

# The State of the World's Refugees 1993

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## Chapter Two Asylum Under Threat

The number of people seeking asylum around the world has escalated sharply in the 1990s, imposing serious strains on the institution of asylum. In the aftermath of the war in the Persian Gulf, 1.8 million Iraqi Kurds fled to the border region of Turkey and to the Islamic Republic of Iran. More than 400,000 refugees flooded into Kenya to escape violence and anarchy in Somalia, civil war in the Sudan and endemic insecurity in southern Ethiopia. A quarter of a million Muslim refugees poured into poverty-stricken Bangladesh, reporting widespread harassment and repression in Myanmar's Arakan state – the second sizeable outflow from that part of Myanmar in the last 15 years. During the early part of 1993, a mass exodus of over 280,000 Togolese took refuge in Benin and Ghana, fleeing political upheaval in their home country.

Meanwhile, in the heart of Europe, over 1.2 million victims of the brutal conflict in the former Yugoslavia sought sanctuary in Croatia, Serbia, Montenegro, Slovenia and the former Yugoslav republic of Macedonia. At least 600,000 more took refuge outside the immediately affected region – a refugee flow unprecedented in Europe since World War II. The late 1980s and early 1990s saw a rapid increase in the number of asylum applicants in industrialized countries. In 1983, some 100,000 people requested asylum in Europe, North America, Australia and Japan. By 1992, the number had risen to over 800,000. In all, some 3.7 million asylum applicants were recorded during the period 1983-1992 (see Figure 2.A and Annex I.5).

The majority of those seeking asylum leave their own countries as part of a mass outflow and find refuge in a neighbouring country. Others make individual journeys to foreign lands, sometimes at a considerable distance from their homes. These two distinct patterns impose different – although in both cases grave – pressures on the institution of asylum. The first is the most common pattern in developing countries, where the pressures exerted by large refugee populations are taxing the hospitality of even the most generous countries. The second has engendered a crisis of confidence in the asylum system throughout the industrialized world.

The impulse to provide refuge to strangers in need is shared by virtually all cultures and religions (see [Box 2.1](#)). It is one of the most basic expressions of human solidarity. Like many forms of altruism, however, it is vulnerable in times of trouble, when individuals and states tend to become preoccupied with their own interests. Today, asylum remains the cornerstone of international refugee protection. It is the principal means through which states meet their obligations towards refugees on their territory. The grant of asylum removes the threat of forcible return and provides the refugee with sanctuary until a solution to his or her problem can be found.

“Everyone has the right to seek and to enjoy in other countries asylum from persecution”

Universal Declaration of Human Rights.  
Article 14 (1)

For all its importance, the status of asylum in international law is ambiguous. According to the Universal Declaration of Human Rights, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” Yet no binding treaty or convention obliges states to grant asylum. There is a gap between the individual's right to seek asylum and the state's discretion in providing it. In this legal no-man's land, each state makes its own decisions as to whom it will admit and why. In practice, of course, these decisions are constrained by

circumstances beyond the control of the affected state. And when asylum-seekers cross a border in large numbers, the state receiving them may, at least initially, have little choice other than to give them asylum. As a result of legal and practical considerations, state practice in granting asylum varies widely. It shifts according to the level of demand, the origins of the people who apply, the perception of their motives and other preoccupations and pressures of the time.

States that have signed the 1951 Convention and/or its 1967 Protocol – which by June 1993 included 120 of the 183 members of the United Nations – generally offer asylum to individuals who conform to the definition of a refugee in those texts. This extends to those who have a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”, who are outside their country of nationality and who are unable or unwilling to avail themselves of its protection.

But even here there is room for interpretation. What constitutes persecution? What evidence shows that a fear is well founded? What obligations are there to people who have a well-founded fear of being persecuted for reasons other than the five mentioned in the Convention? Canada, for example, recently included persecution on grounds of gender as a basis for asylum claims. Must the agent of persecution be a government, or can it be another party? This is an important question in situations where a state is no longer in control of all its territory. The German government, for example, maintains that a government must be implicated in the persecution if a claim for international protection is to be considered valid, while many other governments take a broader view of agents of persecution. And what about the huge movements of people trying to escape from wars, internal strife and general lawlessness, who make up the great majority of today’s refugees?

Many states continue to grant asylum generously, despite the very real political, social and economic pressures created by large-scale refugee influxes. The costs of providing asylum weigh most heavily when they occur in countries already struggling with poverty, economic decline, political instability and environmental degradation – and yet these are the countries that have been most magnanimous in providing refuge to whole groups of people fleeing from war and chaos. In industrialized countries, the steep rise in the number of asylum-seekers, the expense of judicial procedures to evaluate individual asylum applications and the welfare provisions for shelter and support of applicants while their cases are pending, have sent the costs of the asylum system soaring.

“Refusal to grant asylum can expose refugees to serious danger”

The fear of being inundated with asylum-seekers, or foreigners in general, elicits a number of reactions from states, some defensive, others more constructive. One is to prevent people from seeking asylum by making it difficult or impossible for them to reach or cross borders. A second is to attempt to deter further arrivals by lowering standards of treatment – a process that goes under the dubious label of “humane deterrence”. Yet another is the tendency to restrict the grounds on which asylum is granted. A more positive response is to speed up and rationalize the determination process so that well-founded cases can be more easily distinguished from unfounded ones. In a number of countries, attempts are being made to set up faster and more consistent procedures which promise to unclog asylum channels, making it easier for states to meet their obligations to people in need of protection while exercising their sovereign right to control other forms of migration.

It is a sad fact that refugees, many of whom arrive deeply traumatized by what they have already gone through, may still face a succession of problems once they reach a place of refuge. Beyond the initial difficulty of gaining admission and access to asylum procedures, some refugees encounter insensitive and sometimes inhumane treatment by officials and members of the public. The process of deciding whether a person qualifies for asylum can, in certain countries, drag on for several years. In the meantime the refugee lives in a state of limbo, uncertain about the future and haunted by the past. Most serious of all, problems of expulsion and forced return still arise.

Denial of the right to seek asylum has taken a number of forms in recent years. Refugees have been prevented from crossing a frontier when they were in mortal danger from hostile forces, severe shortages of food and exposure to the elements. Others have been forcibly returned to a country where they fear persecution. People arriving at a hoped-for place of asylum by boat have been pushed off from the shore. Other “boat people” have been peremptorily returned to their country without screening to determine the soundness of their claims. Less draconian measures, which are aimed at deflecting illegal immigrants but also affect refugees, have been adopted by some governments, notably in the industrialized world. They include visa requirements for people arriving from countries afflicted by civil strife, and fines imposed on airlines that transport people without proper documentation (see [Box 2.2](#)).

Refusal to grant asylum leaves refugees without protection and can expose them to serious danger. On occasion, the international community responds decisively. For example, action taken to prevent Vietnamese boat people and refugees from landing on the shores of South East Asia following an upsurge in numbers during the late 1980s, triggered the development of a Comprehensive Plan of Action which has been largely successful in bringing the exodus of boat people to a satisfactory conclusion (see Chapter One, Box 1.4). The refusal of Turkey to allow Iraqi Kurds to cross its border in 1991 led to an unprecedented, multilateral military intervention on humanitarian grounds. By contrast, attempts to find countries that will accept Haitian asylum-seekers have made little headway (see [Box 2.3](#)).

Confronted with continuing influxes, a number of governments have sought to deter asylum-seekers by granting them less favourable treatment. Closed camps or other forms of detention or confinement – including the detention of children – have been introduced and access to employment removed. This has been the case, for example, in Hong Kong since 1982, in response to an influx of Vietnamese boat people which was judged to include an increasing proportion of economic migrants. Detention of certain groups of asylum-seekers has also been practised in Australia and the United States. A number of European countries have restricted employment opportunities and social benefits for asylum-seekers. Even in African countries of asylum, long the most hospitable in hosting refugees, an increasing unease and restrictiveness is evident. In Malawi, for example – a country that has extended an exemplary welcome to over a million Mozambican refugees – rising numbers coupled with the effects of drought and economic difficulties led, in 1992, to government plans to fence camps and restrict the movement of refugees. There are signs that the quality of asylum is deteriorating in many other parts of the world as well.

Some governments and judiciaries are also taking a more restrictive attitude towards the definition of a refugee contained in the 1951 Convention, requiring very high standards of proof from those who claim they fear persecution and placing unprecedented emphasis on the asylum-seeker’s ability to demonstrate that he or she has been personally singled out for mistreatment. In addition, asylum-seekers may be required to demonstrate that they could not have sought safety in another area of their country of origin.

### ***The asylum crisis in the West***

Concern is widespread about the strains and pressures involved in granting asylum to large numbers of people. The most systematic debate on this subject is taking place within the European Community (EC) which, although it still hosts a relatively small proportion of the world’s refugee population, has seen a sharp increase in the number of people seeking asylum in recent years. Wider consultations, including European states not members of the EC as well as Australia, the United States and Canada, are taking place on issues of common concern.

During the 1970s, the average number of asylum-seekers arriving in Western Europe was around 30,000 a year. By the end of the 1980s, the annual figure had climbed to more than 300,000. In 1992 it surpassed 680,000. For a region that had seen the last of its post-World War II refugee camps closed in 1960, and had not experienced a mass influx of refugees since the Soviet invasion of Czechoslovakia in 1968, the numbers were sufficiently disturbing to set off a major public debate. Germany has been the most seriously affected by the sharp increase, with the number of asylum-seekers rising from 121,000 in 1989 to 438,000 in 1992.

Moreover, the surge in asylum applications coincided with the strains, both social and economic, of German reunification.

**“Asylum-seekers are increasingly being turned away without any attempt to determine the validity of their claim”**

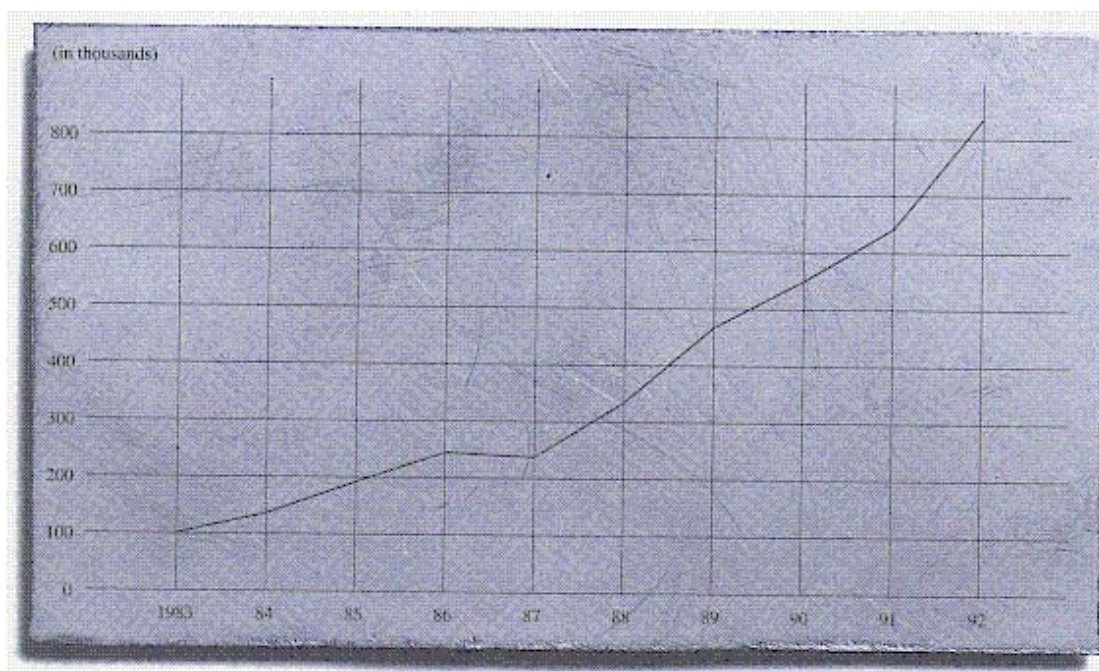
Since the mid-1980s, the pressures on the institution of asylum in Europe and North America have resulted in narrower interpretations of the definition of a refugee, more stringent determination procedures, and attempts to limit access to asylum channels. Austria, Germany and Canada have recently tightened their asylum laws; legislation for the same purpose has been introduced in the Netherlands, Spain, the United Kingdom and the United States. In some cases, people in need of protection have been forcibly returned to the country from which they fled. Particularly disturbing is a growing tendency to turn away asylum-seekers before any attempt is made to determine the validity of their claim to international protection.

What evoked these restrictive reactions? Previous crises had tended to broaden the basis for asylum – through the 1967 Protocol, the 1969 OAU Convention or the 1984 Cartagena Declaration – rather than narrow it.

Obviously, the increase in numbers is one part of the story. Another is the undeniable abuse of the asylum channel by growing numbers of people who are trying to enter the labour market rather than escape persecution or danger in their home country. A further important factor is that the majority of 1990s refugees are people in flight from war, generalized violence and chaos in their home countries.

There is no firm consensus among Western governments about how the needs of this group should be met. Although they have been willing to see such people recognized as refugees under regional arrangements in, for example, Africa and Central America, and to provide them with humanitarian assistance, Western governments are concerned by the prospect of large, spontaneous influxes into their own countries. Direct arrivals from South to North have heightened racial and cultural tensions already in evidence as a result of labour migration in the 1960s. This concern has been exacerbated by the fact that the increase in the number of arrivals has coincided with the culmination of an extended period of low growth in Europe, punctuated by recessions, which has seen domestic unemployment continuing to rise even during the years of modest recovery.

Fig 2.A  
Asylum Applicants in 26 Industrialized Countries: 1983-1992



1983: 101.7	1985: 193.2	1987: 235.0	1989: 470.6	1991: 639.8
1984: 134.2	1986: 243.6	1988: 334.8	1990: 554.8	1992: 839.3

**Note:** For a detailed breakdown of annual totals of asylum applicants in each of the 26 countries of asylum included in this graph, and a brief analysis of the trends, see Annex I.5

The end of the Cold War has, moreover, removed the ideological basis of Western refugee policy, which was heavily geared towards offering asylum to people fleeing from communist regimes. In addition to the 3.5 million East Germans who moved to West Germany before the Berlin Wall was erected, Western countries accepted without question 200,000 refugees from the failed Hungarian uprising in 1956, 80,000 Czechs and Slovaks after the Prague Spring was crushed and 30,000 Jews from Gomulka's Poland.<sup>1</sup> The United States admitted half a million Cubans, tens of thousands of Soviet Jews and thousands of other Eastern bloc citizens. More than 700,000 Vietnamese were resettled in the West after 1975. Exit restrictions normally limited the outflows from communist countries, but those who managed to leave were generally granted asylum without much inquiry into their motivation. As Figure 2.B and Annex I.6 illustrate, the leading groups of asylum applicants in Western Europe, both immediately before and after the fall of the Berlin Wall, have for the most part come from other European countries. Ironically, the same regime changes in Eastern and Central Europe that lifted exit restrictions (and thereby brought a flood of asylum-seekers to Western Europe, especially Germany) also weakened the assumption that these people were in need of asylum.

In most Western countries, individual determination procedures to examine the claims of asylum-seekers are elaborate and costly, as are the social welfare obligations triggered by the arrival of an asylum-seeker. It is estimated that Western European countries alone spend the enormous sum of \$7 billion a year on their asylum systems.<sup>2</sup> An individual petition may take years to work its way through the legal system, leading to long stays at the taxpayer's

expense, even for people who do not in the end qualify for asylum. There is a growing public concern that the possibility of a lengthy stay in a wealthy country with generous welfare benefits is attracting people with very weak claims to asylum – or none at all.

Attempts to use asylum as a route for labour migration undermine both popular and official support for the institution of asylum. In 1992, of the 272,000 individual applications considered in Western Europe, only 25,000 (9 per cent) were granted refugee status under the 1951 Convention. An additional 29,000 people were allowed to stay on humanitarian grounds. Yet by no means all rejected claims are cynical abuses of the asylum system. Among unsuccessful applicants are people who at another time (before the political changes in Central and Eastern Europe) or in another place (one of the states signatory to the OAU convention, for example) would have been admitted as refugees.

The lack of opportunities for legal labour migration increases the pressure on asylum procedures. Western Europe closed regular migration channels (except for family reunification and limited openings for certain skilled professionals) in the early 1970s in response to the severe economic downturn that followed the first oil crisis. The period of painful economic adjustment that followed has not yet come to an end. Western European unemployment rose from 9 million in 1979 to more than 17 million in 1993.

## “Policies intended to deter economic migrants may also affect refugees”

North American and European states generally permit anyone who reaches their borders to request asylum. There are no formal limits on the numbers who may be granted refuge if they meet certain criteria. The widespread perception that the asylum channel is being abused by would-be economic migrants, and the spectre of virtually unlimited numbers of people in need of international protection because of violence and chaos at home, inspire fear in many industrialized countries. This fear is reflected in the Maastricht Treaty on European Union, which permits signatory states to impose visa restrictions in order to prevent mass inflows in case of an emergency outside the Treaty territory.

Domestic pressures create a political imperative for the governments of receiving countries to be seen to be in control of the asylum process. The fear of a deluge of poor and alien people overwhelming prosperous and relatively homogenous societies is an old one, which tends to gain momentum during times of economic insecurity. Unfortunately, in many countries, there are individuals and political parties eager to exploit such anxieties, and to direct confusion and insecurity into the path of xenophobia.

The free movement of people is an element of closer European integration. With the abolition of internal border controls between certain countries within the European Community, common standards for granting admission at the external borders are considered crucial. Elements of such standards are embodied in the Schengen Agreement and the Dublin Convention (see Annex II). The agreements guarantee that all asylum requests will be examined, and determine which of the participating states will be responsible for dealing with each application. Part of their purpose is to avoid disruptive movements of applicants from one country to another, in search of more generous asylum policies or looser procedures, and also to discourage individuals from choking the already overloaded screening process by making simultaneous asylum applications in different countries.

At the same time, EC governments are currently engaged in broader efforts to harmonize their immigration and asylum policies and practices. Their goals include the adoption of common standards for determining and processing manifestly unfounded claims for asylum, as well as a consistent application of concepts such as first asylum and safe countries of origin.

The legitimate efforts of states to streamline and harmonize asylum policies have given rise to a number of concerns. The chief danger is that policies intended to deter economic migrants

from using the asylum channel could, without counterbalancing measures, be equally effective in deflecting refugees with a genuine need for international protection.

### ***The dilemma of the screened-out***

The majority of asylum-seekers who go through individual procedures to determine the validity of their claim are found not to have a “well-founded fear of persecution” under the terms of the 1951 Refugee Convention. However, in most states, only a small proportion of the rejected cases are actually deported.

In the United Kingdom, for example, in 1991 only 15 per cent of applications were granted refugee status under the 1951 Convention. In all 48 per cent were permitted to remain. The overall EC acceptance rate for asylum-seekers was below 20 per cent in 1991 for all statuses combined.<sup>3</sup> Yet an estimated 80 per cent of asylum-seekers stayed on, some illegally and some under special dispensations. An intergovernmental study found that only 25,000 of 110,000 cases rejected in 1990 had left voluntarily or been deported.<sup>4</sup>

### **“The failure to solve the on-refugee problem has adversely affected the position of genuine refugees”**

Some people look at the high proportion of non-refugees who stay on and see a malfunctioning screening system that fails to discriminate between those who need international protection and those who do not. To others it appears to be a laudably flexible practice that permits humanitarian responses to displacement without stretching the conventional definition of a refugee.

States have the unquestionable right to deport people who enter their territory illegally and are found not to be refugees. A number of countries do not hesitate to exercise that right, at least in the case of certain groups, even though deportation is often difficult to implement for practical and political reasons. Some groups of asylum-seekers have strong advocates in the receiving countries who, for political or humanitarian reasons, vociferously oppose deportation.

It is widely acknowledged that the failure to solve the non-refugee problem has undermined the credibility of the asylum channel generally and has adversely affected the position of refugees, who genuinely need international protection. The treatment of rejected asylum-seekers varies considerably from country to country. This lack of consistency, and the uncertainty that afflicts many of those whose asylum applications have failed, creates a number of serious difficulties. New measures to bring coherence and effectiveness to the treatment of rejected asylum cases are welcome, as long as they are consistent with human rights standards and do not jeopardize the safety of the people involved. The prospect of a more orderly system of return makes it even more imperative that screening is fair, thorough and based on sound knowledge of conditions in the country of origin.

## ***Temporary protection***

The majority of the world's refugees today are fleeing from violent conflict and chaotic breakdown of civil order in their home countries. They need, at a minimum, international assistance and protection for the duration of the violence and disorder that displaced them, followed by assistance to reintegrate in their own societies when conditions permit them to return. Permanent exile is neither necessary nor desirable for most people in these circumstances.

During the Cold War, asylum tended to be linked either to permanent settlement in the country where refuge was first sought or to resettlement in another country. At the time, safe return was not viewed, among Western governments, as a realistic possibility for refugees coming from most communist countries. The provisions of the 1951 Convention that relate to the economic and social rights of refugees were therefore seen as tools to promote their integration in the country of asylum. Today, the opportunities for permanent integration in receiving countries are limited. It seems very unlikely that people who have fled *en masse* to a neighbouring country will in the future be offered large-scale resettlement elsewhere, as happened in the case of the Vietnamese boat people in the 1980s and that of the Hungarians three decades earlier.

Most asylum countries in the developing world suffer from increasing pressure on land and water resources, employment and public services. Local integration is correspondingly less practical, both in economic and political terms. A number of asylum countries that have hosted large refugee populations for extended periods, such as Kenya, Malawi, and Pakistan, are chafing under their very real burdens. They do not view asylum on their territory as permanent but as a temporary and pragmatic response to humanitarian emergencies offered until such time as refugees feel safe to go home voluntarily.

Western governments, too, are increasingly resorting to temporary asylum. A number of them make provision for temporary protection in their national legislation, although its content and implementation vary considerably from country to country. It goes under a variety of names: in Europe, "B or C status", "Duldung" (tolerance), "exceptional leave to remain" or "humanitarian status"; and in the United States, "temporary protected status". Falling short of full refugee status, these alternative classifications allow asylum-seekers who might not qualify for refugee status to remain at the discretion of the authorities until it is deemed safe for them to return home. They are used for two distinct but related purposes. They provide a mechanism that allows people who would be denied refugee status under the 1951 Convention – but who would face danger if returned to their country of origin – to remain on a temporary, though often renewable, basis. More rarely, they are used to relieve the members of certain national groups from having to apply for refugee status by giving them leave to remain until conditions in their own country stabilize. In the latter case, judgment is suspended on the question of whether the people concerned would qualify as refugees under the 1951 Convention. This practice has developed in Western Europe in response to the need to provide asylum to large numbers of people fleeing from the war in the former Yugoslavia and, under this impetus, has become more systematic.

For all its benefits as a pragmatic response to situations of compelling humanitarian urgency, there are fears that temporary asylum, while broadening refugee protection, may also weaken it. It protects those who need a safe haven but might not qualify for Convention status. Some observers feel, however, that it also eases the pressure on governments to apply the Convention along with its wide range of economic and social rights. "Humanitarian status" and its equivalents are administrative measures adopted at the discretion of individual governments. They can be granted but also revoked more easily than refugee status.

**“Some asylum countries hosting large refugee populations are chafing under their burdens”**



The argument in favour of temporary protection can be cast in philosophical as well as practical terms. In a number of conflicts today, displacement of people is not the by-product of war but one of its primary purposes. In the face of this grim reality, encouraging permanent resettlement of refugees can mean abetting forcible expulsion. In a setting such as Bosnia and Herzegovina, it is important to keep alive the idea of return in order to avoid collaborating, however unwillingly, in the crime of “ethnic cleansing”. The need to deter such practices has to be weighed carefully against the humanitarian duty to relieve suffering. Clearly, people should never be prevented from escaping extreme danger.

The time has come for temporary protection to be given broader, more coherent and consistent recognition as a legitimate tool of international protection. In order to be accepted, temporary asylum must conform to certain minimum standards of protection against discrimination, *refoulement* and expulsion. It should also come with clearly defined guarantees of humane treatment and fundamental human rights, such as the right to family unity.

### **Cessation clauses**

International protection is meant to be an interim measure to bridge the gap between the time when refugees leave their own country and the time when they can again benefit from national protection, either through repatriation or through acquiring the nationality (and therefore the protection) of a country of asylum. The 1951 Convention includes a series of “cessation clauses”, which present guidelines on when a state may cease to provide protection without violating international obligations or exposing individuals to danger. These include repatriation and resettlement, as well as the situation when a refugee “can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality”. The latter is known as the “ceased circumstances” clause.

### **“The designation of ‘safe countries’ is controversial and often highly politicized”**

Invocation of the ceased circumstances clause has been fairly rare for several reasons, one of which is obvious: the paucity of long-standing, dramatic changes of circumstance in refugee-producing countries. There are some encouraging examples of its application, however. Democratization in Argentina and Uruguay, following the overthrow of brutal regimes with a record of human rights violations, allowed the clause to be applied to refugees from those two countries. More recently, it has been applied to a number of Eastern European countries including the former Czechoslovakia, Hungary and Poland.

As a result of concern about the growing number of asylum-seekers and the new emphasis on temporary protection, interest in the cessation clauses in general, and the ceased circumstances clause in particular, is increasing. Any resort to the clause, however, requires a careful and exhaustive examination of conditions in the country of origin. It is vital that the changes that might justify an application of the clause are profound and durable. They should be reflected in human rights practices and institutionalized in legislative, political and constitutional structures. Above all, they must not be easily reversible. Consistent standards for determining when circumstances justify a change need to be developed, along with humane procedures for returning people as a result of the application of the ceased circumstances clause. In addition, the 1951 Convention provides that individuals should be allowed to appeal for exemption because of continuing fears or past traumas.

## **“Safe countries”**

Along with the renewed interest in cessation of refugee status, the concept of a “safe country” is also gaining currency among officials in some asylum countries. In the context of the asylum debate, a “safe country” is one where there is no serious danger of persecution. A safe country of origin is one that does not produce refugees. The term can also be applied to countries of asylum, meaning that refugees who enter are neither threatened with danger in that country nor with *refoulement* from it.

The concept of a safe country of origin can be applied in two ways. One of these can be useful in evaluating individual asylum claims. The other is potentially a dangerous obstacle to the right to seek asylum, with a questionable basis in international law. The designation of specific countries as “safe” is both controversial and often highly politicized.

If the concept is used as part of an asylum determination procedure, it creates a presumption of ineligibility which the applicant must refute. As long as the opportunity for a rebuttal exists, this presents no great departure from normal practices. Most screening processes incorporate information on the general conditions in an asylum-seeker’s home country as necessary background for assessing the individual’s claim.

The dangers of the safe country concept arise if it is used to exclude entire national groups from consideration for asylum. The political and human rights situations in many countries are difficult to assess with precision, can change very rapidly and may vary from one social or ethnic group to another. The combination of an imperfect classification of safe countries and a rigid refusal to consider asylum cases originating from them could expose individuals to *refoulement* and subsequently to great personal danger.

## **“Although people have the right to seek asylum, they do not have the right to pick and choose where they do so”**

The designation of safe countries of asylum is intended to prevent people from submitting asylum applications in several countries simultaneously or moving from one country where they have already been granted refuge to another which they happen to prefer. Although people have the right to seek asylum, they do not have the right to pick and choose where they do so. It is not the prerogative of asylum-seekers to decide how the burdens of providing refuge will be shared. Refugees are supposed to apply for asylum in the first safe country they reach. There are some difficulties in applying this concept, however. How long does an individual need to have stayed in a country before it is considered a place of first asylum? In an age of long-distance air transport, is a transit stop sufficient? Both forms of safe country – those of origin and of asylum – suffer from the same fundamental problem: determining what constitutes safety.

In a number of cases, measures have been adopted by states to shift the responsibility for examining applications for refugee status to other countries through which the applicants have passed. In the UK it has become increasingly common for asylum-seekers to be sent back when such countries are judged by the authorities to be safe. Although applicants can appeal against this decision, they can only do so from abroad. In France, as a result of prescreening procedures carried out in designated “waiting zones” at ports and airports, asylum-seekers have on a number of occasions been denied access to French territory because they have transited for a few hours or days in a country where they could have sought asylum. Similarly, in Greece, applications for asylum are not accepted unless the applicants come directly from a country where their lives or freedom are endangered. Measures for returning asylum-seekers to neighbouring transit countries were part of the recent constitutional debate in Germany, which resulted in revision of the article governing the terms of asylum.

There is legitimate concern over disruptive movements of asylum-seekers between countries. Nevertheless, measures to shift the responsibility for examining applications back to countries through which the applicant may have briefly passed – without any attempt being made to verify whether he or she will indeed be re-admitted and given a hearing – sometimes place refugees in danger of *refoulement* to their country of origin or to other places where their life or freedom is threatened. It is therefore essential that arrangements of this nature are surrounded with the appropriate safeguards. If they are not made within a framework of burden-sharing, they may amount simply to burden-shifting.

## ***Protection in asylum***

Even in asylum, refugees encounter threats to their security and well-being that are specific to their status as refugees. Some of these have to do with the peculiar vulnerability of refugee camps to external attack. Others arise from the isolation and dependency that often afflict camp populations, making them prey to manipulation and exploitation by petty officials or self-appointed “leaders”. Finally, those who settle within local communities in asylum countries, as is commonly the case in the West, often experience discrimination. Some have been subject to physical violence and even murder. Among the most exposed are refugees who have not yet been given official recognition.

Refugee camps are a highly visible target. They house large concentrations of people, often identified with one side of an armed conflict. The inhabitants are frequently suspected (rightly or wrongly) of plotting against the government of their country of origin. Armed forces representing both countries of origin and countries of asylum sometimes attack refugee camps. Among the best-known incidents are the South African raid on Kassinga camp in Angola in 1978, and the 1982 massacre in the Palestinian refugee camps at Sabra and Chatilla in Lebanon – but such attacks occur more often than is commonly supposed. For example, Cambodian camps in Thailand, Afghan camps in Pakistan, Salvadorian refugees in Honduras, Guatemalans in Mexico and, more recently, Somali camps in Kenya have also drawn fire. Refugee camps in which civilians and armed combatants mingle are particularly vulnerable. Often, raids on camps are proclaimed as justifiable military actions, on the grounds that the camps are providing shelter for armed combatants.

There are two principal ways of dealing with this problem – both of them vigorously but not always successfully promoted by UNHCR. The first is to ensure that camps are located at a sufficient distance from international borders – an approach sometimes resisted by both governments of asylum countries and by refugees themselves. The second is to ensure that camps are strictly civilian in character and humanitarian in purpose. This is easier said than done, as many refugee communities are highly politicized and deeply engaged in the conflicts that caused their displacement. Internal camp organization is often in the hands of factional leaders who see the refugee camp as a resource in their struggle, in terms of provisions and recruitment, and as a sanctuary for wounded or exhausted fighters as well as civilian bystanders. The demilitarization of camps is a prerequisite for the protection of their residents. It is also essential for the preservation of the non-political and humanitarian character of refugee status which is clearly incompatible with military activity.

Even if external attack is not an imminent danger, refugee camps can still be hazardous. The residents are susceptible to manipulation and coercion by ruthless elements from among their own numbers, or by local officials.

**“The 1951 Convention states that refugees escaping danger should not be penalized for entering a country illegally”**

Women are particularly at risk. Such protection as exists for women under normal circumstances is commonly subsumed under family law; the disruption of family circles inherent in forcible displacement leaves many women outside the usual structures of familial and community protection, with enlarged responsibilities and few resources. There are

innumerable instances of refugee women being subject to sexual coercion in exchange for normal entitlements such as food and medical services for themselves and their families. Sexual assault is common in some settings, along with violations of basic rights such as equal access to education and freedom of movement. Women who speak out in defence of women's rights have, in some camps, been targeted for abuse.

Ethnic and tribal tensions often follow refugees into a camp setting, and spark off fighting among different groups. Banditry is commonplace. The enforced idleness (for men particularly) and frustration of prolonged camp existence contribute to a heightened level of tension and violence. Law enforcement authorities in host countries are often reluctant to become involved in refugee-on-refugee crime unless it has political or security dimensions.

One of the most contentious protection issues for asylum-seekers is detention. It is the practice in a number of countries to keep applicants in prison-like facilities as they wait for their cases to be heard, or at least until a preliminary hearing has decided whether they have a plausible case to make. Some states cite security concerns as a reason for keeping refugees in closed camps. The 1951 Convention says that refugees should not be penalized for having entered a country illegally if they have come directly from a place where they were in danger and have made themselves known to the authorities. While limitations on the movements of asylum-seekers may indeed be necessary during an initial evaluation of their cases, the conditions of detention often make it look and feel like punishment, and as such violate the requirement of humane treatment for refugees.

Refugees who have the opportunity to settle in an affluent society are, in relative terms, fortunate. But they too have special needs for protection in asylum. Some of these derive from the difficulty of gaining access to public services, including law enforcement, because of language and cultural barriers. One London borough, for example, reported in 1992 that one in ten of its residents was a refugee, and that 90 per cent of this group could not communicate in English and therefore had little or no access to health care.<sup>5</sup> Again, this is a problem that affects refugee women disproportionately.

More serious even than lack of access to public services are the discrimination, hostility and physical assault that have become a distressing feature of refugees' experience in a number of asylum countries, including the most affluent. The number of assaults on refugee centres and individuals – including mob attacks – has escalated with the growth in numbers of asylum-seekers, as racist and xenophobic groups of the extreme right make a particular target of refugees and asylum-seekers. Governments have sometimes responded firmly, if belatedly, but serious protection problems remain.

## ***Long-term refugees***

The emergence of new and urgent refugee problems tends to monopolize the headlines, but long-standing problems like those of the Afghan refugees in Pakistan and Iran still merit the attention of the international community. Such situations become increasingly serious as time passes and people remain separated from normal community life, often "warehoused" in desolate and crowded refugee camps where the stresses on individuals are acute.

A refugee situation that persists for years or even decades is not only a prescription for dependency, debilitation and demoralization, but also a continuing formula for instability. No state with a sizeable dispossessed population encamped on its borders, or even at considerable distance from them, can feel secure. The longest-standing of today's refugee problems, those of the Palestinians and the exiled Rwandese, are sobering reminders of the potential for conflict inherent in unresolved displacement (see [Boxes 2.5](#) and [2.6](#)). Perhaps the most disturbing element is the maturing of new generations who have known nothing other than the limbo of refugee life. Conflict is the central ordering principle of their lives.

Countries of first asylum that are unwilling to make a permanent place for refugees on their territory often compound the frustrations of life in exile by resisting any developments that imply local integration. They thus deny refugees a chance to engage in productive activity and deny themselves the benefits of refugees' contributions to the local economy. Even social infrastructure projects, such as schools and improved medical facilities, may be discouraged

for fear that they will tempt refugees to remain in camps rather than repatriate at the first available opportunity. The tendency to keep camps inhospitable in order to discourage long stays exacts a heavy human cost. Children are denied irreplaceable opportunities to learn and develop, while their parents grow dependent and embittered.

Asylum is not a solution. It sometimes leads to one, if a refugee is allowed to and wishes to apply for citizenship and thereby ceases to be a refugee. This sequence, which is foreseen in the 1951 Convention as the norm, has ceased to be an option for most of the world's refugees. For them, there is no alternative but a negotiated end to hostilities and the commencement of reconciliation.

## **Conclusion**

Pressure on the institution of asylum comes from a number of different sources. It stems not only from abuses by would-be economic migrants – a well-founded concern in industrialized countries – but, more generally, from the fear of receiving countries that they cannot absorb the number of refugees to which a consistent application of conventional asylum practices would expose them. In the West, lack of consistency was justified in the past by the political motivations of the Cold War. Even then it was challenged by human rights and refugee advocacy groups.

The depoliticization of refugee issues has made possible the application of a broader and more consistent humanitarian standard. But the current refugee system cannot absorb the numbers of people facing persecution and political violence in the world today. As a result, that system has already begun to change. As the process continues, two factors in particular are crucial to a successful adaptation: preservation of the core principle of asylum for victims of persecution, and an effective regime of temporary protection for victims of generalized political violence. The viability of temporary protection depends on an active search for political solutions to refugee-producing conflicts, and greater exertion of co-ordinated pressure to bring the solutions to fruition. Otherwise, temporary protection may simply become another name for prolonged exile.

Asylum remains the cornerstone of international protection. For too long, however, it has been taken to be the entire edifice. Restrictions on access to asylum, and on the definitions of those entitled to it, have been justified by beleaguered governments as necessary for the preservation of the institution. A surer way to accomplish that goal is to embed the practice of asylum in a comprehensive response to refugee flows, which attempts to address the entire continuum from initial causes and preventive actions, through emergency response and international protection, aiming finally to arrive at satisfactory solutions.

## **Box 2.1 The Origins of Asylum**

The concept of asylum has been in existence for at least 3,500 years and is found, in one form or another, in the texts and traditions of many different ancient societies. In the middle of the second millennium BC, as entities resembling modern states with clearly defined borders began to develop across the Near East, several treaties were concluded between rulers which included provisions for the protection of international fugitives. For example, a Hittite king drew up a treaty with the ruler of a different country, in which he declared “Concerning a refugee, I affirm on oath the following: when a refugee comes from your land into mine he will not be returned to you. To return a refugee from the land of the Hittites is not right.”<sup>6</sup> In the 14th century BC, another Hittite king, Urhi-Teshup, who had been deposed by his uncle, was given refuge by the Egyptian pharaoh, Rameses II.

In the 7th century BC, an Assyrian king, Assurbanipal, referred to a refugee from the land of Elam “who has seized my royal feet” – meaning that he had requested and been granted asylum.<sup>7</sup> In Ancient Greece, numerous internal religious sanctuaries were established. However, the idea of external asylum also existed. Herodotus cites the case of a Phrygian, Adrastus, who fled to Sardis in Lydia (now Turkey) after accidentally killing his brother. He presented himself at the palace of Croesus, who welcomed him and told him he could stay as

long as he wished. Asylum also features in Ancient Greek drama: in Sophocles's tragedy *Oedipus at Colonus* the Athenian king, Theseus, gives a compassionate reception to the exiled Oedipus.

In AD 8, the Roman poet Ovid was banished by the Emperor Augustus to Tomis on the Black Sea (now Constanta in Romania), on the extreme edge of the Empire. As he records in *Tristia* (Sorrrows), the Tomitans received him warmly. Although he continued to perceive them as "barbarians", Ovid was touched by their hospitality, learned their language – Getic – and remained among them until his death in AD 17.

The Old Testament Book of Numbers shows God instructing Moses to designate six cities as places of refuge, "both for the children of Israel, and for the stranger, and for the sojourner among them" (35: 9-15). In the New Testament, St. Matthew's Gospel portrays the infant Christ and his family as refugees fleeing into Egypt. Christian sanctuaries were first recognized under Roman law in the 4th century AD, and their physical scope was gradually extended. In the 6th century, the Emperor Justinian – anticipating modern asylum laws – limited the privilege to people not guilty of serious crimes.

During the early years of Islam, the Prophet Mohammed and his followers were forced to take refuge from those who felt threatened by the growing power of the new faith. The Hijra, his flight from Mecca to Medina in AD 622, marks the beginning of the Islamic era according to the religious calendar. The Koran spells out the importance of the notion of asylum in Islam: "Those who have believed and have chosen exile and have fought for the Faith, and those who have granted them help and asylum, these are the true believers" (8: 74).

From early times, asylum had both political and humanitarian dimensions. The ancient practice of granting internal sanctuary – often on a temporary rather than permanent basis – in holy places reflected respect for the deity and the Church, while the grant of asylum by kings, republics and free cities was a manifestation of sovereignty. As the power of the monarchy grew, the right to grant asylum increasingly became the prerogative of the state and the inviolability of internal asylum in holy places declined correspondingly. In the 16th century, for example, King Henry VIII of England abolished many religious sanctuaries and nominated seven "cities of refuge" in their stead.

The revocation of the Edict of Nantes in 1685, which forced 250,000 French Protestants (the Huguenots) to flee their country, marked the beginning of the modern tradition of asylum in Europe. It caused the Marquis of Brandenburg to issue the Edict of Potsdam allowing the settlement of Huguenots in his territory. After the French Revolution, the category of refugees fleeing political rather than religious persecution began to gain prominence. Although the first recorded use of the term "the Right of Asylum" occurred as early as 1725, asylum continued to be viewed more as a prerogative of the Sovereign than as an individual right to protection until the early years of the 20th century.

## ***Box 2.2 Obstacles to Asylum***

Many industrialized states have introduced increasingly tough measures to prevent people from abusing asylum procedures for immigration purposes. While reflecting legitimate concern over irregular immigration, such measures can raise obstacles for people in genuine need of asylum.

Procedures devised to prevent entry or simplify expulsion are numerous. They include heavy policing, as on the eastern borders of Austria, and legal or administrative provisions for rejection of unwelcome visitors before they cross the frontier. France and Spain are among countries that have used the legally questionable concept of "international zones" at airports for intercepting and expelling unwanted aliens. In June 1992, a US presidential Executive Order allowed the summary return of all Haitian boat people intercepted on the high seas, without any examination of their asylum claims. In May 1993, Germany – which in 1992 received more asylum-seekers than all the other European countries combined – revised its constitution to permit asylum-seekers to be sent back to neighbouring countries considered

by the German authorities to be safe countries of asylum. Similar changes of practice have occurred elsewhere – including the Scandinavian countries, traditionally among the most liberal in Europe. These measures were, by mid-1993, leading countries such as the Czech Republic, Hungary and Poland to tighten their own admission policies.

The return of an asylum-seeker to a safe country is not, in principle, objectionable. But when it occurs without the consent of the country concerned, asylum-seekers may end up “in orbit”, shuttling between airports or railway stations only to be refused admission at each successive destination.

This was the fate of two Somali sisters who, accompanied by four young children, arrived in Switzerland in July 1992. Having spent a brief period in Kenya after fleeing Somalia, they travelled to the Maldives and Zurich, hoping to make their way to Canada to join a step-daughter. In Zurich, they were found to be travelling on forged documents and, after a week in detention, were deported back to the Maldives. From there, they were immediately sent on to Sri Lanka, on the basis of forged visas in their passports, then – in an increasingly desperate shuttle from one closed door to another – back to the Maldives and back again to Sri Lanka. Finally, they and their children were detained at Colombo airport. Their detention lasted until 17 September 1992, when one of the sisters was admitted urgently to hospital where she gave birth to a baby daughter. In early 1993 a solution was finally found when Canada – the country they were trying to reach in the first place – accepted them for resettlement. They arrived there safely on 5 March 1993, a year after their odyssey began.

Where possible, governments prefer exclusion to expulsion. Strict visa requirements, coupled with heavy penalties against airlines carrying passengers whose documents are not in order, have made movement more difficult for both migrant and refugee. Many Sri Lankan Tamils, for example, have been prevented from reaching Western Europe in this way. In some countries immigration officials have boarded incoming aircraft in order to screen out and return any passenger who might be intending to apply for asylum. There have been well-documented instances of people – notably Kurds and Tamils – being summarily deported in this way to countries where they have subsequently been detained, tortured or otherwise mistreated. In other cases, immigration officials have been dispatched to refugee-producing countries to show airline check-in staff how to spot passengers with suspect papers – or motives – and prevent them boarding. Slip-ups by ground staff can result in punitive fines against offending airlines. In 1990, in the United Kingdom alone, the government issued 9,521 fines of £1,000 to airlines.<sup>8</sup> Radical changes in the international environment have led to increased population movements. The response of asylum countries should not be to devise ever more ingenious ways to close their doors. Instead, they need to develop procedures that distinguish rapidly, fairly and effectively between those who need protection and those who move for other reasons, while at the same time working to create conditions in countries of origin that permit as many asylum-seekers as possible to return home safely.

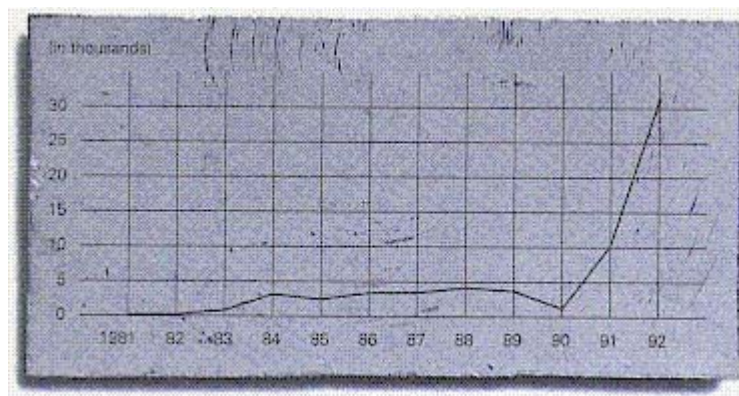
### ***Box 2.3 Haitian Boat People***

In 30 September 1991, a military coup overthrew the first democratically elected president of Haiti, Jean-Bertrand Aristide. The coup was roundly condemned by the international community, which refused to recognize the new government. As repression spread throughout the country over the next few months, more than 38,000 Haitians risked their lives at sea in an attempt to reach the United States. This precipitated a major crisis and threw a spotlight on the long-standing US practice of interdicting Haitian “boat people” at sea.

Ten years earlier, in 1981, the United States and Haiti had concluded an agreement that allowed the US Coast Guard to board Haitian vessels on the high seas and send back those whom US authorities determined did not have a credible basis for an asylum application. Between 1981 and September 1991, the Coast Guard intercepted 24,600 Haitians. Only 28 of

them were found by the Immigration and Naturalization Service (INS) to have a reasonable asylum claim and allowed to enter the United States. The rest were returned to Haiti. The low admission rate aroused serious concern among many human rights groups in the United States and elsewhere.

**Fig 2.C**  
**Haitians Interdicted at Sea: 1981-1982**



1981: 187	1984: 2,942	1987: 3,541	1990: 1,124
1982: 193	1985: 2,411	1988: 4,614	1991: 10,086
1983: 762	1986: 3,388	1989: 3,737	1992: 31,401

Total: 64,386

Source: USA Coast Guard

In the eight months following the September 1991 coup, more Haitians were interdicted at sea than had attempted to leave during the whole of the previous decade. Under pressure from litigation challenging the validity of screening carried out on Coast Guard cutters on the high seas, the US government opened a camp at its military base in Guantanamo Bay, Cuba. According to official INS statistics, 34,841 interviews with Haitians were conducted at Guantanamo Bay from November 1991 to June 1992 and 11,062 people were found to have a "credible fear of persecution", the necessary grounds for seeking asylum. While this gives an average recognition rate of 31.6 per cent, the rate fluctuated widely during the period, even though political conditions in Haiti did not change significantly. Those not recognized as having reasonable grounds for filing an asylum claim continued to be returned to Haiti.

In May 1992, President George Bush issued Executive Order 12807 which halted the screening and ordered the immediate repatriation of all Haitians interdicted at sea. Efforts were simultaneously launched to monitor the situation of returnees and to screen applicants for refugee status in Haiti itself. A federal court found that the executive order violated section 243(h) of the 1980 Refugee Act, and imposed an injunction against return. But the US Supreme Court allowed the order to stand while it decided on the case. On 21 June 1993, it ruled 8-to-1 in favour of the Executive Order.

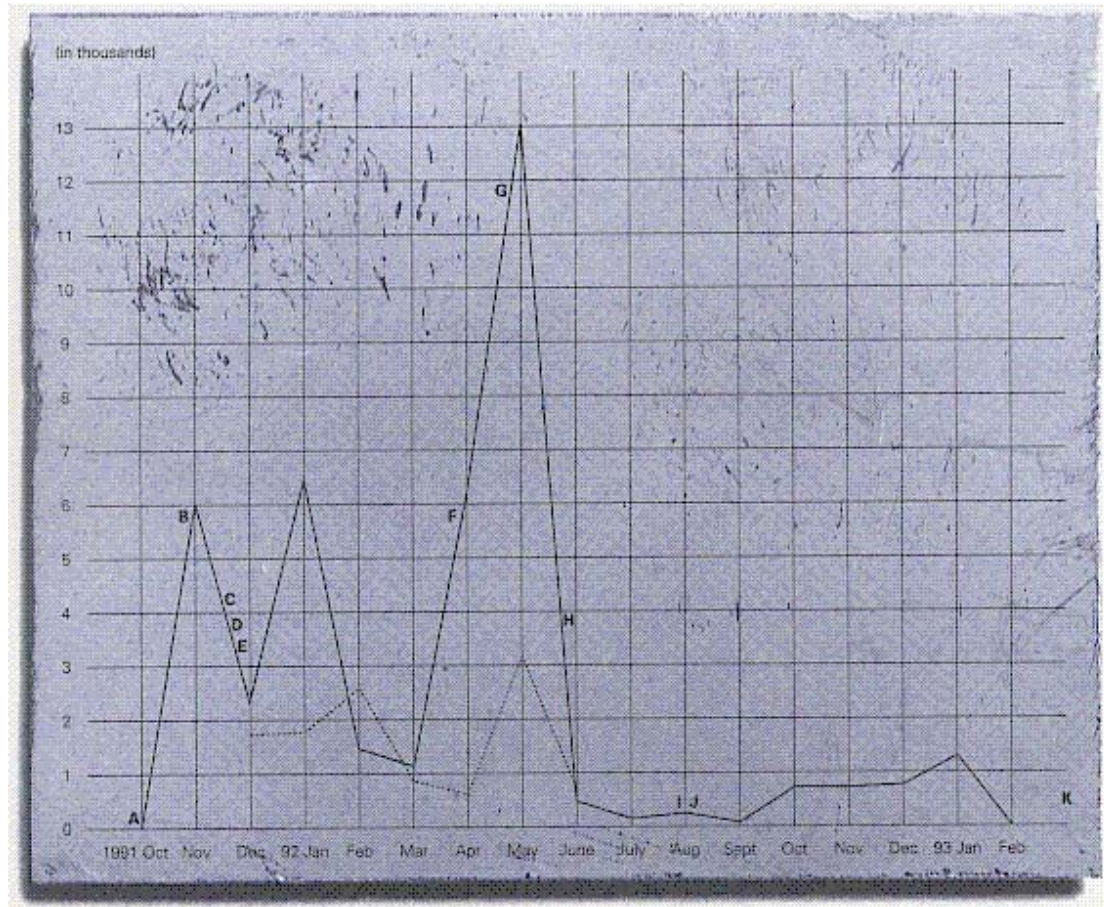
The summary return of all Haitians to their country of origin appears to be in direct contravention of the widely recognized right to leave one's country to seek asylum from persecution. According to the State Department's 1992 annual report on human rights conditions, the level of political violence declined in Haiti in 1992 but widespread human rights abuses continued. They included extra-judicial killings by security forces, disappearances, beatings and other mistreatment of detainees, as well as political interference with the judicial process.

It has been recognized that an effective response to the Haitian crisis needs to revolve around intensive efforts to find a political solution to the situation in Haiti and to address the root causes of the refugee outflow. The United Nations and the Organization of American States, with the support of the US administration, have been undertaking intensive diplomatic efforts to resolve the political crisis, restore democracy and promote human rights monitoring through an expanded international presence.



In the meantime, UNHCR has continued to express its concern that asylum should remain open for people who are obliged to flee. The set of standards and safeguards that are spelled out in the 1951 Convention and 1967 Protocol should apply to Haitians who qualify as refugees.

**Fig 2.D**  
**Haitians Interdicted at Sea and Those Found to have Plausible Asylum Claims 1991-1993**



**Haitians interdicted at sea: October 1991 to February 1993 ( ——— )**

<b>1991</b>	<b>1992</b>	April: 6,144	August: 252	December: 772	TOTAL: 41,141
October: 19	January: 6,477	May: 13,053	September: 84	<b>1993</b>	
November: 6,012	February: 1,401	June: 473	October: 714	January: 1,354	
December: 2,346	March: 1,158	July: 160	November: 713	February: 9	

**Haitians found to have plausible claim to refugee status: December 1991 to June 1992 ( - - - - - )**

December: 1,703	February: 2,263	April: 598	June: 674
January: 1,742	March: 897	May: 3,185	TOTAL: 11,062

Sources: US Coast Guard; Immigration and Naturalisation Service

**Haitian Boat People: A Chronology of Events**

- A** 30.09.91 Aristide deposed by military coup
- B** 28.10.91 First post-coup boat of 19 Haitians intercepted by US Coast Guard
- C** 14.11.91 US Naval Base at Guantanamo (Cuba) opened as screening centre
- D** 18.11.91 Coast Guard returns 538 Haitians
- E** 19.11.91 Miami court issues temporary restraining order barring repatriation. Ruling subsequently overturned by Circuit Court

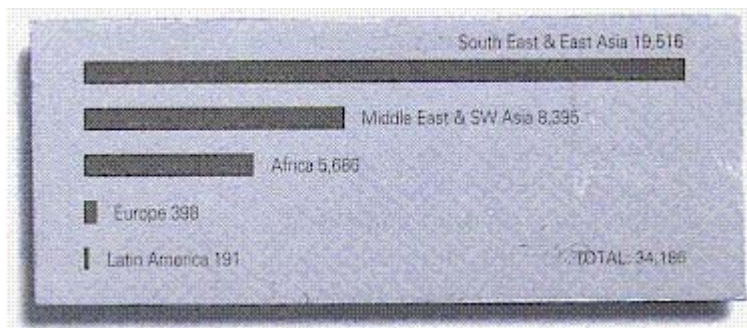
- F 27.03.92 New York Federal Judge issues temporary restraining order blocking repatriation from Guantanamo
- G 22.04.92 Supreme Court lifts restraining order and returns case to Court of Appeals
- H 24.05.92 Executive Order ends screening: orders direct return of all interdicted Haitians
- I 29.07.92 Court of Appeals overturns Executive Order and reimposes injunction against return
- J 01.08.92 Supreme Court stays injunction, pending ruling on the merits of the case
- K 21.06.93 Supreme Court rules in favour of Executive Order

## Box 2.4 Resettlement

Resettlement, which involves moving refugees from one country to another, is often considered the least satisfactory solution to a refugee problem because of the difficult cultural adaptations involved. It is normally turned to only as a last resort, when there is no other way to guarantee protection and safeguard fundamental human rights.

Resettlement may be necessary to ensure the security of refugees who are in danger of being deported to their country of origin, or those whose physical safety is seriously threatened in the country where they have sought sanctuary. It is also used to provide humanitarian protection to particularly vulnerable groups, or to reunite refugees with close relatives. Although resettlement receives extensive publicity, it applies to only a minute fraction of the international refugee population. Just over 34,000 of the world's 18.2 million refugees were resettled in 1992.

**Fig 2.E**  
**Departures for Resettlement, by Region of Origin: 1992**

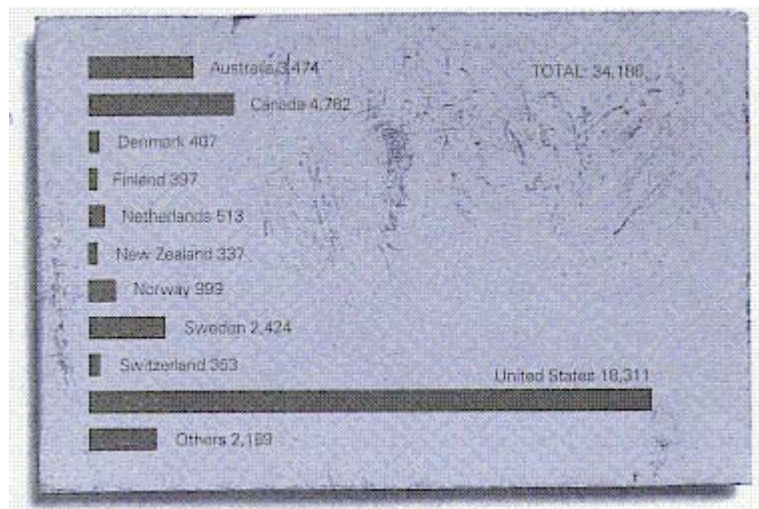


Historically, large-scale resettlement has been rare, the most spectacular exception being that of Indo-Chinese refugees. In 1979, in order to preserve temporary asylum which was severely threatened in South East Asia at the time, Western countries agreed to accept large numbers of refugees. Over 700,000 Vietnamese boat people were resettled under these arrangements. Other refugees who have recently needed resettlement have included torture victims among the Iraqi refugees in Turkey and Saudi Arabia, and Somali refugees in Kenya suffering from torture or war-related disabilities. Significant numbers of women at risk are found among Ethiopian refugees in Sudan and Somalis in Kenya. Many have suffered from sexual abuse and other forms of violence. Resettlement has traditionally been viewed as a permanent solution. The great majority of today's refugees, however, are victims of conflict rather than political persecution, and as a result there may be a corresponding growing need for temporary resettlement outside the immediate region. Opportunities of this type have been urgently sought for particularly vulnerable groups from the former Yugoslavia, such as former detention camp inmates and their families.

While the major immigration countries such as Australia, Canada and the United States have continually provided the lion's share of resettlement places, some smaller countries – notably

the Netherlands, the Nordic countries, New Zealand and Switzerland – have been particularly generous in providing resettlement opportunities for difficult cases.

**Fig 2.F**  
**Numbers Accepted for Resettlement, by Receiving Country: 1992**



### ***Box 2.5 Who Protects the Palestinians?***

The Palestinians have suffered displacement longer than any other refugee group of comparable size. Since the 1948 Arab-Israeli War and the creation of the State of Israel, subsequent wars in the region have uprooted many Palestinian families two, three or even four times.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was created in 1949 by UN General Assembly resolution 302(IV), with a mandate to provide humanitarian assistance to refugees from the 1948 war.

Originally, UNRWA looked after three-quarters of a million Palestinian refugees. By 1993, mainly as the result of an additional outflow following the 1967 Arab-Israeli War and natural demographic growth, this figure had increased to 2.7 million Palestinians living in Jordan, Syria, Lebanon, the West Bank and Gaza.

Although no single refugee group has attracted more international attention than Palestinians, their protection falls uncomfortably between the mandates of the two refugee agencies, UNRWA and UNHCR. UNRWA's mandate focuses on relief. It does not explicitly include either the protection of refugees or the promotion of solutions to refugee problems. UNHCR's mandate, on the other hand, has protection at its core but excludes Palestinians under the responsibility of UNRWA as a result of specific reservations raised by governments during the drafting of UNHCR's Statute in 1951.

Nevertheless, the UN Secretary General, in his report of 21 January 1988 to the General Assembly, proposed the expansion of UNRWA activities in the Occupied Territories to include a limited protection function. Subsequent General Assembly resolutions supported this approach. UNRWA has taken a series of steps to provide a degree of passive protection for the population in the Occupied Territories, including the initiation of a legal aid scheme, the recruitment of additional international and local staff and the publication of reports. However, regular abuses of the basic rights of Palestinian refugees continue, both in the Occupied Territories and in a number of other countries in the region.

The fourth generation of Palestinian refugees is now growing up living in camps constructed by their great-grandfathers with UNRWA's help. UN Security Council Resolution 194, adopted in 1948, states that the Palestinian refugees should be permitted to return to the homes they

left during the 1948 Arab-Israeli war and that compensation should be paid to those who choose not to return. For many this is not a realistic option. The world cannot afford to let another generation grow up without the firm prospect of a satisfactory end to one of the worst chapters in refugee history.

### ***Box 2.6 Rwanda: A Generation of Exile***

The estimated half-million Rwandese refugees, almost all members of the minority Tutsi tribe, are among the oldest refugee populations on the African continent. After three decades in exile, many people who in 1959 fled the Hutu-led “social revolution” that preceded independence in 1962 have been integrated to varying degrees in neighbouring countries of asylum. But refugee numbers have continued to swell as a result of natural demographic growth and additional outflows of Rwandese caused by periodic eruptions of inter-ethnic violence. With the Rwandese government long maintaining that it had neither the land nor the resources to permit large-scale repatriation, the situation continued to fester, souring relations with neighbouring countries.

Tensions flared into open conflict in October 1990, when the Rwanda Patriotic Front – an organization composed mainly of refugees and exiles – launched an attack from across the Ugandan border. The conflict and its disturbing implications for regional security prompted a number of summit meetings of regional heads of state, culminating in the Dar es Salaam Declaration of 19 February 1991.

The Declaration, signed by Burundi, Kenya, Tanzania, Uganda and Zaire (all countries with sizeable populations of Rwandese refugees), as well as by Rwanda itself, recognizes that a solution to the 30-year-old refugee problem is essential to any viable peace agreement. Therefore it calls on the OAU and UNHCR to draw up a Plan of Action to identify solutions for the refugees, including voluntary repatriation or integration in asylum countries, following the establishment of a cease-fire and the initiation of a national process of political dialogue. A number of detailed surveys have since been carried out to investigate the possibilities for repatriating those refugees who wish to return home, and arranging local integration for those who do not. Effective implementation of the plan, however, depends on the establishment of peace and suitable conditions for return.

The introduction of a new constitution and a multi-party system in Rwanda should have been important steps towards political reconciliation and a definitive solution to the problem of Rwandese refugees. So should the 9 January 1993 agreement on power-sharing within a broad-based transitional government, signed by the present government and the Rwanda Patriotic Front. The peace process, however, remains volatile, and has been shaken by a new outbreak of fighting in the north of the country. This has led to a further exodus of refugees and, by June 1993, to the internal displacement of nearly one million people throughout the country. Once again, the prospects for a permanent solution have been set back.

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## Footnotes

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<sup>1</sup> Astri Suhrke, "Safeguarding the Right to Asylum." Unpublished paper prepared for the Expert Group Meeting on Population Distribution and Migration (Santa Cruz, Bolivia: 18-22 January 1993), preparatory to the International Conference on Population and Development, 1994, organized by the Population Division of the Department of Economic and Social Development, United Nations Secretariat, in collaboration with the UN Population Fund.

<sup>2</sup> Intergovernmental Consultations on Asylum and Refugee Policies in Europe, North America and Australia, "Towards international recognition of the need for consistent removal policies with respect to rejected asylum-seekers." Unpublished working paper. Geneva: 1992.

<sup>3</sup> The rate was slightly higher for Europe as a whole. In 1991, some 283,000 requests for Convention refugee status were adjudicated in the EC countries, the Nordic countries, Austria and Switzerland. Some 33,000 people (12 per cent) were granted Convention status while an additional 40,000 were allowed to stay on humanitarian grounds.

<sup>4</sup> Intergovernmental Consultations on Asylum and Refugee Policies in Europe, North America and Australia, "Towards international recognition of the need for consistent removal policies with respect to rejected asylum-seekers." Unpublished working paper. Geneva: 1992.

<sup>5</sup> Cecilia Hall, "Language Barrier Hits Refugees' Health Care." London: *The Independent*, 25 November 1992.

<sup>6</sup> Walter Kalin, *Das Prinzip des Non-refoulement*. Frankfurt: Peter Lang, 1982. Cited in W. Gunther Plaut, *Refugee Determination in Canada*. Ottawa: 1985.

<sup>7</sup> James B. Pritchard, ed., *Ancient Near Eastern Texts relating to the Old Testament*. Princeton (US): Princeton University Press, 1969.

<sup>8</sup> Antonio Cruz, *Carrier Sanctions in Five Community States: Incompatibilities Between International Civil Aviation and Human Rights Obligations*. Church Committee for Migrants in Europe, 1991.