaces, then finds, Zathang’s birth certificate. A few days before the initial trial date in April, the INS decides to argue that Zathang has committed fraud. Zathang’s team says it needs more time to prepare.

DAY 206: June 28, 1999

The case is set to begin at 1 p.m. Churchill enters the courtroom at 1:05 and says she won’t get to the case until “2:30, at least.” It is past 3:30 when she finally is ready.

Judges such as Churchill have enormous discretion to interpret immigration

Zathang’s legal team comes from nearby Georgetown University. Two second-year law students, Jessica Attie and Grace Lou, have spent hundreds of hours preparing his case. The weekend before his packet was due at the court, they worked 72 hours nonstop. The interpreter assigned to the case does not speak the same dialect as Zathang. Though it is clearly difficult for the men to understand each other, the trial proceeds. Karl Klauck, the INS trial attorney, is the third government lawyer on the case. That kind of turnover is not unusual in asylum cases.

Klauck argues that Zathang’s application should be denied because of fraud. He says Zathang is not Burmese at all because he came to America with an Indian passport. He contends that Zathang is claiming Myanmar nationality simply to win asy-

Churchill loses her patience and soon cuts him off. It is almost 6 p.m. The judge reschedules the case for another day, a month away.

DAY 238: July 30, 1999

Expectations are high among Zathang’s friends as the hearing resumes. Churchill had said she will set aside enough time to hear his case today. But she has already scheduled other cases for the afternoon. Another lawyer, Lora Ries, is handling the case.

Churchill wants to know whether the INS would support asylum if Zathang proves he is Burmese. Ries says the INS “still has some trouble with the case” and would oppose asylum even then.

This time, Silverstein has taken the train from New Jersey to testify in person,

the ticket paid for by the law school. But he still has trouble making his points. The judge interrupts Ries, instructing her how to ask the questions. Frederic K. Lehman, an anthropology and linguistics professor at the University of Illinois, takes the stand.

Lehman offers a piece of evidence that seems to cut right through the government's case: he knew Zathang in Burma. They met at the University of Mandalay when Lehman was a visiting professor in 1981.

Not only that Zathang speaks a dialect found only in the Chin state he claims as home. The judge promises to get back to the case after she wraps up some other matters on her docket.

The hours go by. Finally, it is Zathang's

racy group, how he was forced to spend more than 10 hours a day carrying equipment for the soldiers and how, finally, he was warned by the wife of the village leader that he would be arrested again. So he fled to India, where he managed to buy the passport that has become the crux of the government's case against him.

When he is finished, his first cousin Philip Hrengling speaks on his behalf. Hrengling, a pastor, already has been granted asylum. Like Zathang, he fled Myanmar to India, where he too bought a passport on the black market.

Churchill wants to know why Hrengling doesn't have the same last name as Zathang. In the back of the room, professor Lehman shakes his head, knowing that few Burmese use surnames. "I can tell

minute speech he gave at an all-day demonstration in front of thousands: "I said the military system of government has to come down!"

"There was a time when you actually left Burma, yes or no?" the INS lawyer asks Zathang.

"He's here," Churchill interrupts. "Why would you ask a question like that?"

The judge breaks for lunch and tells everyone to be back at 1:15 p.m. But she has double-booked her calendar again and takes up other cases upon her return.

It is nearly 3 p.m. when Zathang's trial resumes. The key INS witness, a document analyst, has left. Churchill is incensed. But the case moves forward.

Zo T. Hmung, the uncle of Zathang's wife, relates that Zathang's flight from

TO THOSE IMMIGRANTS WHO HAVE EXPERIENCED POLITICAL OR RELIGIOUS PERSECUTION FIRSTHAND, ASYLUM IS A CORNERSTONE OF AMERICA'S IMAGE AS THE LAND OF THE FREE AND THE HOME OF THE BRAVE. BUT RELATIVELY FEW OF THEM WILL EVER GET IT.

turn to tell his story. He sits with his student lawyers, facing the judge, and testifies through a different interpreter, who this time speaks his dialect. Churchill tells Zathang he must look at her while he testifies, but then the judge rarely looks his way.

"Just because I wanted to have democracy in my country, I was beaten and tortured," Zathang says. "I can't even express the words about how I hate the military people in my country."

Churchill wants to know why he won't agree to be sent back to India. Zathang takes off his glasses, holds them in his hands and looks straight ahead. He understands some English and knows this is not a good sign.

He says he is afraid to go back to India because the authorities there have recently begun deporting Myanmar refugees back to their homeland.

The judge breaks again to hear another unrelated matter. By now, the INS lawyer has a headache. Attie's mother, who has come to watch the proceedings, gives the lawyer aspirin. After the break, Zathang continues to describe his life in Myanmar.

He explains how he became a member of the Chin National Front, a pro-democ-

you for sure he is not an Indian citizen. We are born in the same village and his father and my father are brothers," Hrengling testifies.

The case is not over yet, but it has been a long day. The only free day the judge can find on her calendar is one when the law students won't be in town. She schedules the case for that day anyway.

DAY 245: August 6, 1999

Georgetown University law professor Mary Brittingham cuts short a vacation to try the case for her two students.

INS lawyer Ries isn't there either. In her place is still another INS trial attorney, Sandra Czaykowsky, who is unfamiliar with the case.

The INS lawyer raises another obstacle. She says the interpreter at the previous hearing had met Zathang at a church service, a disclosure not made to the court. She says the law students helped pick the interpreter, which makes his interpretation of Zathang's testimony suspect.

But it is too late to make a change.

Zathang takes the stand again. He becomes animated when describing a 15-

Myanmar was described in an Indian newspaper. The judge wants to see a copy.

The article was published on July 7, 1998. It says Zathang, who was born in Burma and had been "arrested, tortured and jailed," had fled to India. "Police are seeking him for interrogation" the article says. Lian Uk, who was elected to the Burmese Parliament but not allowed by the government to assume his seat, testifies that he has known Zathang for more than 20 years.

"He's, of course, a citizen of Burma," Uk says. "No, no, no, he can't be a citizen of India. The Indian government does not accept dual citizenship."

By now, the evidence seems overwhelmingly in favor of Zathang. "I'm wondering if the government is willing to concede I should just grant this applicant asylum?" Churchill asks. Czaykowsky says no. "We will appeal. There are several issues in this case."

DAY 250: August 11, 1999

John Ross, the document expert, testifies that the Indian passport is authentic, but he can't determine if it was bought on

the black market by Zathang. He also cannot draw any conclusions about Zathang's blue-colored Burmese birth certificate because the INS has no similar documents to which to compare it.

Attie delivers her closing argument. She says Zathang was forced to buy an Indian passport "to save his own life" and notes that his route to freedom was identical to that of others who have been granted asylum.

It is the INS lawyer's turn. Ries is back. She argues that "it is entirely possible that the applicant is an Indian citizen." She speculates that perhaps Zathang once lived in Myanmar, but he must have moved to India. She dismisses his role in organizing the pro-democracy movement. If India were not safe, she asks, why would he leave his wife and children there?

The judge questions Zathang at length and says she will issue her decision after lunch. But within minutes she changes her mind, saying she will take the case under advisement and render judgment later.

Later is more than a year away.

DAY 642: *September 6, 2000*

Nearly 13 months after the final hearing, Churchill issues her ruling, giving no explanation for the delay.

She denies Zathang's request for asylum. Despite her own comments in the

for us to make any other factual findings. We note, though, that his general credibility is in some question."

She orders Zathang back to India but grants him a special dispensation called voluntary departure, which would allow him to leave America at his own expense with a clean immigration record.

DAY 688: *October 2, 2000*

Zathang's lawyers file a notice of appeal. In the motion, Georgetown University fellow Virgil Wiebe points out that the judge referred to Zathang's witnesses as "convincing." He argues that Churchill's decision is not supported by the law or by the evidence and that it contains "significant factual errors and omissions."

The request is pending before the Board of Immigration Appeals. It could take years before the panel rules.

EPILOGUE

Zathang, now 42, is allowed to stay in the U.S. pending his appeal. He is living with friends in Maryland, looking for work. He finally got a work permit from the INS last June. The card classifies him as Burmese.

When he learned of Churchill's decision, he was so upset he couldn't sleep for days. He said he does not know what else

versity, said he and Zathang came from nearby villages in Myanmar, that he knew him at the university and had heard of his political activities. "He is really from Burma," Sakhong said.

Zathang's family remains in India. They move every few days. Had Zathang been granted asylum, he would have started the paperwork to bring them to the United States legally.

Zathang spoke with his wife by phone for 10 minutes in August 2000 on the same day Amnesty International warned that many ethnic Chin in northeastern India were in danger of deportation.

Attie, now 27, graduated from law school in May 2000. She is a clerk for a federal judge. She said she lost her idealism about the asylum process long before Churchill ruled in Zathang's case. Ries, the INS lawyer, now works for a congressional immigration subcommittee. She thinks Churchill made the right decision. "There were credibility questions," she said. The 13 months it took Churchill to issue her decision violated a 60-day rule set by Chief Immigration Judge Michael J. Creppy. "Justice delayed is justice denied," Creppy said in an interview.

Churchill declined to talk directly about Zathang's case but through a court spokesman said "she needed all that time. It required a lot of consideration."

After the trial ended, the Immigration

THE 13 MONTHS IT TOOK THE JUDGE TO ISSUE HER DECISION VIOLATED A 60-DAY RULE. THE JUDGE INSISTED SHE NEEDED ALL THAT TIME. IT REQUIRED A LOT OF CONSIDERATION.

courtroom, despite the testimony of Zathang's witnesses, despite the published account of his flight from Myanmar and the paucity of evidence to support the government's position. Churchill says she believes Zathang is actually Indian because of his passport. She concedes that he "may have Burmese nationality as well" but concludes that the time he spent in India proved he was living there without persecution and could return safely.

"We cannot, from the record, completely sort out the truth from the fictions," she writes. "It is our conclusion, from the preponderance of the evidence here, that he has Indian nationality, despite his claims to the contrary. It is not necessary

he could have told the judge. "I have all the proof I am a Burmese citizen," he said. "If they couldn't accept that, I don't know what more I could do."

The Los Angeles Times discovered that Zathang is listed on an Internet site identifying Burmese Chin residing in the United States. His attorneys were unaware of the reference, which helps corroborate Zathang's nationality.

The Times also found other Burmese Chin who verified Zathang's ethnicity. "He is not only my oldest brother's friend but also his classmate when they were in Mandalay University," said Siang Dun, who left Myanmar in 1995. Zapeng Sakhong, who taught at Mandalay Uni-

Service invited one of Zathang's witnesses to speak at a celebration of asylum reform. At the event, the witness thanked America for granting him asylum. But then he mentioned the case of a teacher from his village, a man who first fled to India when he learned he was going to be arrested.

"The INS made the improbable argument that he is Indian... even though 10 people, including professors and members of parliament, testified that he is a Burmese," the witness said.

The INS posted Hmung's speech—with its reference to Zathang—on its web site. ■

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The 1951 Convention relating to the Status of Refugees and the 1967 Protocol

Date of entry into force:

22 April 1954 [Convention], 4 October 1967 [Protocol]

At 1st May 2001:

■ Total number of States Parties to the 1951 Convention: 137

■ Total number of States Parties to the 1967 Protocol: 136

■ States Parties to both the Convention and Protocol: 133

■ States Parties to one or both of these instruments: 140

■ States Parties to the 1951 Convention only: Madagascar, Monaco, Namibia and Saint Vincent and the Grenadines

■ States Parties to the 1967 Protocol only: Cape Verde, United States of America and Venezuela

List of 140 States Parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (at 1st May 2001)

Albania	Democratic Rep. of the Congo	Kenya	Rwanda
Algeria	Denmark	Korea (Republic of)	Saint Vincent and the Grenadines
Angola	Djibouti	Kyrgyzstan	Samoa
Antigua and Barbuda	Dominica	Latvia	Sao Tome and Principe
Argentina	Dominican Republic	Lesotho	Senegal
Armenia	Ecuador	Liberia	Seychelles
Australia	Egypt	Liechtenstein	Sierra Leone
Austria	El Salvador	Lithuania	Slovakia
Azerbaijan	Equatorial Guinea	Luxembourg	Slovenia
Bahamas	Estonia	Macedonia (former Yugoslav Rep. of)	Solomon Islands
Belgium	Ethiopia	Madagascar	Somalia
Belize	Fiji	Malawi	South Africa
Benin	Finland	Mali	Spain
Bolivia	France	Malta	Sudan
Bosnia and Herzegovina	Gabon	Mauritania	Suriname
Botswana	Gambia	Mexico	Swaziland
Brazil	Georgia	Monaco	Sweden
Bulgaria	Germany	Morocco	Switzerland
Burkina Faso	Ghana	Mozambique	Tajikistan
Burundi	Greece	Namibia	Tanzania (United Republic of)
Cambodia	Guatemala	Netherlands	Togo
Cameroon	Guinea	New Zealand	Trinidad and Tobago
Canada	Guinea-Bissau	Nicaragua	Tunisia
Cape Verde	Haiti	Niger	Turkey
Central African Republic	Holy See	Nigeria	Turkmenistan
Chad	Honduras	Norway	Tuvalu
Chile	Hungary	Panama	Uganda
China	Iceland	Papua New Guinea	United Kingdom
Colombia	Iran (Islamic Republic of)	Paraguay	United States of America
Congo	Ireland	Peru	Uruguay
Costa Rica	Israel	Philippines	Venezuela
Côte d'Ivoire	Italy	Poland	Yemen
Croatia	Jamaica	Portugal	Yugoslavia
Cyprus	Japan	Romania	Zambia
Czech Republic	Kazakhstan	Russian Federation	Zimbabwe



The major goal of protection and the Convention is the voluntary return home of uprooted persons.

UNHCR/S. GIRARD/LS-MEX/0933

► Continued from page 23

These do, though, need to be rationalized. We have to get together and figure out how to make protection work, and how to keep the Convention central to our work.”

UNHCR recently launched its global consultations with governments, legal scholars, non-governmental organizations and refugees themselves, to do just that. The discussions are designed to reaffirm the commitment of governments to the Convention, at the same time examining

to the Convention in Geneva in December. Ministerial-level participants at the meeting, convened jointly by UNHCR and the government of Switzerland, will adopt a declaration intended to commit signatories to the full and effective implementation of the Convention and its Protocol.

Discussions concerning the interpretation of various provisions of the Convention will be organized in a series of round tables involving government experts, NGO representatives, scholars and representa-

tations to the problems of refugees, and protection of refugee women and children.

The intended outcome of these discussions varies, from achieving a clearer consensus on how to approach some of these problems to setting international standards.

Much has changed over the past 50 years. The world is more complex than it was in 1951; people are more mobile; shades of gray elude categorization where once black-and-white fitted neatly into hard-

“NO CONTRACTING STATE SHALL EXPEL OR RETURN... A REFUGEE... TO THE FRONTIERS OF TERRITORIES WHERE HIS/HER LIFE WOULD BE THREATENED...” Article 33

key protection concerns not explicitly addressed in the 1951 instrument.

“The objectives of the consultations are to promote a common understanding of protection dilemmas, improve cooperation in dealing with them, and generate new approaches tailored to changed demands and circumstances,” said Feller. The meetings will extend into 2002 and are organized along three so-called ‘tracks’. The ‘first-track’ discussions will be held at an unprecedented meeting of states parties

tives of UNHCR. These ‘second-track’ talks will focus on issues like exclusion and cessation, *non-refoulement*, family unity, refugee definition and the question of illegal entry into an asylum state.

‘Third-track’ discussions will be held within the framework of UNHCR’s Executive Committee at specially organized sessions. They will examine such themes as protection of refugees in mass influx situations, protection of refugees in individual asylum systems, protection-based so-

won definitions. Humanitarianism has seemingly been replaced by hard-nosed pragmatism, empathy by suspicion.

But one thing has not changed: people still flee persecution, war and human rights violations and have to seek refuge in other countries. For refugees, now as half a century ago, the 1951 Convention is the one truly universal, humanitarian treaty that offers some guarantee their rights as human beings will be safeguarded. ■

The suffering continues

The worldwide suffering of uprooted peoples—and those trying to help them—continues. Nsakala Tshiana, a local UNHCR employee in the town of Kimpese in Democratic Congo, was gunned down in late March near the border with Angola. He was driving alone when he was stopped by four armed men who demanded his vehicle and then shot him twice in the back. The driver died later in a local hospital. Three UNHCR field staff were murdered in Atambua, West Timor, in September 2000 and another official was gunned down a few weeks later in Macenta, Guinea (see REFUGEES magazine N° 121). Six men were subsequently sentenced to terms ranging from 10 to 20 months for the Timor killings. UNHCR said it was “deeply disturbed” at the verdicts which “make a mockery of the inter-



UNHCR/COXCOLO

UNHCR driver Nsakala Tshiana.

national community’s insistence that justice be done.” Staff were blunter, saying they were “outraged” at the “mockery” of a trial and by the light sentences. Several weeks after Tshiana’s killing, six staff members of the International Committee of the Red Cross (ICRC) were also mur-

dered, this time in the northeast of Democratic Congo. The team was driving in vehicles clearly marked with the Red Cross on a road considered to be safe when they were killed by unknown assailants. And a Dutch pilot flying for the Red Cross was killed when his aircraft was hit by ground fire in southern Sudan. Continued killings and other types of harassment of humanitarian workers have led to increasing demands for a major strengthening of global security for field staff of the United Nations and other humanitarian organizations.

Among refugees, the latest released figures show UNHCR continues to care for huge numbers of people, estimated at 21.1 million worldwide. They included 8.4 million in Asia, 5.6 million in Europe and 5.3 million in Africa. ■

Where it all started

He is the man who began it all. In 1921, Dr. Fridtjof Nansen, already a famed scientist and explorer from Norway, was named by the League of Nations as the first High Commissioner for refugees. The occasion marked the start of the modern international system for protecting refugees, replacing an ad hoc arrangement administered by private and voluntary organizations. The United Nations High Commissioner for Refugees, the successor to Nansen, keeps the link alive. Each year the agency awards the Nansen Refugee Award to

individuals or organizations which have accomplished outstanding refugee work. And recently, that connection between past and present was further strengthened. Italian artist Fausta Mengarini had sculpted the bust of Nansen in bronze for the League of Nations, but before it could be donated the League was dissolved. Mengarini kept the sculpture well hidden during the World War II years because precious metals were being requisitioned



© WPT/WIDE WORLD

Nansen poses for sculptor Fausta Mengarini.

for the war effort, but eventually donated it to the Dohrn family which had founded a famed interna-

tional center for zoological and oceanographic research in Naples where Nansen had worked in 1876. It was kept in the family until 83-year-old Pietro Dohrn, a doctor and nephew of the founder of the Naples research center, decided to donate it to UNHCR. It will be installed in the agency’s Geneva headquarters. ■



CARTOON BY BORISLAV SAJTINAC. REPRODUCED WITH PERMISSION

“In any case, no wall will be high enough to prevent people from coming...”

High Commissioner Ruud Lubbers urging European countries not to close the door to asylum.

“Its values are timeless, but we should stand back and consider its application in today’s world.”

British Prime Minister Tony Blair on the 50th anniversary of the Geneva Refugee Convention.



“It is the wall behind which refugees can shelter.”

Erika Feller, UNHCR’s director of international protection on the Convention.

“It would be difficult for governments to sign a blank check and to undertake obligations towards future refugees, the origin and number of which would be unknown.”

The original drafters explaining the reasons for various restrictions in the Convention.



“The modern system of refugee rights was...

conceived out of enlightened self-interest” on the part of states.

Law professor James C. Hathaway.



“The danger is that countries confronted with growing numbers of asylum seekers will decide to cut back on their commitments to the UNHCR or, worse, exit the international

Refugee Convention. That would be a tragedy.”

Australian Immigration Minister Philip Ruddock discussing the impact of people smuggling on aid for refugees.



“Exile is violent, a total fall. It takes time to get out of this vertigo.”

Afghan woman writer Spojmai Zariab, living in exile in France.



“We want to be reunited with our parents and go back to school. Life here is better than the jungle.”

Teenage twins Johnny and Luthern Htoo who led the God’s army guerrillas in Myanmar’s jungles before surrendering in Thailand.



“It is a real problem that Europeans try to lessen obligations to refugees. They must take seriously the responsibility of giving asylum.”

High Commissioner Ruud Lubbers.



“There are some indications that Europe is losing sight of its duty to protect refugees under international law, as set out in the 1951 Convention. These risks have enormous impact on other regions which look to Europe as an example.”

U.N. Secretary-General Kofi Annan.



“Is this an April Fool’s joke?”

Reaction of a middle-aged couple on hearing about the arrest of Yugoslav President Slobodan Milosevic.