Some Thoughts on the Ethical Dimensions of the Project to Reformulate International Refugee Law

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The Reformulation Project was initiated from the conviction that the present system for the protection of refugees is seriously flawed. These flaws can affect those seeking protection. They can also affect those providing protection. All of these perceived flaws have a moral/ethical dimension.

Access to the system by those in need has always been a matter of moral concern. This concern has grown as various nation-states have placed more and more barriers to access, either unilaterally or conjointly with other states. This includes the need to cross an international border, into another state, in order to be eligible for refugee status. Recently, states have made increasing use of deliberate strategies to interdict the flow of refugees, thus seriously inhibiting the ability of those in flight to seek protection from the international community.

A second flaw in the current system is that countries of the North spend an enormous amount of money on their own particular determination processes. This provides protection to only a small minority of the world’s refugee population. Over 80 percent of the world’s refugees remain in the South. Their protection needs are primarily met by the UNHCR, operating on a budget which is one-quarter that spent on refugee determination in the North.

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Several other limitations in the current system have an impact upon those seeking protection. There has been a growing recognition that the current definition fails to protect claimants who are genuinely fearful of serious harm, but who cannot establish that they are at differential risk because of their civil or political status—the core of the present definition. Regional agreements in Africa and the Americas have recognized this and extended protection on a broader basis. The conceptual narrowness of the definition needs to be addressed if protection is going to be effectively and equitably available to all those in need.

There is a conundrum in the present system. The claim for protection may be favourably determined on a group basis when it can be established that the claimant is a member of a group that is at risk. However, thereafter, that group-linkage is largely ignored. The

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