As powerful states have increasingly come to question the consonance of the Convention-based refugee law system with their more general migratory control objectives, a political space has evolved in which fundamental issues of the nature of international refugee protection are tenable for the first time since the immediate post-War era. While it is true that recent reform initiatives have generally been regionalized in scope and often restrictionist in tendency, the Reformulation Project is examining the possibility of re-invigorating a universal protection regime characterized by an enhanced conceptual scope aligned with the norms of international human rights law, yet tailored to take real account of the legitimate interests of receiving countries. Our goal is to promote the reconceptualization of international refugee law based on the three principles of international human rights law, respect for distinct national values, and effective international burden sharing.

The Reformulation Project seeks to promote critical thinking on a "blueprint" for a new refugee protection system which would dispense with the present, arbitrarily assigned, non-collectivized duty of states to provide long-term asylum. Our objective is to investigate the possibility of a more universally accessible and human rights-defined system of refugee law premised not on long-term...
Refuge is dedicated to the encouragement of assistance to refugees by providing a forum for sharing information and opinion on Canadian and international issues pertaining to refugees. Refuge was founded in 1981. It is published six times a year by York Lanes Press for the Centre for Refugee Studies, York University.

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For examples of style.

References. Please refer to a recent issue or payment, made payable to York Lanes Press, with your order.

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The dominant theme, to be presented in this issue, is the apparent inexorable growth of refugees, whether as a result of the contraction of legal spaces, the weakening of asylum procedures, the tightening of migration rules, or the result of wars. The system has evolved in a piecemeal fashion and is characterized by an internationally dominant theme, to be presented in a series of articles or sections of a major topic. Six of these thematic issues will appear each year. Additional articles, brief reports and statistical tables will also be included in each issue, on a space-available basis, after the thematic articles.

Refuge continues to welcome contributions on relevant topics, of approximately 4,000 words, including references. Please refer to a recent issue for examples of style.

C. Michael Lanphier, Editor

Our commitment to a more meaningful international supervisory agency which might mean a revamped UNHCR or a new agency derives from a number of concerns. First, we want protection to be more principled and consistent than is presently possible with individual states exclusively in control. Huge disparities in recognition rates (for example, the United States recognizing Salvadorans at a two percent rate in the late 1980s while Canada recognized about asylum, but rather on temporary protection leading to the restoration of the refugee's right to membership in his or her community of origin. The system would be characterized by an internationally administered process of refugee determination and interim protection in which refugee protection responsibility would be shared out under an interstate system, and in which there would be an equitable sharing of both the financial and human aspects of protection beyond the first asylum stage.

To explore this possibility, we convened a Legal Working Group of twelve recognized experts from around the world in 1993 to help us define the "building blocks" of such a regime. We then commissioned ten of the leading social science experts on refugee protection to work in five North-South teams to elaborate thinking on these building blocks, taking into account the most up-to-date empirical knowledge available. Most recently, we convened a consultation in 1995 of forty experts from academe, governments of the North and South, and the nongovernmental and intergovernmental communities. Their task was to debate the five "Studies in Action" prepared by the North-South social science research teams. Core funding for the project has been provided by the Ford Foundation, now supplemented by a grant from the MacArthur Foundation.

We invited the authors of the Studies in Action to consider a number of difficult issues, set out below.

International Administration

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85 percent of Salvadoreans using the same definition) bring the system into disrepute, and dilute its protective capability.

Second, since the proposed system would involve commitments by states to receive recognized refugees under a responsibility sharing formula, and to fund the operations of the system under a burden sharing formula, there must obviously be real commonality in both the standards and modalities of decision-making. States must be able to place reasonable level of confidence in the accuracy and efficiency of refugee determination carried out by other states if the system is to work.

Third, we believe that there are tremendous cost savings to be realized by moving away from every state running its own determination system. If a generic international administration system could radically reduce the more than U.S. $10 billion that developed states spend each year to run their highly legalistic status determination systems (by e.g. using positive group determination processes and a common country information database), then significant monies could be freed up to help fund other parts of the proposed system (e.g. repatriation and development assistance).

Burden Sharing

As a preliminary matter, we have distinguished two issues: fiscal burden sharing and human responsibility sharing (addressing the allocation of responsibility for receiving refugees). There are three basic costs that would need to be shared under the proposal.

First, a critical piece of our reformulated system would be to induce states to honour the basic duty of non-refoulement (non-return) of asylum-seekers by minimizing the costs of compliance. Given the enormous costs to OECD states of running their individuated status determination procedures and offering related processing and admissions services, we have proposed that UNHCR (or a successor international supervisory agency) take charge of the first asylum and status determination functions. It is assumed that the use of group determination, a common database of country of origin information, etc., would be much less expensive than the present process.

Second, there would be expenses associated with repatriating rejected asylum-seekers and moving recognized refugees to the site of temporary asylum; supervising the compliance by temporary asylum states with relevant human rights norms; and providing "concrete inducements" by way of development assistance to less developed states which receive refugees for the purpose of temporary protection.

Third, there would be collectivized costs associated with the ultimate "return in safety and dignity" of refugees to their homes, including a program of repatriation and development assistance to bring about meaningful re-integration. Related to this would be the costs of moving those refugees unable to return home safely after expiration of the temporary protection period (probably 5 years) to a country of permanent resettlement.

The critical question, then, is the basis upon which to organize this fiscal burden sharing regime. How could states be induced to participate in such a system? How would obligations be structured and administered?

Temporary Protection

A first, critical issue is whether temporary protection does in fact make refugee protection a more palatable prospect for states. Is the "numbers issue", which is so routinely raised, truly the concern, or would a system that distinguishes between protecting refugees and permanent admission to a community make the "asylum crisis" less profound? Will temporariness counteract the "pull" dimension of current movements of asylum-seekers? What is the empirical evidence regarding the percentage of refugee-producing events which could reasonably be expected to be resolved before the expiration of a "temporary protection phase"? Is there "enough value" to ensure that repatriation in safety could become the norm of the regime?

Second, is temporary protection a humane concept that is truly reconcilable with respect for the dignity of refugees? Which human rights of refugees need to be respected as matters of priority? For example, what level of family reunification makes sense? How can one ensure that temporarily protected refugees do not just "disappear into the woodwork," particularly in states with heterogeneous populations and democratic values which promote internal freedom of movement? Is there an effective means of supervising compliance with refugee rights by the states which afford temporary protection? What kinds of international fiscal support ought to be provided to less developed states which host disproportionate numbers of refugees in order to make a high quality of protection viable? How does one ensure a "flow-through" of that support to refugees, while simultaneously benefiting the local populations, it generates a popular support

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for refugee protection? Is there a way
to protect individual refugee rights (in-
cluding specific concern for the vulner-
able among the refugee population),
and the collective rights of the refugee
population, such that repatriation as a
functioning communal entity is really
viable?

Third, just how long can temporary
protection last? Is the answer the same
for all refugees, or do age, sex, family
status, and other factors change the
answer? How could an internationally
administered regime take such matters
into account? How could a temporary
protection system be made as simple
and subject to as few “exceptions” as
possible, in order to attract state sup-
port, but not at the expense of sensitiv-
ity to the real predicaments of
refugees?

Responsibility Sharing

On what basis could the international
community be convinced to commit itself to a system of responsibility shar-
ing in refugee protection? In other
words, what are the compelling politi-
cal, moral, or other concerns which
should cause us to rethink the current
system’s reliance on accidents of geo-
graphy or transportation links as the
defining factors in determining who
seeks protection where?

Second, while it is illogical, viewed
from both a fiscal perspective and in
terms of ultimately facilitating repa-
triattion (for both cultural and logistical
reasons) to move huge numbers of
(mostly rural) refugees in the South to
Northern states for temporary protec-
tion, how does the Project avoid appear-
ing to legitimate a “new apart-
heid” for refugees? This raises the very
important concept of the “social lim-
its” to the idea (derived from interna-
tional environmental protection efforts)
of “common but differentiated
responsibility,” which would seem
key to a meaningful responsibility
sharing system in the refugee context.

A third issue is how to define base-
line responsibilities for human responsi-
bility sharing. “Raw numbers” are
unlikely to be the right measure of an
equitable responsibility sharing sys-
tem; instead, account should be taken
of the nature of the refugees to be re-
ceived. Thus, for example, the Scandi-
navian example of receiving “difficult
to settle” refugees, albeit in smaller
numbers than other industrialized
countries, is seen by some as a possible
model for a broader system of respon-
sibility sharing. A related concern is
whether pre-existing responsibilities
(i.e. refugees already residing in the
state) should be factored in to original
allocations, or whether the new system
should “start from scratch.” Further,
there is the matter of taking account of
the need for residual, permanent set-
tement spots for those refugees unable
to go home in safety after the expira-
tion of the temporary protection phase.
Should countries that are willing to
take a larger share of this (more long-
term) responsibility see their tempo-
rary protection quotas reduced ac-
cordingly?

Fourth, how should the interna-
tional supervisory agency (UNHCR or
its successor) make concrete decisions
regarding who is protected and where
during the temporary protection phase? In other words, how ought it to
be decided which refugees are part of
which country’s responsibility sharing
quota? Because of logistical, fiscal, and
cultural concerns—and keeping in
mind that the hoped for solution in
most cases will be repatriation to the
country of origin—a regionalized tem-
porary protection approach seems to
make the most sense. Can this objec-
tive be fairly achieved without inad-
vertently creating a “new apartheid”? What weight ought to be attached to
individual refugee preferences, and
how could this be reconciled to both
the need for systemic efficiency and
recognition of the value of protecting
refugees as a group in order to allow
the continuance of their communal tra-
ditions pending return? What of vic-
timized minorities within the refugee
community who wish to be protected
from the refugee community itself? If
some refugees are to be protected out-
side the region, who should they be?

Repatriation and Development
Assistance

A system of repatriation and develop-
ment assistance should ensure that ac-
count is taken of the relative inability
of those states which currently receive
most of the world’s refugees (and
which would likely continue to receive
a high percentage of refugees under
our largely regionalized temporary
protection plan) to provide for their
needs. Beyond simply “cost recovery,”
though, the system should aspire to
greater balance through the provision
of funding which would actually ben-
efit the host community (e.g. support

[There may be a] need to fine-tune the system to distinguish
between the logistics of assistance to “defunct states” (Somalia?)
and (reformed) “predator states” (Guatemala?) in terms of the
channels for delivering development assistance.

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