How Nation-States Create and Respond to Refugee Flows

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The ideal type of political organization is the nation-state, which leads to a presumption of state legitimacy when the state represents a community, based on ethnic origin or shared political values, that claims a right to persist. A nation-state tends to produce forced migration for three reasons: it contains more than one nation; the populace disagrees about the structure of the state or economy; or the state implodes due to the lack of resources. This paper elaborates a theory of refugee production and policy formation based on the dynamics of the nation-state. It concludes by addressing international refugee policy and practice in light of this theory and political changes following the end of the cold war.

Persistent patterns in refugee movements provide clues to the systemic causes of refugee flows. They provide guideposts for reevaluating international collective responses to refugees that remain deeply rooted in cold war thinking.

Since the 1960s, the bulk of the world's refugees have been from developing countries and have been given refuge by their neighbors in developing countries in Asia, Africa, and Latin America (UNHCR, 1993, 1995; U.S. Committee for Refugees, 1992). With the collapse of Soviet communism, the Balkans joined the list, as ethnic fighting led to levels of violence and refugee flows not seen in Europe since the end of World War II.

The purpose of this article is to explain the sources of refugee flows, discuss the bases for coordinated international policy and practices related to refugee movements, and reevaluate major components of international cooperation on refugees in light of recent changes in world politics.

THE NATION-STATE

Refugee production is rooted in geopolitical structure. Since the nineteenth century, the dominant model of global political organization has been the nation-state. The nation-state model emerged in Europe and became the principal political model because of the dominance of European powers. The assumption that countries ought to be organized as nation-states is the key to understanding the political basis of refugee production and of policies towards refugees developed in the twentieth century by governments, originally under League of Nations auspices and now primarily through the United Nations (Holborn, 1975; Gallagher, 1989).

The Nation and Nationalism

Contributors to recent literature on the nation and nationalism locate the origin of the "nation," in the sense implied by the term "nation-state," in modern European history (*e.g.*, Anderson, 1991; Hobsbawm, 1991; Moynihan, 1994; Heraclides, 1991; Halperin and Scheffer, 1992 ; Greenfeld, 1992; Seth, 1993; Ra'anan *et al.*, 1991; Hammar, 1990; Colley, 1992; Brubaker, 1992). Analysts disagree as to which is the first nation.[1] Also, the variety of definitions of the word "nation" is vast.

Anthony Smith (1986) discusses the often-noted distinction between the territorial nation and the ethnic nation. The territorial nation, identified with West European countries such as England, Spain, and France (and their former settler colonies), is the result of a fusion of regional groups merged into an overarching identity in a process facilitated or imposed by a central governmental power. The national identity may be a new transethnic community, such as the British that incorporates English, Scots, Welsh, and Northern Irish groups (Colley, 1992). It may result from the imposition of one region's characteristics on other regional groups, as in Castillian Spain or the Ile de France. Echoes, sometimes strong echoes, remain in regional identities, languages, cultures, and institutions in places like Catalonia, the Basque country, Provence, Brittany, Scotland, and Wales.

The criteria to judge success of a nation-building process are unclear. What distinguishes the long history of French nation-building (Hobsbawm, 1991), for example, from Haile Salassie's plans for Ethiopia or Joseph Stalin's plans for Russification? What differentiates nation-building from imperialism? Is the Indonesian experiment in nation-building successful and acceptable except in the case of the East Timorese?[2]

The ethnic nation, by contrast, is a community based on descent. Often, as in Central European history, it is a nation in search of a state. Poland, Hungary, and the various Balkan entities come to mind, as do the Kurds, Eritreans, and East Timorese.

There is also a mixed variety, represented by Germany and Italy, which has a cultural or historical basis for a nation, but requires leadership to foster national identity and state assistance to build the nation. In this case, development and consolidation of a nationality is accomplished by creating and fusing

[1]Anderson (1991) nominates the nineteenth century republics of North and South America. Greenfeld (1992) suggests Tudor England. Brubaker (1992), along with many others, proposes revolutionary France because the community of *citoyens* replaced the king as the source of legitimacy for a state that was to serve *la nation* (Schama, 1989).

[2]One interpretation of the territorial nation-state is as derivative of an empire built by the accretion of contiguous ethnic territories. The emergence/imposition of a single identity leads to a nation-state such as France or the United Kingdom but this is not a necessary outcome, as the Austro-Hungarian empire illustrates. This is the predicament of many post-colonial states, notably those in Africa, and the successor states to European empires in Central Europe and the Balkans.

national identity with the political project to establish a state. In the twentieth century, the development of Zionism conforms to this pattern. A national identity was reestablished in coordination with a political program. The state often has an important role in initial nation-building and continuously attends to the maintenance and enhancement of national identity.

The list of characteristics that define a nation, whether territorial or ethnic, is long and disputed. In the sixteenth and seventeenth centuries in Europe, religion was accepted as a crucial characteristic. Illustrations of religion's role in early modern European nation-building include the expulsion from Spain of the Islamic Moors, former colonial masters, and the Jews, a middleman minority (Zolberg, 1978; Zolberg, Suhrke and Aguayo, 1989);[3] the Protestant expulsions from France following the revocation of the Edict of Nantes; and the Treaty of Augsburg in 1555 that established the idea that the prince's religion is the religion of the inhabitants (Camilleri and Falk, 1992:14).

Remnants of religion's earlier role persist in established state religions and religious requirements for constitutional monarchs. Many predominantly Islamic countries have leaders or strong constituencies, often prodded by regional powers,[4] that urge states to organize under Islamic law. Islamic forces promote the view that the separation of church and state is a Western idea, while Islam is a way of life that makes no sharp line between sacred and secular. Many Europeans view Islam as a cultural threat to the separation of political structure and religious belief.[5] For them, religion remains important as a national characteristic – it helps them define what they do not want to be and whom they do not want to admit as immigrants, namely Moslems.

In the nineteenth century, language became a touchstone of national identity. The Italian and German governments deliberately encouraged the spread of the Italian and German languages in their modern forms as nation-building techniques. French schools taught a standard French in order to instill the French national identity and culture into the hearts and minds of the population (Hobsbawm, 1991; Greenfeld, 1992; Seton-Watson, 1964, 1981). Compulsory military service was used by France and other states to consolidate national identity.

The writing of history, the founding of museums, the recovery of folktales and folk music, the development of philology, and dictionary writing were

[3]Expulsion of the moors and Jews is analogous to the more contemporary African expulsions of former European colonials and middle-man minorities such as Asian Indians in drives towards Africanization.

[4]The influence of other states underscores the international dimension of refugee production. External influences are often catalysts of refugee flows (Zolberg, Suhrke and Aguayo, 1986).

[5]European concern about separation of religion and state in regard to Islam has a parallel in nineteenth century U.S. concern about the implications of Catholic political philosophy for freedom of conscience (Dolan, 1985; Keely, 1994).

additional elements of state-sponsored programs to build national identity and solidarity in the population at large. (*See* Hobsbawm and Ranger, 1992, on the nineteenth century.)

Social Darwinism provided a "scientific" underpinning to the importance placed on descent and race for the definition of nations and national characteristics. Social Darwinism contributed to the emphasis on ethnic descent as the basis to claim nationhood in the late nineteenth and twentieth centuries.

Territory also is typically an integral aspect of nationality (*e.g.*, Zolberg, 1981). A group may not control a territory or even reside on what is presumed ancestral land, but place is usually included somewhere in a group's national identification.

The list goes on. A list of requirements of a "genuine" nation is a stumbling block to analytic clarity because each attribute has an exception – whether religion, language, common ancestry, or a historic homeland. Furthermore, claims about national history, customs, or origins can be misleading or historically false, although demythologizing does not necessarily vitiate the nation's power as an organizing principle or destroy national identity.

The definition of a nation may be approached more fruitfully using the analytic device of the "ideal type" developed by Max Weber in his analyses of bureaucracy and the state. A list of characteristics describes typical attributes of a social construction, such as a bureaucracy or a nation. Any specific case need not contain all of the attributes found in an ideal type assembled from the broad spectrum of concrete examples.

A nation exists when the idea is accepted by the members that they are a group, that they are unique, that the group has a continuity and value worth preserving because of its presumed shared characteristics, however the group conceives of such ties. When that identity leads to a political project to protect, preserve, and enhance the group over time and in space, a nationalism – an ideology based on the common identity as a nation and linked to a political program (Smith, 1986) – has emerged. The variety of conceptions of groups' uniqueness and value undergirds the multiplicity of nationalisms.

Both ethnicity and assent to a set of political beliefs can be the major defining characteristic of a nation. Germany and France, which are neighbors, are examples of ethnicity rather then civic assent as the dominant mode of national identification (Brubaker, 1992). The historical period during which a nation-building project took place may be related to the importance of various nation-defining characteristics. Nineteenth century instances of nations usually emphasize language, for example.

Newcomers or immigrants accepted into states are generally expected to assimilate. In France, for example, about one-third of the population is estimated to have a foreign-born grandparent. Yet immigrants have been absorbed into French culture and society. In Germany, with its even stronger ethnic basis for nationality, Polish immigrants were assimilated (Weiner, 1995:47). In

countries that have "hyphenated" groups, like Canada and the United States, the hyphenate is usually a weak identity after three generations, and assimilation to civic culture is usually expected (Fuchs, 1990).

The nation, as understood in the term "nation-state," is currently the normative basis of a state's claim to legitimacy. Critics of nationalism who predicted its impending demise, like Hobsbawm (1991), were incorrect (Moynihan, 1994:24).[6] The existence of a relatively homogenous, self-reproducing group rooted in shared values, with a sense of its own uniqueness and importance that are worth preserving, with a history, sense of shared fate, elements of shared culture, and a territorial referent that figures in its identity and history – these broadly describe what the citizenry of a state "should" be (*e.g.*, Laqueur, 1992:55). This norm, however, is vigorously contested, especially in regard to European states that have experienced large-scale migration.

That multinational states are the statistical norm does not weaken this ideal. The nation provides the preferred and, for some, the "natural" basis for a state. The nation ordinarily requires a state to provide internal order and to preserve and defend the nation in external relations, as well as to foster the life of the nation. Obviously, those who control the levers of power in states can manipulate national and nationalist feeling to preserve their own power and privilege. This manipulation need not destroy the genuine feeling of belonging by the members of the nation or citizens of a state who embrace (or feel embraced by) a national identity. Nations, through their governments, ask for and receive extreme sacrifice, even of life itself, for the sake of the nation or motherland or fatherland.

The State – Territory, Citizenship, and Sovereignty

The state ideally is the political expression of the nation. Nationalisms, even those that are not democratic, are populist.[7] The state legitimately exercises power and extracts resources to provide order and protection. There is no necessary connection between the nation and a particular state form, *e.g.*, monarchy, republic, or dictatorship. Nations, such as the French from the *ancien regime* to the current Fifth Republic, have often had various state forms over time and maintained continuity. A change in state form, or sometimes restoration of a form, can enhance national identity and unify a nation as, for example, the Great Revolution and Restoration in English history and the more recent return of the monarchy in Spain and the establishment, under Juan Carlos's active leadership, of a parliamentary system.

[6]After a 30-year silence, former U.S. Secretary of Defense (1961–1968) Robert S. McNamara published a memoir (1995) in which he noted eleven causes for the "disaster in Vietnam." Among them was "underrating nationalism as a force in the world."

[7]For a discussion of whether nationalism, as the political program of the nation, includes an inherent tendency toward democracy, *see* Greenfeld's (1992) chapter on England.

As with the nation, there is a large and growing literature on the state, its structure, and changes (Barkey and Parikh, 1991; Guéhenno, 1995). There are specialty literatures on territory (*e.g.*, Kratochwil, 1985; Day, 1987; Goertz and Diehl, 1992; Kacowicz, 1994), citizenship (*e.g.*, Hammar, 1990; Soysal, 1994; Brubaker, 1992; Hollifield, 1992; Baubock, 1994; Kymlicka, 1995; Beiner, 1995; Klusmeyer, 1996), and sovereignty (*e.g.*, Camilleri and Falk, 1992; Fowler and Bunck, 1995; Weber, 1995; Spruyt, 1994; Lyons and Mastanduno, 1995; Thomson, 1994; Keohane, 1991; Bartelson, 1995). These works analyze the contested meanings of territory, citizenship, and sovereignty and, in some cases, forecast or call for their demise. Some analysts mistakenly assume change means collapse or ruin of the state (Keely, 1996).

There is wide acceptance of sovereignty and mutually exclusive territory as hallmarks of the state (Camilleri and Falk, 1992: 3). Nonetheless, the literature reflects a lack of consensus on precisely what these mean.

States are also bounded by rules of membership (Brubaker, 1992; Hollifield, 1992). Citizens belong; all others are aliens. The rules vary from state to state. Some states grant members of the nation a right to claim citizenship, as do Israel and Germany. Virtually all states permit acquisition of citizenship through the process of "naturalization."[8] Whether a nation is of a territorial or ethnic type has a great deal to do with how easy it is to be naturalized. Until recently, a state typically mandated that citizens be members of just that one state. While multiple citizenship is more common today, some analysts debate the consonance of dual or multiple citizenship with the nation-state ideal (Miller, 1989; Brubaker, 1989; Hailbronner, 1989; Schuck, 1989; Hammar, 1989).

In the contemporary geopolitical system, everybody belongs somewhere. Statelessness is normatively deviant (Zolberg, 1981). Flows of refugees unable to receive their state's protection are not only deviant, they also threaten geopolitical structures based on the sovereign state.

The Nation-State as Normative

The nation state is the global norm for political organization. Even when states are multinational, governments try to mold the nations into one that is under the state's control. A state apparatus nurtures national identity to legitimate the government in a territorial homeland. Conversely, the nation, whether based on descent or civic assent, justifies the state as the concrete means to preserve a people's identity and way of life.

Further, the nation-state justifies the axiom of self-determination. Self-determination refers to the claim that a people has a right to demand the means

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[8]The term naturalization carries overtones of membership rooted in genetics or ethnicity. An outsider is incorporated (literally made part of the body), *i.e.*, administratively made to be what usually occurs "naturally" through birth.

to preserve, protect, and foster their peoplehood, their culture, their way of life, and their homeland. All nations have the putative right of self-determination, including the right to claim a state to govern their territory as the political expression of their nationality. Self-determination as an axiom of political order assumes the nation-state is the basis of political structure (Halperin and Scheffer, 1992; Heraclides, 1991).

In an ideal system of formally equal states, with mutually exclusive territories, everyone belongs somewhere – all territory is ruled by states representing the collective interests of a constituting people or nation,[9] and all nations have the right to a state. Each state, in turn, ideally should contain only one nation. But this does not accurately describe the real world.

The Political Bases for Refugee Production

As a political organizing principle, the nation-state contains opposing tendencies. Each distinct nationality component theoretically provides the basis for a new state. Yet existing states resist the instability and dislocation that a new state creates. The presence of multinational states makes it necessary to address the differences between the normative ideal and reality.

Second, because nationality does not imply any specific type of state (monarchy, parliamentary democracy, and so on), there is always room for disagreement about the preferred organization of state, economy, and society. No specific type of state structure is required for a nation to persist through time, even if it came into existence as the result of a nationalist struggle. Disagreements about state structure can lead to revolution or violent social transformations.

Third, a nation's or a multinational society's capacity to sustain a modern state is not guaranteed. Weak states can implode, leading to social chaos.

These tensions in the nation-state model yield three sources of refugee production: multinational realities that conflict with the nation-state norm, ideological disagreement, and state failure. These are rooted in the instability of the nation-state, the fundamental unit of contemporary geopolitical structure.[10]

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[9]The possibility for exceptions to every generalization about nations arises even in this instance, *e.g.*, Antarctica. The assertion of mutually exclusive territory, like claims about sovereignty and citizenship, often is more an expression of ideals, about which exceptions abound (*see* Keely, 1996).

[10]I acknowledge my debt to the work of Aristide Zolberg and Astri Suhrke individually and collectively in the book, *Escape from Violence* (1989), with Sergio Aguayo. I have attempted to root their insights systematically into the nation-state structure and a broader conceptualization of its inherent tensions. I propose that nation-building and state-building (especially social transformations of the state by revolutions) are analytically distinct. Further, the implosion of states itself is a separate source of refugee flows. While gladly acknowledging my intellectual debt, I take full responsibility for the current articulation and hope they see their work fruitfully advanced by these efforts.

Nation-State Norm and Multinational Reality

State officeholders pursue national integration or nation-building as a state function. Nation-building is not confined to independence struggles; it is continuous. French opposition to American television programming dominating European airwaves, U.S. discussions of adopting English as the official language, and Norwegian rejection of membership in the European Union are recent examples of ongoing attention to national integration in established states.

Countries that contain two or more nations face the problem of reconciling the nation-state norm with their political reality. The tension can persist, even in countries that long ago developed a national identity out of a plurality of groups, especially when regions or territories were once separate.[11]

States tend to deal with multinationalism in four patterned ways. First, the state may attempt to develop a supranational identity that is separate from any constituent group. The aim is to create a new territorial nation, such as the British, an amalgam of English, Scots, Welsh, and Irish. This is the model followed by Indonesia and Kenya in the modern post-colonial era (Hefner, 1991).

The second pattern is to create a national identity based on one dominant group that requires other groups to conform to the dominant culture. This model overlooks the issue of how willing the dominant group is to structurally integrate other nationalities. Will access to jobs, power, land, and other social goods be allowed on an equal basis, culminating in intermarriage? A successful outcome may produce a "nation" that is rooted in the dominant group's culture, but it may destroy other "peoples" as nations, along with their culture, history, identity, and – in extreme cases – their lives. In many countries, the clash of indigenous people with the dominant culture reflects this tension. In Spain and France, regional groups' cultures dominated and came to define the national culture. Other ethnic and regional groups were structurally integrated, even while the dominant and defining national culture spread, sometimes with intense effort by the central state apparatus.

A third route to nation-building in a multinational state is "ethnic cleansing." Ethnic homogeneity can be accomplished by population transfers, like those between Greece and Turkey after World War I or between India and Pakistan after Partition. More violent ethnic cleansing can take the form of expulsion, regardless of whether there is a place – a purported homeland – for those expelled. The movements in turn from Rwanda by Hutus and Tutsis are of this sort. The ultimate ethnic cleansing is genocide, as seen with the Armenians after World War I and the Holocaust of the Jews under the Nazis.

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[11]There is a special issue of indigenous peoples in many countries that creates additional difficulties politically. Analytically, most accommodations are federationist and are usually restricted to a small minority of the population and to marginal land.

Finally, multinationalism can be handled by confederation arrangements. Switzerland is the prime example of a successful, long-term arrangement. Despite its periodic tensions, Canada is another example. The former Yugoslavia and Czechoslovakia are failed confederations. Successful confederations seem to have success in establishing something of a loyality, even a national identity, rooted in the fact of the confederation itself. The identity of Swiss, for example, is also important in addition to the deeply institutionalized nationalities in the constituent cantons.

All four patterns of nation-building in multinational states include the constant possibility of conflict among groups, which may be violent. While creating a supranational identity and absorbing nonmembers into a dominant group are not inherently violent, each requires the destruction or suppression of national identities of at least some citizens, and each may lead to resistance. East Timorese opposition to absorption into Indonesia exemplifies resistance to absorption into a supranationality. Baltic opposition to incorporation into the Soviet Union, and nationality resistance to Russification generally in the former Soviet Union, indicate the potential for conflict. While conflict may not result in violence, it is highly likely. When violence erupts, there is a high possibility that people will flee because they are on the wrong side politically, ethnically, or religiously. Ethnic cleansing is violent by definition and, short of genocide, produces refugees. While confederations can be stable, they are also likely to break down. Nation-building that seeks to manage or change multinational reality is likely to produce refugees, as shown by 500 years of history from the expulsion of Moors and Jews from Spain in 1492 to recent ethnic cleansing in Bosnia.

Ideology about the Relation of the State to Society

The idea that the state is the political expression of a nation does not imply that national identity is tied to a specific state structure. The form of the state and of social institutions (especially the economy) are not fixed, even in a relatively homogeneous nation-state, and national identities persist despite changes in the political and socioeconomic structure of a state. For example, the French nation survived the revolution, but was further formed by it, and endured through five republics. The Russians' identity persisted from Tsarism, through Marxist-Leninism, to their current attempts to create a new state form. When the form of a state changes due to internal unrest, whether originated in rightist, leftist, or other ideological factions, the potential for refugees exists. A revolution and its consolidation are likely to produce refugees.

In the twentieth century, leftist (Marxist-Leninist) revolutions, inspired by visions of an equitable society based on socialism, challenged traditional social structures. Spain's civil war, the rise of national socialism in Germany and Italy in the 1930s, and more contemporary rightist dictators, such as Chile's

Pinochet, remind us that social transformation, violence, and refugees can result from rightist efforts. Religious ideology, especially Islam in recent decades, can also lead to fundamental political change.

Revolution, whether inspired by the left, right, or religion, usually involves violence and often many refugees. Revolutions usually do not destroy national identity, although some may seek to repress it. Revolutionaries may consciously use nationalist sentiments to consolidate revolutionary changes. Even revolutions that spurn nationality, as official Marxist-Leninist doctrine did, may appeal to national identity in an emergency. Stalin called on devotion to Mother Russia to inspire the sacrifices of the "Great Patriotic War."

State Implosion

When Catherine the Great, Empress of All the Russias, made progressions through her realm, her favorite and minister, Count Gregory Potemkin, preceded her. The Count assured an impression of prosperity for the Empress by having elaborate building facades constructed, with nothing behind them. Thus the phrase "Potemkin Villages." The system of states in certain regions today seems to be a Potemkin Village – names and colored blots on a map with no functional state.

The characteristics of "state implosion" include no sitting government in control and no operative justice system; crumbling infrastructure without the resources to maintain it; lack of schooling, organized medical care, and other basic social services; primitive internal markets and virtually no export market; and banking and monetary systems that have become worthless. Examples of imploded states include Afghanistan, Somalia, Angola, Liberia, and Rwanda. Others, like Zaire, may soon share the same fate.

"State implosion" can occur when former colonial masters withdraw support from former colonies. In the decolonization after World War II, new states appeared. France and the United Kingdom maintained close ties to their former colonies, providing needed political and economic support to the new states. Other colonial powers, notably Italy, Portugal, and Belgium, were minimally involved in their former possessions. The economic problems of Europe in the 1980s and the demands of European economic integration resulted in pulling back from former colonies.

"State implosion" has also occurred when supports inspired by the cold war were withdrawn. East and West – specifically the former Soviet Union and the United States – provided ideological, economic, political, and military support to those who controlled or challenged government. Proxy civil wars, insurrections, resistances, and national political fronts permitted the great powers to compete for influence. Wars resulted in Vietnam, Cambodia, Afghanistan, the Horn of Africa, Angola, Nicaragua, and El Salvador. The former Soviet Union

today lacks the capacity to engage in such foreign adventures, even if its constituent parts desired to do so.

The withdrawal of external supports for weak states is not the only route to implosion, even if typical of the rash of state failures in the 1990s. Implosion can follow in the wake of bad management, corruption, natural disaster, or changes in market forces affecting economies unable to adjust. The nation-state model presumes that, once established, a state will persist. States need material, organizational, and human resources to sustain them, and the existence of a nation does not guarantee those critical resources for a state.

Migration flows happen when a state implodes. Migration results as people seek security and as society regroups itself. Often barons/war lords initiate a "refeudalization" of society. Migrants become refugees if their flight is due to fear of persecution or death meted out to members of rival families, clans, former governments, or other enemies of emergent local chiefs.

Nation, State, and Refugee Production

This analysis of the sources of refugee flows has not cited economic differences, poverty, or lack of development as primary determinants of refugees. Economic factors can spark opposition and may lead to nationality conflict, revolutionary activity, or even the collapse of the state. Yet refugees, who have appeared in moderately wealthy and very wealthy states, are not primarily an economic phenomenon. Rather, refugee production originates in the nation-state as the mode of geopolitical organization.

The three bases of refugee flows – multinational conflict, revolution, and state implosion – are analytically distinct but not mutually exclusive. Multinational states can be racked simultaneously by nationality and ideological conflicts. A revolution can devolve into such chaos that the state implodes. Refugee movements are not the inevitable result of all violent conflict, but a likely outcome. In the twentieth century, multinational conflict over control of state power, revolution, and state implosion have repeatedly resulted in refugee movements.

After World War I, uncontrolled movements of people from states that could not or would not protect their citizens led the League of Nations to arrange internationally coordinated protection and assistance to displaced people, who were generally unwanted where they fled. The international response to refugees developed into a refugee regime. Concern gradually shifted from population transfers, related to the end of European empires, to interwar minorities issues and refugees from Nazi Germany. After World War II, the focus of international refugee aid shifted to repatriation in Europe and then, when forced repatriation to Iron Curtain countries became unacceptable, changed quickly to overseas settlement schemes. The European focus domi-

nated until the mid-1950s, when attention shifted to the Third World where refugee production increased because of civil wars and ideological revolutions. These wars and revolutions were tied to post-colonial nation and state building and to cold war rivalry.[12]

When the cold war ended, so did the basis for Western policy to encourage flight from communism with a virtual guarantee of resettlement. Coincidentally, some Third World states weakened to the point of implosion because the superpowers withdrew external supports. Simultaneously, the asylum systems of the industrial countries are overwhelmed, geared as they were to East-West refugee flows of the cold war. Nationalism, self-determination, and the multiplication of states have reemerged to the point where the shape of geopolitical "order" is unclear.

The international refugee regime's contemporary structure, norms, and resources evolved to address the problems of a post-World War II world, dominated by cold war rivalry. Today the refugee regime deserves reevaluation.

International Response to Refugee Flows

The international response to refugee flows, first under League of Nations sponsorship and now primarily located in the United Nations system, is founded in the nation-state system. Because people are supposed to be under the protection and normally within the boundaries of their state, any large, uncontrolled movement of people beyond their borders threatens international political stability. If the movement is caused by people who lack their state's normal protection, then a serious failure of the state system has occurred.

A state is not behaving as a state should when people flee or are forced out because of racial, ethnic, religious, or political reasons. The international refugee regime – with international treaties, multilateral agencies, and a phalanx of nongovernmental organizations encouraged to be implementing partners in dispensing aid – is not based primarily on humanitarian feelings. Whatever individual motivation inspires national and international officials and civil servants and refugee and human rights advocates, the political basis for the international refugee regime is the protection of states and the international system of states that is threatened when states fail to fulfill their proper roles.[13]

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[12]The UNHCR's first office outside Europe and Hong Kong (a British Crown Colony) was not established until 1962 in Burundi.

[13]These descriptive statements about the functions of the refugee regime can aid in realization of human rights because a realist theory of international relations would support human rights whose violation leads to destabilizing refugee flows. The support of human rights, therefore, inheres in a realpolitik approach to international relations, in addition to claims based on inalienable rights or the fundamental dignity of the person.

Because refugee production is rooted in the nation-state model that under-girds the current geopolitical system, refugees are a system-induced threat. Any system will try to counter such a threat and return to its original or a new equilibrium.

The state system requires order to engage in trade, finance, diplomacy and the other daily, yet complex, behaviors of the "global village." So the first tasks of the League of Nations High Commissioners included sending nationals "home" after empires broke up to "their own" countries, in an effort to create a new equilibrium. Under current international practice regarding refugees, the "preferred durable solution" is repatriation, not settlement in the place of first asylum or resettlement in other countries. Repatriation is an attempt to regain normalcy – with people in the state where they belong and the citizens of that state receiving the protection of life and property that they expect.

Reemphasizing Repatriation

During the cold war, refugee policy discussion in Western industrial countries, especially the United States, focused on escapees from communism. Refugees were used for ideological purposes – people risked their lives when they voted with their feet. Important operations and funding focused on resettling "victims" of communism while, for most of the Third World, Western policy was to assist refugees in place.

Resettlement and asylum policy in the West generally favored applicants from communist countries. The system assumed that numbers of applicants would be relatively low because totalitarian governments would prohibit exit. The public would support the social and economic costs of resettlement as the price of opposition to the communist threat. When larger groups periodically emerged, the additional burdens of resettlement were accepted because the flows "proved" how bankrupt communism was. From Europe there were Hungarians in 1956, spurts of East Germans until the Berlin Wall was built, and escapees from the crushing of the Czech Spring. In the Western Hemisphere, Cubans left after Castro's success in 1959 and in later bursts, especially the Mariel boatlift of 1980. From Asia there were Indochinese in 1975–76 and again in 1978–1980 when the boatpeople movement developed.

The resettlement focus assumed that communism would persist into the foreseeable future in the Soviet Union and, with strong Soviet backing, on the world scene. German *Ostpolitik* tacitly acknowledged that communism would remain a fact of life. The United States led in encouraging and resettling escapees from communism, through a policy of supporting first asylum and a standing promise to resettle people leaving countries with communist governments.

Whatever contributions these policies made to the demise of communism in the Soviet Union and Warsaw Pact, they distorted the refugee system. The purpose

of the refugee apparatus was to contain and control a threat created by the failure of the state system. The anticommunist policy encouraged refugee flows, taking advantage of the refugee regime's capacity to handle them. The focus in the First World was on refugee resettlement, not political change that would allow repatriation. Given the assumption of no foreseeable change in communist-controlled governments, repatriation was not a viable option for the politically important flows from communist countries. The propaganda value of freedom fighters and escapees encouraged refugee movements and resettlement.

The U.N. High Commissioner continued to support repatriation, especially in the context of Third World refugees from civil wars. Peacemaking in Central America, Afghanistan, and Cambodia all contained elements of refugee repatriation (and attention to internally displaced persons) as part of a peace process. The U.N. High Commissioner for Refugees, Sadako Ogata, early in her tenure announced a year of repatriation that soon turned into a decade of repatriation. Prolonged civil wars, fed by big power and regional power intervention (Zolberg *et al.*, 1986) and the easy availability of arms, did not encourage quick solutions. Nevertheless, significant repatriations occurred in the 1990s in Ethiopia, Namibia, Cambodia, Nicaragua, El Salvador, and Mozambique (UNHCR, 1995).

Repatriation requires political leadership that will pay a high price in money and in the diplomatic persistence needed to convince parties of the futility of conflict and the efficacy of political accommodation. In the Third World, parties to conflict included both nationality and ideological groups, often with external backing by cold war protagonists. To break these habits, the industrial countries must alter asylum policy and practice that is premised on abetting escapees from communism. While industrial countries now pursue this change, they face great internal opposition to it.

Additionally, the scope of resettlement needs attention. In the United States, in particular, citizens of the former Soviet Union and of Indochina continue to be resettled as refugees. This honoring of cold war commitments and domestic ethnic politics needs to end, or refugee flows will be encouraged and resources not put into making the flows unnecessary. Repatriation will be seen as a policy for Third World, noncommunist countries. Instead of following a dual standard, resettlement should be confined to desperate cases where it is the only reasonable solution. The UNHCR's list of cases in dire need (a list that has about 40,000–60,000 persons at any given time) would be a good starting point for determining the necessity for resettlement.

Humanitarian Intervention

Under the U.N. Charter, the Security Council can make a finding that there has been a breach of the peace and call on member states to contribute to

military action against the violating state.[14] The Charter also permits military action by states in self-defense. Contrary to the Charter, states have taken military action against other states for additional reasons, such as the maltreatment of citizens of the intervening state (Arend and Beck, 1993).

A number of arguments are used to justify military intervention in refugee producing situations. For example, human rights violations by a government against its citizens, argues Reisman (1990), violate the sovereignty of the people. The offending government cannot legitimately object to intervention as a violation of sovereignty because the real violation of sovereignty is the government's mistreatment of its own citizenry. However, the practical difficulties of implementing such a doctrine precludes its adoption by the international community.

The widespread violation of human rights carried out by a government, tolerated by that government, or carried out when the government is incapable of stopping it, almost invariably leads to internal displacement and eventual refugee flows across borders. The probability is high that human rights violations will lead to refugee flows which threaten the stability of receiving countries. This provides an argument justifying self-defensive actions permitted under the U.N. Charter. Provoking refugee flows can rise to the equivalent of aggression (McCalmon, 1996). A country may defend itself by forceful intervention in another state to end human rights violations and prevent imminent refugee flows that threaten its security (Keely, 1995).

Security Council Resolution 688 on northern Iraq reopened the issue of the legitimacy and wisdom of humanitarian intervention (e.g., Arend and Beck, 1993; Keely, 1995). Any decision to intervene with military force will weigh the probability of success. Recourse to the U.N. Security Council's Chapter VII powers to use military force precludes, in any reasonable scenario, the use of force against a permanent member of the Security Council who has veto power, and most likely against any powerful state.

Policy arguments for humanitarian intervention, therefore, will have the character of permitting forceful intervention, but not requiring it. That forceful intervention might become a more acceptable option, but not a requirement for state action, underscores that forceful intervention is undertaken for reasons of state, not fundamentally to protect human rights. All large-scale human rights violations will not generate corrective, forceful action by states. In some cases, no state feels threatened or, if one or more do feel threatened, military action may be judged counterproductive to state interests. Questions about humanitarian intervention – whether and under what circumstances such intervention will occur – merit additional attention from the international community as a way to develop expectations about state behavior in the post-cold war world.

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[14]These Security Council powers are referred to by the shorthand designation of Chapter VII powers, referring to the section of the U.N. Charter in which they are detailed.

Protection

A fundamental mandate of High Commissioners for Refugees, from the first appointee in 1921 under a League of Nations initiative to the current U.N. High Commissioner for Refugees, has been to provide state-like protection to refugees who are outside their country and unable or unwilling to seek their state's protection. Such protection includes the security of person and property and the exercise of rights to worship, to marry, and other normal life activities.

"Protection" can take on wider meanings. For example, if repatriation is the preferred durable solution, it should take place in safety. The UNHCR arguably needs access to a country to which refugees are returning to make sure that the return is secure and returnees receive no retribution. Because, as High Commissioner Sadako Ogata points out, a person has the right to stay in his or her country, protection may extend to preventive action when it is clear that large-scale human rights violations are underway.

The protection mandate can be extended to UNHCR's helping to organize safe areas for targets of persecution or taking the lead in providing humanitarian aid in war situations, such as in Bosnia. Exposure of unarmed U.N. humanitarian workers, however, may not result in effective protection of displaced people and may actually hinder political progress or preclude policy options. Extending the protection mandate raises important policy and operational issues.

The mandate of UNHCR to provide protection, it should be recalled, is a mandate given by states. As the source of the mandate, states define its scope and operation. The mandate is not a moral law nor does a U.N. agency provide the final interpretations on the meaning of its mandate under changing conditions. States provide authoritative interpretations and extensions of mandates of international organizations. Yet states make mistakes and shirk their duty, sometimes to their great peril, as is generally conceded in the Bosnian case. Currently, there is tension between some UNHCR officials and refugee and human rights activists, on the one hand, and states, on the other hand, about the meaning, scope, and application of refugee and humanitarian law in emerging situations involving civil conflict.

In this debate, the multilateral agencies and their nongovernmental organization (NGO) supporters are sometimes characterized as the "good guys" battling states seeking to avoid human rights obligations. Such polarization does not lead to good policy discussion or development.

To propose that states want to destroy the international refugee and asylum system is naive. For states to claim the power to define the mandate of multilateral agencies that they collectively created and sustain is not the moral equivalent of abandoning 75 years of hard-won humanitarian law and practice. States have a fundamental interest in preserving human rights standards and a capacity to deal with refugee flows that result when those rights are violated.

Refugee flows, after all, are a destabilizing threat to the state system, which is why states developed and support the refugee regime along with multilateral agencies and the NGO community. Interests of states and human rights advocates coincide, even if the incentives to protect human rights differ. Consolidation of gains and future progress in securing human rights more broadly will require continued cooperation, not recrimination.

Early Warning

Finally, early warning of potential refugee flows has received wide attention from international agencies, NGOs, and academic analysts (Clark, 1989; UNHCR, 1993). The UNHCR often discusses the need to build early warning capability. The Deputy Secretary General for Humanitarian Affairs has the mandate to develop early warning capacity.

NGOs on the ground, multilateral agency officials, diplomats, intelligence agents, and journalists all do provide early warning signals. While most people may be surprised by a refugee flow, professionals who monitor such things are hardly ever surprised. The scope or speed of events, however, can not always be accurately anticipated. The movement out of Rwanda in 1994 was on a scale and with a rapidity that surprised even those close to events. Efforts to provide early warning need refining to provide not just the knowledge that something is about to happen, but also information on the timing, size, and characteristics of unfolding events. More recently, efforts to anticipate state failures have sought to identify measures that forecast impending civil strife (*e.g.*, Jaggers and Gurr, 1995).

Early warning is not the same as a political decision to react. The refugee flows from Somalia were long predicted. That civil strife would break out in Bosnia unless addressed was clear to many interested and involved in the region. It was not lack of information that precluded action as events unfolded.

The international community's recent problems with refugee flows were not due primarily to lack of information. Lack of political consensus on what to do, unwillingness to commit resources and military personnel, and the cost of garnering domestic political support are generally conceded to be more central for explaining the lack of preemptive action in Bosnia, Rwanda, Somalia, and elsewhere – not the absence of advanced warning.

As the international community searches for ways to order international relations, to lay down rules of behavior, and to codify expectations of state actors, it must recognize that early warning is just the first step. Early warning capability regarding refugee flows is serious business and needs tending. Early warning, however, is not a substitute for policy about what to do in the face of threatened refugee flows, the commitment to carry out that policy, and the leadership to earn domestic support for foreign policy initiatives.

THE TASK AHEAD

The substance of the current refugee regime developed in the context of the cold war. The regime is not simply a function of a bipolar world political structure, with no validity outside that context. On the other hand, all refugee-related norms and practices developed since World War II are not of perennial value.

While refugee flows remain rooted in the tensions inherent in the nation-state system, international relations among states have shifted away from the cold war's bipolar structure. Thorough reevaluation of the scope, content, and objectives of the international refugee regime is needed today. The challenge for the international community is to reexamine the objectives of collaborative multistate activity in reaction to refugee flows in this new context. Resistance to adaptation in the name of preserving human rights and protection of refugees could undermine public support and weaken commitment, especially by industrial democracies, to protect and assist victims of persecution and war.

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