Background Paper **BP-280E**

REFUGEE PROTECTION: THE INTERNATIONAL CONTEXT

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Revised October 2008

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CONTENTS

Page

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REFUGEE PROTECTION: THE INTERNATIONAL CONTEXT*

There are many people in the world whose lives, liberty or security are in jeopardy. Some are threatened by political oppression, some by natural disasters, others by economic conditions that make even a subsistence existence difficult or impossible. Still others flee war or civil strife. Such situations force many individuals to leave their homes to seek refuge and security elsewhere, either in other countries or in different parts of their own country. In a general way, all such people may be called "refugees." In international and national legal systems and practice, however, the term carries a much more limited and technical meaning. Those who fall under the rubric "refugees" in this more technical sense are the subject of this paper, which provides an overview of the international system that has developed to protect the human rights of refugees.(1)

THE UNITED NATIONS CONVENTION

The 1951 United Nations *Convention Relating to the Status of Refugees* (the Geneva Convention) is the main document governing the treatment of refugees by states in whose territories the refugees are found. Some 147 states have acceded to the Geneva Convention and/or its Protocol, the most important parts of which are its definition of "refugee" and its prohibition against *refoulement*.

A refugee is defined in Article 1 of the Geneva Convention as a person who:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; …

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* The original version of this document was prepared by Benjamin Dolin and Margaret Young, formerly of the Library of Parliament.

(1) Including the internally displaced and others of concern, the Office of the United Nations High Commissioner for Refugees listed 31.7 million people of concern to that office as of 1 January 2008. Source: UNHCR, "2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons," June 2008.

Article 33 goes to the heart of a state's duty to protect the human rights of refugees, although it is important to note that the protection granted has also become part of customary international law. Entitled "Prohibition of Expulsion or Return ('Refoulement')," Article 33 states:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

It is important to recognize what the Geneva Convention does not do:

- It does not create an expansive definition of "refugee." The rights of refugees under the Geneva Convention arise only for those who have crossed an international boundary in consequence of persecution on racial, religious, political or social grounds. Those whose need for refuge flows from other than what are essentially political origins – that is, from war, famine, flood, statelessness, poverty and so on – and who may be of great humanitarian concern, have no claim on other states that can be asserted by reliance on the Geneva Convention.

- Although both customary international law and the Geneva Convention require that contracting states not return (*refoule*) refugees to the country where they fear persecution, such states are not required to permit them to stay permanently. As well, they are not prohibited from returning refugees to a third country, unless that country would likely return them to the country where they fear persecution.

- The right of refugees not to be *refouled* is not absolute. A state is entitled to place its own security interests ahead of the rights of the refugee; it also has the right to refuse refuge to people convicted of serious crimes and who thereby pose a danger to the receiving society.

The Convention Against Torture[(2)] (CAT) is also relevant, as it contains a provision prohibiting *refoulement* where there are substantial grounds for believing that a person would be in danger of being subjected to torture. Many states, including Canada, have included protection under the CAT in their refugee determination procedures.

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(2) The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

There are also two regional agreements, for Africa[3] and for Central America,[4] that extend the meaning of the concept of refugee for their signatory states in an attempt to respond to their particular needs. In practice, many Western countries, to varying degrees and under varying conditions, also extend protection to a broader range of individuals than those recognized under the Geneva Convention definition.

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

A. The Mandate

In 1950, with the adoption by the General Assembly of the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR), the current institutional framework for the protection of refugees came into being. Currently, UNHCR's staff, including short-term employees, number more than 6,200 (most of whom work in the field) in 116 different countries, as well as at headquarters in Geneva. Its budget is approximately US$1 billion. The general mandate of UNHCR is twofold: to protect refugees and to seek permanent solutions for their problems. It currently assists more than 31.7 million people.

B. Fulfilling the Mandate

1. Protection

The characteristic that most distinguishes Convention refugees from other migrants (for example, those seeking better standards of living, often confusingly called "economic refugees") is their need for protection. In crossing an international border and being unwilling or unable to return, refugees place themselves outside the realm of protection normally provided by a state to its citizens. The central aspect of UNHCR's role, then, is to ensure that refugees receive that protection by providing protection against *refoulement*, providing for their basic physical needs (shelter, food and so on), and ensuring respect for other basic human rights.

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(3) *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf.

(4) UNHCR, *Cartagena Declaration on Refugees*, 22 November 1984, http://www.unhcr.org/basics/BASICS/45dc19084.pdf.

2. Finding Durable Solutions

There is a commonly accepted hierarchy of permanent solutions to refugees' problems: repatriation to the country from which the refugees fled, integration into the country of first asylum, and resettlement in another country.

a. Repatriation

Repatriation can be a risky business. There can be serious threats to refugees who return to areas where the situation that caused them to leave has not improved. Nevertheless, repatriation, when it is possible and provided it is undertaken voluntarily, is usually thought to be the best durable solution, since it permits refugees to reintegrate into familiar surroundings and culture. Many refugees repatriate on their own, but when movements are planned and organized UNHCR plays a key role in ensuring that returnees have accurate information about conditions in their former homeland, that the individuals are moving voluntarily, and that their human rights will be protected. UNHCR also has a role to play in monitoring their treatment after return, and in assisting returnees to re-establish themselves. This assistance includes, depending on the circumstances, providing returnees with transit centres, grants, food, housing materials and agricultural implements to assist them in their initial year of return. The UNHCR reports that 731,000 refugees were repatriated in 2007.

b. Local Integration

Whether a country to which refugees initially flee can ultimately integrate them into its economic and social fabric depends on a variety of factors: the number of refugees, the economic and demographic structure of the country, the nature of its society (including racial and religious differences), the political and security situation, and the environmental impact of the newcomers. As a durable solution, local integration consists of three elements: the attainment of legal rights, economic integration that allows for a standard of living similar to that of the local population, and social and cultural acceptance.(5) Refugees are able to integrate and move forward with their lives, which differentiates local integration from other situations where neighbouring countries host refugees.

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(5) Alexandra Fielden, *Local Integration: An Under-reported Solution to Protracted Refugee Situations*, UNHCR New Issues in Refugee Research, Research Paper No. 158, June 2008.

Local integration can have benefits for the refugees, UNHCR and the host country. The establishment of refugee camps may be essential for emergency care, but ongoing camps often act as a disincentive to longer-term economic self-sufficiency, and can adversely affect the refugees' pride and self-respect. Camps are also very costly to operate year after year; thus, even partial self-sufficiency lightens the load on UNHCR. From the point of view of the host country, money spent on self-sufficiency projects also aids the country generally.

c. Resettlement Outside the Region

In some situations where repatriation is impossible and countries of first asylum are unwilling or unable to offer continuing protection to refugees, resettlement, traditionally in developed Western countries, may be the only option available. Its use is circumscribed, however, by the availability of resettlement places and by the financial demands of sponsorship. There are fewer than 100,000 resettlement spots worldwide, which means that less than 1% of the world's refugees benefit from resettlement in a given year. The largest resettlement movement in the post-Second World War period has been that of the Indochinese refugees from the mid-1970s onward.

The Geneva Convention itself does not place any duty on countries to resettle refugees, although one clause of the preamble does urge that states recognize the importance of an international approach to refugee problems. Only a small number of countries, including Canada, have a tradition of resettling refugees. However, this is changing, as more countries (from a greater diversity of regions) have started refugee resettlement programs. "New" resettlement countries include Argentina, Benin, Brazil, Burkina Faso, Chile, Iceland, Ireland, Spain, and the United Kingdom.

OTHER ORGANIZATIONS

Numerous international organizations play an important role, directly or indirectly, in assisting refugees. These organizations include the International Organization for Migration, the Red Cross, UNICEF, the World Food Program, the World Health Organization, and the UN Office for the Coordination of Humanitarian Affairs.

In addition to international organizations, non-governmental organizations in various countries assist in the settlement of refugees and, particularly in Western countries, play an important advocacy role in asserting refugee rights, particularly when these appear to conflict with the interests of states as perceived by their governments. Such organizations can also be effective advocates of the rights of individual refugees who appear to have been treated unfairly or whose refugee claims appear to have been incorrectly assessed.

THE ROLE OF INDIVIDUAL STATES IN PROTECTING REFUGEES' HUMAN RIGHTS

It is an important, if self-evident, fact of the modern world that refugees flee from and to individual countries, and are sometimes resettled in still others. UNHCR has no independent authority to enter any state, even to monitor or assist in refugee camps, without the permission of the country in question. Individual states contribute to the protection of refugees' human rights in three main ways: through financial assistance, resettlement, and protection against *refoulement*.

A. Financial Assistance

Without financial assistance, many countries of first asylum, most of which are in developing countries, would be unable to shoulder their burdens, particularly where there have been mass influxes of refugees. Thus, financial assistance to UNHCR and to other humanitarian agencies is essential to enable them to deliver emergency aid and longer-term protection. Donations for food aid are also important.

B. Resettlement

As discussed above, resettlement in countries outside the region that generated the refugees is the least preferred durable solution, but is nevertheless sometimes unavoidable. The primary countries of resettlement in terms of actual numbers accepted are the United States, Canada and Australia, but other countries also share the burden, with some concentrating on the hard-to-place refugees, such as the disabled, or refugees from certain regions.

It should be noted that providing resettlement opportunities for refugees does not affect states' interests as spontaneous arrivals may. States retain full sovereign rights on whether or not to admit refugees from abroad, on which people to admit, and on how many. They may select refugees on the basis of who will best settle in the country, or according to other criteria, as they wish. Spontaneous arrivals, on the other hand, prevent the state from exercising some of those choices. The problems that this poses will be discussed below.

C. Protection Against *Refoulement*

In addition to financial assistance and the provision of resettlement opportunities, a state's most important duty is to ensure that individuals are not forcibly returned to countries where they claim to have a well-founded fear of persecution. This protection can be temporary or long-term and it exists independently of the Geneva Convention as part of customary international law. The Geneva Convention itself is silent about procedures to be used to determine the *bona fides* of a refugee claim. Indeed, many signatories have no formal procedures at all, relying instead on UNHCR. Others, primarily Western countries, have developed administrative or quasi-judicial procedures to determine whether a claim should be recognized.

Refugee recognition is often bound up with politics, procedures, and state requirements. Thus, it should not be surprising that overall refugee recognition rates vary greatly from country to country, or that certain nationalities will enjoy more success than others in having their claims recognized.

D. International Cooperation

1. European Union's Common European Asylum System

The move towards the development of a Common European Asylum System (CEAS) in the European Union (EU) has been a complex and difficult process that is still ongoing. The creation of the CEAS has been driven by the process of integration itself. First, the signing of the Single Europe Act in 1986 abolished restrictions on the movement of European Community workers across borders within the single market. This in turn created the need for common policies and processes with respect to the EU's external borders in order to address the movement of non-EU nationals within EU territory and prevent the possibility of multiple asylum claims.

Second, the expansion of the EU to include new member states bordering on countries of origin, or regions that are primary transit routes for asylum-seekers, such as North Africa and the Balkans, raised concerns in member states that the EU would face an increased number of asylum-seekers.(6) This reinforced the need to establish common asylum policies and procedures and have those provisions adopted by accession states and third countries.

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(6) Christian Boswell, "The 'external dimension' of the EU immigration and asylum policy," *International Affairs*, Vol. 79, No. 3, 2003, p. 624.

The main focus of the CEAS is to ensure that one member state would not face a greater number of asylum claims than the others due to different and/or more generous refugee protection measures.(7) The CEAS also seeks to address the external dimension of asylum, namely reinforcing protection mechanisms in countries of origin, as well as addressing the root causes of refugee movements.

a. The Schengen Agreement

Efforts to coordinate asylum processes in Europe initially began outside the European Community framework as a largely intergovernmental process with the signing of the Schengen Agreement by France, Germany and the Benelux(8) countries in 1985. Since the signing of the Agreement, the Schengen area has expanded to include 22 EU member states and two non-EU member states, Norway and Iceland.(9)

The purpose of the Schengen Agreement was to provide for the gradual abolition of inspections between the borders of these states. However, this has raised security concerns with respect to the movement of non-EU citizens and in particular, asylum-seekers across borders within the Schengen area. Signatory states worried that the removal of internal borders would result in asylum-seekers travelling to different countries in order to make multiple asylum claims, taking advantage of different legal standards and regulations. As a result, the Agreement includes several principles with respect to asylum, which collectively have become known as the *Schengen Acquis*:(10)

- Assignment of exclusive responsibility for examining asylum requests to a single country, according to common criteria;
- Establishment of rules for asylum-seekers visiting other countries;

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(7) European Union, "The European Union Policy towards a Common European Asylum System," February 2006, http://ec.europa.eu/justice_home/fsj/asylum/fsj_asylum_intro_en.htm.

(8) Benelux refers to the neighbouring monarchies of Belgium, the Netherlands, and Luxembourg.

(9) When the Schengen Agreement was incorporated into the Treaty of Amsterdam in 1997, Ireland and the United Kingdom also became subject to its provisions. However, under the Treaty of Amsterdam, they are also able to opt out of some its measures, if they so choose. Similarly, though Denmark signed the Schengen Agreement, it is also able to opt out of its provisions under Title IV of the EC Treaty. European Union, "The Schengen Area and Cooperation," http://europa.eu/scadplus/leg/en/lvb/l33020.htm.

(10) UNHCR, *Tool Boxes on EU Asylum Matters; Tool Box 1: The Fundamentals*, 1 November 2003, p. 85.

- Assurance that the country responsible for examining an asylum request will re-admit the asylum-seeker; and

- Sharing of data and information regarding asylum applicants.

The *Schengen Acquis* evolved with the signing of the Dublin Convention in 1990,(11) which provided a mechanism and criteria for determining the state responsible for examining asylum applications lodged in the EU.(12)

b. The Common European Asylum System

Another major step in the harmonization of EU asylum regimes occurred in October 1997, with the signing of the *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts*. Article 2, paragraph 15 of the Treaty of Amsterdam established the legal foundation for the creation of a common European asylum regime. Among other things, it required that the Council adopt criteria and mechanisms for determining which member state would be responsible for considering an application for asylum submitted by a national of a third country in one of the member states. In addition, it called for the establishment of common minimum standards on the reception of asylum seekers, and the minimum standards regarding the qualification of third country nationals as refugees and on procedures for granting or withdrawing refugee status.

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(11) *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities-Dublin Convention*, Official Journal C254, 19/08/1997, pp. 0001–0012.

(12) The Dublin criteria for determining member state responsibility are, in order of priority:

1. If the applicant has a family member who has refugee status and is legally resident in a member state, that state will be responsible, if the person concerned so desires: Article 4.
2. If the applicant has a valid residence permit, the issuing member state will be responsible: Article 5(1).
3. If the applicant has a visa, even an expired one, the issuing member state will be responsible: Article 5(2) to 5(4).
4. If it can be shown that the applicant irregularly crossed the border into a member state from a non-member state, that member state will be responsible: Article 6.
5. The member state responsible for controlling the entry of the applicant into the territory of the member states will be responsible for examining the application for asylum unless, before applying for asylum in a member state where the obligation to hold a visa is waived, the applicant entered a member state where the visa obligation was also waived (Article 7).

If none of the above apply, the first member state in which the application for asylum is lodged is responsible: Article 8.

Through its protocols, the Treaty of Amsterdam also required that the *Schengen Acquis* be incorporated into the framework of the EU.

The Treaty also resulted in immigration and asylum policies being transferred to the first pillar in the EU decision-making framework.(13) This meant that the harmonization of asylum regimes would no longer be a strictly intergovernmental process, but rather the European Commission would play a central role in the process; namely it would have the sole right to propose legislation that would be binding upon member states. Moreover, under the first pillar, unanimity was no longer required for decision-making in the Council of the European Union. Qualified majority voting would be sufficient.(14) Therefore, decisions regarding asylum policy would no longer be based upon "the lowest common denominator of restrictive measures."(15)

Since the Amsterdam Treaty was signed, the creation of the CEAS has occurred in two main phases. The first phase, lasting from 2000 to 2004, involved the introduction of four main legal instruments on asylum, which are based upon the full and inclusive application of the Geneva Convention.(16)

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(13) The European Union has a three-pillar structure with each pillar representing a different type of cooperation between Member States. The first pillar reflects supranational decision-making, where EU institutions pass legislation that is binding on Member States. The second pillar consists of intergovernmental decision making through the Council of the European Union, made up of ministers from EU Member States, which issues directives and passes legislation. The second pillar focuses on the development of a Common Foreign and Security Policy. The third pillar is also intergovernmental and focuses on police and judicial cooperation through the Council of the European Union. Both the second and third pillars require unanimity in voting. Prior to the Treaty of Amsterdam, asylum and immigration policy was under the third pillar.

(14) In the Council of European Union, each member state may cast a certain number of votes based upon its population size. A qualified majority is achieved if the majority of member states approve the initiative and 255 votes of the total possible 345 votes allocated to member states are also cast in favour of the initiative. Furthermore, a member state may request a verification of the vote to ensure it represents 62% of the population of the European Union. (See European Union, *Glossary*, "Qualified Majority," http://europa.eu/scadplus/glossary/qualified_majority_en.htm.) This system of qualified majority voting will be modified under the *Treaty of Lisbon*. Under paragraph 17 of Article 1, "as from 1 November 2014, a qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union." (See *Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community*, Notice Number 2007/C 306/01 in *Official Journal of European Union*, Vol 50, 17 December 2007, http://bookshop.europa.eu/eubookshop/download.action?fileName=FXAC07306ENC_002.pdf&eubphfUid=534817&catalogNbr=FX-AC-07-306-EN-C.)

(15) Jacqueline Bhabha, "European Harmonization of Asylum Policy: A Flawed Process," *Virginia Journal of International Law*, Vol. 35, 1994, p. 101.

(16) Unless otherwise noted, this section is drawn from: European Union (2006).

- **The Dublin Regulation:** established the rules used to determine the member state responsible for assessing an application for asylum.

- **The Reception Conditions Directive:** guaranteed minimum standards for the reception of asylum-seekers, including housing, education and health.

- **The Qualification Directive:** established a set of criteria for qualifying for either refugee or subsidiary protection status and set out what rights are attached to each status.

- **The Asylum Procedures Directive:** ensured that asylum-seekers have access to the same minimum procedures upon arrival, such as access to legal aid, interpretation services and judicial scrutiny of their application.

The EU also established the European Refugee Fund to provide member states with the financial support necessary to implement these legal instruments.

The second phase of the CEAS was agreed to by EU heads of state in 2004, as part of the Hague Programme, an initiative aimed at renewing EU cooperation in 10 policy areas. The Hague Programme outlined three main priorities with respect to CEAS for the period 2005 to 2010:(17)

- creation of higher common standards for the protection of refugees;

- enhancement of practical cooperation between member states in the area of asylum through the creation of a European Asylum Support Office (EASO), responsible for supporting and coordinating the efforts of member states in asylum activities; and

- development of partnerships with countries of origin to provide them with assistance to enhance their own protection capacities, as well as to promote the creation of return and resettlement programs.(18)

These priorities were reinforced and elaborated upon in the Council of the European Union's 2008 *European Pact on Immigration and Asylum*, as well as the European Commission's *Policy Plan on Asylum: An Integrated Approach to Protection Across the EU*.(19)

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(17) Commission of the European Communities, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions; Policy Plan on Asylum: An Integrated Approach to Protection Across the EU*, June 2008, p. 4, http://www.statewatch.org/news/2008/jun/eu-com-asylum-communication-jun-08.pdf.

(18) European Union (2006).

(19) Commission of the European Communities (2008); and Council of the European Union, "Draft of the European Pact on Immigration and Asylum," 13440/08, 24 September 2008, http://www.statewatch.org/news/2008/oct/eu-european-pact-imm-asyl-13440-08.pdf.

In addition to the Hague Programme, the entry into force of the *Treaty of Lisbon* in 2009 will likely have a significant impact on the Common European Asylum System.(20) The Treaty, which was adopted in Lisbon in December 2007, is expected to be ratified by the end of 2008.(21) The Treaty incorporates the Charter of Fundamental Rights of the European Union, which guarantees the right to asylum.(22) It also enshrines in EU law uniform protection measures for asylum applicants, above the minimum standards provided by the Treaty of Amsterdam. Finally, the Treaty also grants the European Court of Justice jurisdiction over asylum and immigration cases.

2. The Canada–U.S. Safe Third Country Agreement

In North America, international cooperation for considering refugee claims is much simpler. Canada and the United States are parties to the Safe Third Country Agreement.(23)

Provision for naming a "safe third country" has existed in Canadian law since 1989.(24) However, it was not used until the events of 11 September 2001 provided an impetus for Canada and the United States to reach an agreement on which country would be responsible for examining claims in cases where the claimant entered from the other country. They signed the Safe Third Country Agreement in 2002 and it came into force two years later. During 2005, Canada returned 303 refugee claimants to the United States under the terms of the Agreement.(25)

The Safe Third Country Agreement embodies the general principle that claimants should have their claims examined by the first of the two countries in which they are physically present. Accordingly, it is based upon the same burden-sharing premise as the EU arrangement,

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(20) UNHCR, "Building a Europe of Asylum: UNHCR's Recommendations to France for its European Union Presidency," 9 June 2008, p. 1, http://www.unhcr.org/refworld/docid/484e71812.html.

(21) The Treaty has been ratified in most EU member states. The Czech Republic and Sweden are currently in the process of ratifying the Treaty. However, the Treaty was rejected by Ireland in June 2008.

(22) European Parliament Council Commission, "Notices from European Union Institutions and Bodies," *Charter of Fundamental Rights of the European Union*, *Official Journal of the European Union*, (2007/c303), 14 December 2007, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/c_303/c_30320071214en00010016.pdf.

(23) The Agreement's official title is an "Agreement Between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries." A copy of the Agreement is available on the Citizenship and Immigration Canada website at http://www.cic.gc.ca/english/department/laws-policy/safe-third.asp.

(24) Under Canada's *Immigration and Refugee Protection Act*, the minister may designate a country as a state to which refugee claimants may be returned to make their claim for protection. See sections 101(1)(e) and 102 of the Act.

(25) Citizenship and Immigration Canada, "A Partnership for Protection – One Year Review," November 2006.

but differs in many respects. Perhaps most significantly, the Safe Third Country Agreement does not seek to harmonize the refugee determination procedures of its signatory countries, as do the vast array of European instruments, directives and regulations. Rather, the Safe Third Country Agreement simply allows Canada to return refugee claimants to the United States to bring their claims in that country if they arrived in Canada from the United States at a land port of entry, and vice versa.

The Canada–U.S. Agreement is, however, similar to the European system in respect of the exceptions that are made for particular individuals who would otherwise be subject to the safe third country rule, such as unaccompanied minors and applicants with family members who have previously been given refugee status in the destination country.

The Safe Third Country Agreement has evoked criticism from some refugee advocates. Specifically, they argue that it erodes refugee protection and increases people smuggling while creating a time-consuming and costly new administrative procedure at our land borders. Those in favour of the Agreement point to the UNHCR's involvement in reviewing the Agreement, and the guarantee that persons returned under the Agreement cannot be deported to their home country without their claim being heard. Therefore, they suggest that the Agreement is not adversely affecting those in genuine need of protection. As well, the decrease in claims in Canada has represented significant savings.

CURRENT THREATS TO THE HUMAN RIGHTS OF REFUGEES

Many of the current threats to the human rights of refugees have existed from time immemorial – repressive regimes, civil conflict, ethnic clashes, poverty, and so on. It is a truism to state that the world needs to pay more attention to these root causes of refugee movements. Meanwhile, refugees are with us now, and will be in the future. They will continue to be dealt with by the laws, institutions, and state practices that constitute the loose refugee protection "system" described above. In the past decade, however, a number of additional pressures have been placed upon the system and its component parts.

A. Migratory Pressures on Western Countries

The volume of refugee claims today places significant pressures on determination systems designed to handle far fewer applicants. Moreover, many of those seeking asylum are perceived as migrants seeking immigration opportunities, rather than *bona fide* refugees. Others seek shelter for reasons relating to war or civil strife and therefore do not fall under the strict definition of refugee found in the Geneva Convention. Moreover, the higher the number of claimants, the more difficult it is to separate valid from invalid claims in an acceptable period of time.

Arrivals of refugee claimants are described as "spontaneous" in the sense that they occur outside normal immigration channels and in an unpredictable fashion. Even apart from the practical difficulties of dealing with relatively large numbers, such movements affect the ability of a sovereign state to control its borders and are seen as threatening on that ground alone. Even immigrant-receiving countries such as Canada are very concerned about control issues, particularly since it is clear that public support for a generous refugee program depends on its being controlled, with only genuine refugees being assisted. In addition, spontaneous arrivals make it difficult to identify criminals and security risks among the claimants, a situation that may further erode general public support for genuine refugees.

In response to these migratory pressures, Western countries began in the 1980s to tighten up their determination systems and to introduce controls designed to deter spontaneous arrivals. Methods include visa restrictions, fines imposed on airlines that carry undocumented passengers, returning claimants to third countries, detention of claimants, and restricted rights to employment. Further measures also included the development of the multilateral agreements discussed above.

It should be realized that only a very small percentage of refugees ever leave their own region to claim asylum in the West. On the other hand, refugee determination systems in developed countries are individualized, bureaucratic, often lengthy, and very costly. Further, refugees become entitled to benefit from extensive social support systems paid for by taxpayers.

Indeed, although greatly increased migration has been discussed in terms of the recent restrictive response of governments and the threat this presents to genuine refugees, there is no doubt that spontaneous arrivals in the West consume a disproportionate share of the world's

resources devoted to refugees: states spend many times the amount of the entire budget of UNHCR on spontaneous arrivals.

Furthermore, it may be argued that those who arrive spontaneously in the West are not representative of the refugee population as a whole, being largely male, young, and resourceful enough to manipulate visa and control systems in order to travel to the West. Meanwhile, a disproportionate number of residents of refugee camps are children and women.

Despite these contradictions and difficulties, the concept of asylum remains at the heart of any system of refugee protection. In all Western countries, the challenge of the future will continue to be how to coordinate responses and streamline refugee determination systems without sacrificing fairness and reliability, and how to institute appropriate border controls without impairing the ability of individuals in genuine need to find refuge.

B. A Changing World

In the close to 50 years since UNHCR came into existence, the world has changed dramatically. The number of refugees has steadily increased and, while a number of refugee problems have been solved, many more show no signs of resolution. The average duration of major refugee situations reached 17 years in 2003, up 8 years from a decade previous.(26) Those in protracted refugee situations are often in a state of limbo for more than one generation. Many of the world's refugees now originate in the developing world and do not necessarily fit the Geneva Convention's narrow definition of "refugee"; mass movements also defy the Geneva Convention's implied individualized concept of persecution. For example, the flow of refugees from Iraq following the 2006 Samara bombings has created a major protection challenge for the international community. Moreover, as noted above, large-scale migration from South to North, and potentially in significant numbers from East to West, threatens the institution of asylum in the West. It will be continually necessary to adapt to these changes, respond to the current pressures on the system, and face the challenges of the future.

(26) United Nations High Commissioner for Refugees, *The State of the World's Refugees: Human Displacement in the New Millennium*, Oxford University Press, New York, 2006, p. 109, http://www.unhcr.org/static/publ/sowr2006/toceng.htm.