

PROMOTION, DISSEMINATION AND TEACHING OF INTERNATIONAL REFUGEE LAW: TOWARDS A NEW INTERNATIONAL SOCIAL ORDER *

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Definition of International Refugee Law

International refugee law is that part of public international law that deals with the provision of international protection to refugees, and with the search for permanent solutions for the problem of refugees, by facilitating their voluntary repatriation or their assimilation within new national communities.¹ It is a new body of law, which has grown up, almost imperceptibly, in the last five decades.² It seeks, to use the preambular words of the UN Charter, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, . . . and to promote social progress and better standards of life in larger freedom", but in the standard milieu of the sovereign rights of States, each constantly vigilant of matters essentially within its domestic jurisdiction.

The competence of this system of law extends to all legal issues concerning refugees that may arise between States, between international organizations, between States and international organizations, between States and refugees, between international organizations and refugees, and be-

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The views expressed herein are those only of the two authors.

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¹ This definition is a paraphrase of the Statute of the Office of the UNHCR, Article 1. The Statute constitutes the Annex to U.N. General Assembly Resolution 428 (V) of 14 December 1950.

² Weis, *Refugee Law — A New Branch of Law*, in INT'L. BAR J. 30 (May 1973).

tween refugees. Legal issues concerning refugees commonly arise in connexion with the application for asylum, the determination of standards of treatment, and the application for naturalization.³

International refugee law is closely linked with the generally accepted principles of international law on the one hand, and fundamental humanitarian principles on the other hand.⁴ The generally accepted principles of international law applicable to the protection of refugees include, *inter alia*: sovereign equality of all States, personal supremacy of States over their nationals and territorial integrity, respect for human rights, self-defence, good faith, state responsibility, and international cooperation. The fundamental humanitarian principles applicable to the protection of refugees include respect for basic human rights, freedom of movement, the granting of asylum, *non-refoulement* and family unity.

In the academic phylogeny, international refugee law falls within the broader scope of the international law of human rights, as well as of international humanitarian law. On the one hand, the international law of human rights is based upon the Universal Declaration of Human Rights⁵, the International Covenant on Civil and Political Rights⁶, the International Covenant on Economic, Social and Cultural Rights⁷ and the United Nations Declaration on Territorial Asylum of 14 December 1967. The Convention Relating to the Status of Refugees⁸ (hereinafter called the Refugee Convention), constitutes a bill of particulars for the Universal Declaration, particularly Article 2:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The Refugee Convention reflects the injunctions of the three basic human rights instruments in such provisions as Article 13 on the acquisition of movable and immovable property, Article 14 on the right to engage in wage-earning employment, Article 21 on housing, Article 22 on public education, Article 23 on public relief, Article 24 on labour legislation and

³ Dadzie, *Tasks and Perspectives in the Field of Refugee Law*, Work Paper submitted to the Abidjan World Conference on World Peace Through Law, 26-31 August 1973, at 1.

⁴ See Patrignone, *Inter-relationship between General Principles of International Law and Fundamental Humanitarian Principles Applicable to the Protection of Refugees*, in *ANNALES DE DROIT INTERNATIONAL MEDICAL* (May 1977).

⁵ Adopted by U.N. General Assembly Resolution 217A(III) of 10 December 1948.

⁶ Adopted by U.N. General Assembly Resolution 2200A(XXI) of 16 December 1966. It entered into force on 23 March 1976.

⁷ Adopted by U.N. General Assembly Resolution 2200A(XXI) of 16 December 1966. It entered into force on 3 January 1976.

⁸ Pursuant to U.N. General Assembly Resolution 429(V) of 14 December 1950, the U.N. Conference of Plenipotentiaries met at Geneva and adopted the Refugee Convention on 28 July 1951. Following the deposit of the sixth instrument of ratification, it entered into force on 21 April 1954.

social security, and Article 26 on freedom of movement. Thus, the Refugee Convention may be described as a Convention on human rights for refugees.

On the other hand international humanitarian law is based upon the four Geneva Conventions of 12 August 1949, and Protocols I and II of 8 June 1977, for the protection of victims of war. Of these, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War⁹ contains provisions protecting refugees.¹⁰ The Protocol Additional to the 1949 Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)¹¹ provides that refugees shall be protected persons¹² and provides otherwise for their welfare.¹³

The close association of international refugee law with the law of human rights and with international humanitarian law accounts for its authoritative force in international relations, notwithstanding that it does not include any enforcement mechanism. Moreover, refugee law is authoritative because it embodies either *jus cogens*, customary law, or general principles of law recognized by civilized nations. Thus, even in regions of the world where the component States are generally not yet party to the Refugee Conventions, such as Asia¹⁴, governments have extended protection to refugees on the basis of certain minimum standards of treatment embodied in provisions of national constitutions, laws, or administrative regulations. Where the provisions of international instruments, to which the State is a party, are not automatically incorporated into the national legal system, the introduction of the corresponding national laws or administrative measures for the protection of refugees becomes a pivotal question.

The implementation of the Refugee Convention and Protocol is a question to be decided under the constitutional law of the State party. If the State considers them to be law — amending treaties, then they are submitted for ratification; if not, they are treated as in accordance with national law or, to avoid a conflict with existing national law the State makes the necessary reservations.

Whether or not the Refugee Convention and Protocol are self-executing is also a question that addresses itself to the national law of the party, and to the nature of the provisions concerned. Publicists believe that most of the provisions of the refugee treaties are self-executing, with a few exceptions, notably those relating to the travel documents.

Regardless of the provisions of national law on these questions, under international law every State party is obliged to give effect to the provi-

⁹ It entered into force on 21 October 1950.

¹⁰ In Articles 26, 44, and 70.

¹¹ It entered into force on 7 December 1978.

¹² In Article 73.

¹³ In Article 74.

¹⁴ Fiji, Iran, Israel, Turkey and the Yemen Arab Republic are parties to the Refugee Convention.

sions of the refugee instruments and to carry them out in good faith, under the time-honoured principle of *pacta sunt servanda*. While the United Nations High Commissioner for Refugees (UNHCR) is only a persuasive and non-coercive authority, his Office manifests a humanitarian ideal of the world community. Of course, the implementation and application of refugee law would be facilitated if his Office, or an associated agency such as the proposed Universal Court of Human Rights, or the existing International Court of Justice, were vested with compulsory authority in the adjudication of legal issues relating to refugees.

Refugees in International Law

The term 'refugee' is used in two senses: the sociological and the legal. In the sociological sense, a refugee is any person who is obliged to flee his habitual place of residence and seek refuge elsewhere. His reasons for flight may be caused by nature, e.g., floods or earthquakes; or they may be caused by politics, e.g. war, foreign domination or occupation, civil disturbance, or political changes in the home country. Thus, the reasons for flight may be characterized as either natural disasters or man-made disasters.

In the legal sense, the use of the term 'refugee' is confined to any person who flees his country for political reasons, i.e. because of man-made disasters. It is in this sense that the Statute of the Office of UNHCR¹⁵ defines a refugee as any person

who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.¹⁶

There are three essential elements in the legal definition of the term 'refugee': (a) the person is outside the country of his nationality, or, in the case of stateless persons, outside the country of habitual residence; (b) the person lacks national protection; and (c) the person fears persecution. Because of the second element, a refugee is a stateless person, either *de jure* or *de facto*.¹⁷ It is not the function of this paper to discuss the issue of whether or not, under present international law, the individual can be regarded as a subject of international law, or remains solely as its object. Under traditional customary international law, the position of the refugee was extremely precarious, and while it has been remedied by the conclusion of treaties, nonetheless refugees are devoid of national protec-

¹⁵ Adopted by the U.N. General Assembly on 14 December 1950, as Annex to Resolution 428(V).

¹⁶ Article 6(b).

¹⁷ Weis, *Refugees and the Law*, Work Paper submitted to the Abidjan World Conference on World Peace Through Law, 26-31 August 1973, at 2.

tion and therefore lack nationality, which is the principal link between the individual and international law.¹⁸ Because a refugee approximates a stateless person, he can be compared, as Oppenheim did, to a vessel on the open sea not sailing under the flag of any State¹⁹, or be called flotsam and *res nullius*, as Schwarzenberger did.^{19a}

Historical Background

As an international phenomenon, the concept of refugees is as old and as tragic as the concept of organized hostility among States. But it was only in this century that the refugee problem advanced from the periphery to the epicentre of international affairs, when the present generation, aided by modern mass media, witnessed the massive influx of refugees in Europe after the two world wars, the birth of mammoth refugee populations in the new African States since 1960, and the emergence of refugee patterns in Latin America and in Asia in the last decade.²⁰ Thus, ours is sometimes called the century of the uprooted.

The need for international action on the refugee problem was first recognized on 27 June 1921, when the Council of the League of Nations decided to appoint a High Commissioner for Russian Refugees. This post was filled by Dr. Fridtof Nansen. The High Commissioner's mandate was extended in 1924 to Armenian refugees, and in 1928 to Assyrian, Assyro-Chaldean, and Turkish refugees. Later, his Office was placed under the authority of the Secretary-General of the League of Nations. After Dr. Nansen's death in 1930, the Nansen International Office for Refugees was created as an autonomous body under the authority of the League; it went into liquidation at the end of 1938.

Meanwhile, the Council of the League of Nations had appointed a High Commissioner for Refugees coming from Germany. In 1936, after Germany withdrew from the League, the High Commissioner's Office was incorporated into the League of Nations. This Office was closed simultaneously with the Nansen International Office. Both offices were replaced by a High Commissioner's Office for all refugees under the protection of the League of Nations. The mandate of the new High Commissioner later included refugees from the Sudeten territories of Czechoslovakia and to refugees from Austria.

To complement the High Commissioner's assistance to refugees from Germany and Austria, an international conference in 1938 set up an Intergovernmental Committee on Refugees (IGCR). This Committee later extended its programme to Spanish refugees and to new groups of refugees that emerged during World War II.

¹⁸ 1 OPPENHEIM, INTERNATIONAL LAW 640 (8th ed., Lauterpacht).

^{19a} 1 SCHWARZENBERGER, INTERNATIONAL LAW 171.

²⁰ MELANDER & NOBEL. (ED.), *Introduction*, in AFRICAN REFUGEES AND THE LAW 9 (1978).

In 1943, the Allied Powers created the United Nations Relief and Rehabilitation Administration (UNRRA), which assisted millions of displaced persons, mainly in Germany, Austria, Italy, and certain areas of North Africa and the Near East. Approximately a million of these persons refused to return to their countries, thus turning into a new category of refugees.

In 1946, the UN General Assembly adopted the Constitution of the International Refugee Organization (IRO). It resettled more than a million and repatriated 70,000 refugees of European origin. It went into liquidation in 1952.

In view of the continuing need for the international protection of refugees, the UN General Assembly decided to establish a High Commissioner's Office for Refugees, by resolution 319 (IV) of a December 1949. The General Assembly adopted the Statute of the Office of the UNHCR as Annex to Resolution 428 (V) of 14 December 1950. The UNHCR assumes the function of providing international protection to, and seeking permanent solutions for the problems of, refugees. The Statute, Article 2, describes his work as "of an entirely non-political character; it shall be humanitarian and social" The nature of the functions of UNHCR are abundantly discussed elsewhere.

Sources of Refugees Law

In identifying the sources of international law, it is usual to turn in the first instance to the Statute of the International Court of Justice, Article 38, which provides:

1. The Court, whose functions is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. international conventions, whether general or particular, establishing rules recognized by the Contracting States;
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general principles of law recognized by civilized nations;
 - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Accordingly, the two main sources of refugee law are international conventions and international custom.

International conventions as a source of refugee law were initially limited in scope. The first category of refugee instruments dealt only with

the establishment of internationally valid travel documents for refugees. They were:²¹

1. The Arrangement with regard to the issue of certificates of identity to Russian refugees, signed at Geneva on 5 July 1922. It was adopted by 53 States;
2. The Arrangement for the issue of certificates of identity to Armenian refugees, adopted at Geneva on 31 May 1924. It was adopted by 35 States;
3. The Arrangement relating to the issue of identity certificates to Russian and Armenian refugees, supplementing and amending the previous two Arrangements, signed at Geneva on 12 May 1926. It was adopted by 20 States;
4. The Arrangement concerning the extension to other categories of refugees of certain measures taken in favour of Russian and Armenian refugees, signed at Geneva on 30 June 1928. It was signed by 11 States;
5. The Plan for the issue of a certificate of identity to refugees from the Saar. It was adopted by 16 States; and
6. The Agreement relating to the issue of a travel document to refugees, signed in London on 15 October 1946.

The second category of refugee instruments dealt with the legal status of refugees, but only a limited number of States were parties to them. They were:

1. The Arrangement relating to the legal status of Russian and Armenian refugees, signed at Geneva on 30 June 1928. It was adopted by 11 States, but it was only a recommendation and not a legally binding instrument;
2. The Convention relating to the international status of refugees, signed at Geneva on 28 October 1933. It was ratified by 8 States, some of which made reservations; and
3. The Provisional Arrangement concerning the status of refugees from Germany, signed at Geneva on 4 July 1936. It was signed by 7 States. A protocol signed by 3 States extended the application of the Convention to refugees from Austria.

The first two categories of refugee instruments were limited both in scope and in participation, and have been thus described as 'rudimentary'.²² The third category consists of instruments adopted since 1951, characterized by a broader scope. They are:

1. The Convention relating to the status of stateless persons, of 28 September 1954. It entered into force on 6 June 1960;

²¹ Weis, *supra* note 17, at 6-16.

²² Jennings, *Some International Law Aspects of the Refugee Question*, 20 BRIT. YRK. INT'L. L. 106 (1939).

2. The Convention on the reduction of statelessness, adopted in New York on 28 August 1961. It entered into force on 13 December 1975;
3. The Agreement relating to refugee seamen adopted at The Hague on 23 November 1957. It entered into force on 27 December 1961. The Protocol entered into force on 30 March 1975;
4. The U.N. Convention as the recovery abroad of maintenance. It was adopted on 20 June 1956;
5. Protocol No. 1 to the Universal Copyright Convention of 6 September 1952;
6. The Protocol to the European Convention on social and medical assistance;
7. The Agreement on the abolition of visas for refugees of 20 April 1959. It entered into force on 3 September 1960;
8. Principles concerning treatment of refugees adopted by the Asian-African Legal Consultative Committee at Bangkok in 1966;
9. The Convention of the Organization of African Unity concerning the specific aspects of problems of refugees in Africa, adopted at Addis Ababa on 10 September 1969;
10. The Convention on the recognition of studies, diplomas, and degrees in higher education in the Arab and European states bordering on the Mediterranean. It was adopted on 16 December 1976;
11. The European Convention on social security adopted in Paris on 14 December 1972. It entered into force on 1 March 1977; and
12. Protocol additional to the Geneva Convention of 12 August 1949 and relating to the protection of victims of international armed conflicts. It was adopted on 8 June 1979 and entered into force on 7 December 1978.

The fourth category consists of the three most important refugee instruments. They are:

1. Statute of the Office of the UNHCR, adopted by the U.N. General Assembly on 14 December 1950 as Annex to Resolution 428 (V); Article I describes the function of the High Commissioner as providing international protection to refugees, and seeking permanent solutions for the problems of refugees. Article 6 delimits the competence of the High Commissioner to refugees as defined in that Article.

However, the High Commissioner's competence *rationae materiae* and *rationae personae* has been expanded by policy directives given him by the General Assembly and the Economic and Social Council, under Article 3. Various resolutions of the General Assembly and the ECOSOC, led to

this expansion by the use of the terms "good offices" and "displaced persons". More explicitly, the General Assembly has passed resolutions dealing with "refugees who do not come within the competence of the U.N."²³, and with the High Commissioner's "special humanitarian tasks entrusted to him, in addition to the original functions of his Office."²⁴ Likewise, the ECOSOC adopted a resolution dealing with "the essential humanitarian tasks undertaken by his Office in the context of man-made disasters, in addition to his original functions."²⁵

In this context, there are three criteria for action by UNHCR:

- (a) Under Article 2, the work of the High Commissioner shall be of an entirely non-political character humanitarian and social;
- (b) Under Article 1, the UNHCR, acting under the authority of the General Assembly, shall, *motu proprio*, provide international protection, but shall provide material assistance only upon the request of the State concerned;
- (c) The High Commissioner's competence extends not only to refugees who fall within the scope of the Statute, but also to displaced persons, and to those in refugee-like situations.

2. The Convention Relating to the Status of Refugees, adopted by the U.N. Conference of Plenipotentiaries at Geneva on 28 July 1951. It entered into force on 21 April 1954. At the time of this writing, 80 states are parties to the Convention and/or the Protocol.²⁶

The Refugee Convention is a reaffirmation and consolidation of antecedent international agreements relating to the status of refugees, and it extends their material and personal scope. It is a comprehensive catalogue of refugee rights, and it contains a more general definition of refugees than that embodied in previous agreements. However, it represents an innovation by establishing a formal link between its provisions and the international agency charged with the protection of refugees.

3. The Protocol relating to the status of refugees which entered into force on 4 October 1967. It is an independent instrument, accession to which is not limited to States, parties to the Convention. By accession to the Protocol, States undertake to apply the substantive provisions of the Refugee Convention to all refugees falling under its definition, but without limitation of date.

International conventions are thus the major source of refugee law. It is worthwhile to stress that the number and variety of sources of refugee

²³ Resolution 1388 (XIV), Report of the UNHCR, 20 November 1959; Resolution 1499 (XV), Report of the UNHCR, 5 December 1960.

²⁴ Resolution 32/69, Expression of appreciation to the UNHCR, 8 December 1979.

²⁵ Resolution 2011 (LXI), Report of the UNHCR, 2 August 1976.

²⁶ But of the 80 States which are parties to these two instruments, 5 States are parties to the Convention only, and 2 States are parties to the Protocol only.

law would seem to call for a codification could be carried forward either on the regional or the international level.

International custom also constitutes another source of law. It would be interesting to conduct an enquiry into the question of whether at this stage, some of the standards defined in the Refugee Convention and Protocol, and in the Declaration on Territorial Asylum, might have already acquired an independent normative character; the most widely known are the principles of asylum and *non-refoulement*. International customary law may be considered a source of refugee law, insofar as it provides minimum standards for the treatment of aliens, since refugees are aliens. But refugees are not ordinary aliens, for they no longer enjoy the protection of the country of nationality. Hence, the absence of diplomatic protection could render ineffective the minimum standards of treatment laid down by international custom. For this reason, refugees are aliens *sui generis*, requiring higher than minimum standards of treatment.

As a source of international law, custom is regarded "as evidence of a general practice accepted as law". Such general practice may be proved constitutional provisions, ordinary legislation, or administrative regulations. A number of national laws provide for the grant of asylum to persons who fear persecution in their home country, or otherwise confer legal protection on refugees. Provisions of this nature in national laws constitute evidence of State practice, as an element of international custom.

Asylum and non-refoulement

The problem of refugees and the granting of asylum are intertwined. Only a person who is granted asylum by another State can apply for refugee status; thus, the refugee treaties imply the principle of asylum. This creates problems in the case of a massive influx of refugees. While the Refugee Convention does not deal with admission, it deals with *non-refoulement* by providing in Article 33 that 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.

While asylum is still a right of States rather than of the individual, *non-refoulement* has advanced into a rule of international law at least in the narrow sense, exemplified by Article 33, where the refugee is already within the territory of a contracting State. In the wide sense, *non-refoulement* covers persons who are not yet within the territory but are still seeking admission at the border.

The principle of *non-refoulement* was declared to be "a generally accepted principle" by the Convention relating to the status of stateless persons. Article 33, which expresses this principle, is one of the most important provisions of the Refugee Convention, to which no reservation is allowed.

While it is for national law to establish criteria for the grant of asylum, there is an increasing tendency to adopt international criteria for eligibility for asylum, observing common standards.²⁷ In any event, the principle of asylum implies at least four elements:

- (1) A State does not only have the right, but also the obligation, to grant temporary asylum;
- (2) An asylee should not be expelled or returned to a territory, with respect to which he has well-founded fear of persecution;
- (3) An asylee is immune from persecution and penalty on account of his illegal entry or presence;
- (4) An asylee is entitled to temporary residence within the state of asylum until his reintegration, resettlement or voluntary repatriation.²⁸

Rights of Refugees

The thrust of refugee law is to define and protect the rights of refugees. Aliens in any country are normally protected by international law, through the instrumentality of alien's law or immigration laws. But refugees, although aliens, do not enjoy the diplomatic protection of their state of nationality. Because of their vulnerable position, the Convention stipulates for them in certain aspects, treatment more favourable than that accorded to aliens generally.

The Convention stipulates in principle three standards of treatment for refugees:

- (1) national treatment, or treatment accorded to nationals of the Contracting State concerned;²⁹
- (2) most-favoured-nation treatment, or the most favorable treatment accorded to nationals of a foreign country;³⁰
- (3) treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.³¹

In addition to the specific rights enumerated in the Convention, refugees are entitled under its terms to quasi-consular functions, to be discharged by the asylum State, *i.e.*, a State which has recognized refugee status, which, under Article 25, shall arrange that administrative assistance be afforded to them by their own authorities or by an international authority. Moreover, Article 27 provides that the asylum state shall issue them identity papers and, under Article 28, travel documents.

²⁷ Weis, *supra* note 17, at 16-18.

²⁸ Sinha, *Rights of Refugees under Contemporary International Law*, Work Paper submitted to the Abidjan World Conference on World Peace Through Law, 26-31 August 1973, at 2.

²⁹ See Articles 4, 14, 16, 17 para.(2), 20, 22 para.(1), 23, 24 and 29.

³⁰ See Articles 15 and 17 para.(1).

³¹ See Articles 13, 18, 19, 21, and 22 para.(2).

The Statute of the Office of UNHCR, Article 1, speaks of permanent solutions for the problem of refugees by their voluntary repatriation or their assimilation within new national communities. Hence, the Refugee Convention Article 34, provides that contracting States shall facilitate the naturalization of refugees; in particular, they shall expedite naturalization proceedings and reduce charges and costs.

Promotion, dissemination and teaching

From the viewpoint of the international community, the rationale for the promotion, dissemination and teaching of international refugee law is found in General Assembly Resolution 428 (V) of 14 December 1950, which not only adopts the Statute of the Office of the UNHCR, but also "calls upon Governments to co-operate with the UNHCR in the performance of his functions concerning refugees falling under the competence of his Office". Moreover, the Statute provides in Article 8 (a): "The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by: Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto; . . .". Among States Parties to the Refugee Convention, the rationale for the promotion, dissemination and teaching of this subject is found in Article 35 (1): "The Contracting States undertake to co-operate with the Office of the UNHCR, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention".

Thus, the rationale is to ensure that the basic standards for the protection of refugees embodied in the various international instruments are implemented and translated into effective day-to-day practice through the promulgation of the proper laws at the national level. In short, the promotion, dissemination and teaching of refugee law is a useful step in ensuring that the fundamental rights of refugees will not remain as a static body of shining theory, but will move into and transform the workaday world. The thrust of this course would be towards a new international social order.

From the viewpoint of the educational community, the rationale is found in the Universal Declaration of Human Rights, Article 26 (2): "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

Teaching this subject would "further the appropriate intellectual and emotional development of the individual . . . develop a sense of social responsibility and of solidarity with less privileged groups and . . . lead to observance of the principles of equality in everyday conduct".³² International refugee law has a "paradigmatic value" since, like humanitarian law in general, "it is a test area for the effectiveness of the international legal order".³³

The rationale for the promotion, dissemination and teaching of the subject has been widely accepted. The International Congress on the Teaching of Human Rights convened by UNESCO and held in Vienna on 12-16 September 1968 included an Annex to the final document, setting out recommendations on programmes, and stating: "Another subject which should be introduced within different programmes on the teaching of human rights is the fundamental rights of refugees."

In 1973, the World Peace Through Law Center held its international conference at Abidjan, Ivory Coast, and adopted the Refugee Law Project. The final report, which the Center submitted to the UNHCR on 31 July 1976, included a section on future programs, among which is "a program devoted to the teaching of the international human rights of refugees, as part of a course on humanitarian law". Under this program, one of the components of the Center, the World Association of Law Professors, "will develop course materials on refugees suitable for inclusion in the curriculum of law schools around the world as a part of a course on Humanitarian Law . . . (and) will develop a coursebook on Refugee Law. The Refugee Law Coursebook will draw upon materials to be contained in the World Directory of Refugee Law and will be published and distributed by the Center."

The Conference on the Situation of Refugees in Africa held at Arusha, United Republic of Tanzania on 7-17 May 1979 issued a Report, which included a section on "Dissemination of Refugee Law", stating, *inter alia*: "The Conference 1. Recommends the establishment under the auspices of the OAU, UNHCR, and UNESCO and the Secretary-General of the United Nations (Division of Human Rights), of an African centre to deal with the following functions in regard to refugee law, humanitarian law, and human rights: (a) to arrange for teaching, training, dissemination and research . . ."

Likewise, the Symposium on Human Rights and Fundamental Freedoms in the Arab Homeland held in Baghdad, Iraq, on 18-20 May 1979

³² UNESCO recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedoms. Adopted by the General Conference at its eighteenth session in Paris, 19 November 1974. The quotation is from paragraph 5.

³³ Bothe, *Methodological and Didactic Problems involved in the University Teaching of International Humanitarian Law, Especially in Connexion with the 1977 Geneva Protocols*, in INTERNATIONAL COMMITTEE OF THE RED CROSS, DRAFT REPORT ON HUMANITARIAN LAW, KRAKOW, 27 August-1 September 1979, at 68 (1979).

noted, among its recommendations, the necessity of including the teaching of human rights and international law in the educational curriculum of various levels in the Arab countries, and in police, army, and judicial academies. The U.N. Seminar on the Establishment of a Regional Commission on Human Rights with Special Reference to Africa, held in Monrovia, Liberia, on 10-20 September 1979 included among its recommendations the proposal for the U.N. "to intensify its activities in the field of human rights in Africa, particularly by disseminating information to all levels of the population in Africa and encouraging teaching, training, education and research in the field of human rights." The Seminar also welcomed the information that UNESCO plans to establish in the near future, an African Institute for teaching and research in the field of human rights.

Most recently, the teaching of refugee law was implicitly endorsed by the Executive Committee of the High Commissioner's Programme, an international body provided for by the Statute of the Office of the UNHCR which, *inter alia*, advises the High Commissioner, at his request, on the exercise of his functions. Meeting at its 30th session in October 1979 at Geneva, the Executive Committee took note of the special programme of action for the dissemination and teaching of refugee law. The Executive Committee "recognized the importance of the dissemination of refugee law in increasing the effectiveness of efforts being undertaken by the High Commissioner's Office in this matter", *i.e.*, the promotion, dissemination, and teaching of the fundamental human rights of refugees.

Structures for promotion, dissemination and teaching

To facilitate the adaptation and development of teaching methods and materials to suit specific characteristics of the Asian region, it would be beneficial to create a regional center for teaching, training, dissemination, research and publication on the subject, as an integral part of what could be an Asian Center devoted to international refugee law, humanitarian law, and human rights. Within this Center, there could be a Section on Specialized Higher Studies, which would organize and assist not only university teaching, but also teaching in institutes and conferences among judges, lawyers, policemen, the armed forces including the navy and coast guard, social worker, and immigration officers.

Existing structures could also be tapped for this purpose, including the "moot court" feature of the annual international meetings of the World Peace Through Law Center held in different countries, and the annual Jessup Moot Court competition held in the United States among selected law students from all over the world. The presentation of a problem involving international refugee law in these moot courts would highlight the subject and arouse widespread public interest.

Some sources of information or materials include: the Office of the UNHCR; the U.N. Educational, Scientific and Cultural Organization

(UNESCO); the International Red Cross; the International Institute of Human Rights at Strausbourg; the International Institute of Humanitarian Law at San Remo; the Association for the Study of the World Refugee Problem; and the International Commission of Jurists.³⁴ Such a variegated field necessitates a clearing house for information and research, so that those who could best use the material for educational purposes can find out about its existence or readily have access to it.

This role could be filled by the proposed Asian Center. It would serve, *inter alia*, as a regional refugee law documentation service, and as a center for research, education, publication and information; in sum, it would serve as an infrastructure for the promotion, dissemination, and teaching of the subject.

Preparation for teaching

Considering the contemporaneity of refugee problems, there would appear to be no obstacle in exciting student interest; the major problem would arise from the time limitations of the curriculum. In the Faculty of Law, necessarily international refugee law would have to be taught as a part of the course on public international law, or part of the seminar on international organizations. Where there is room for flexibility, the subject could be introduced at an independent seminar on human rights or humanitarian law. In the Faculty of Arts and Sciences, there might be more leeway for teaching it as a separate course.

Teacher motivation, according to UNESCO³⁵, should be located in the "commitment to the ethics of human rights and to the aim of changing society, so that human rights are applied in practice; a grasp of the fundamental unity of mankind; ability to instill appreciation of the riches which the diversity of cultures can bestow on every individual, group or nation". Teaching objectives would be based on the need to deepen student knowledge, consolidate existing instruments and other materials, and promote analysis of the manifestations, causes, and effects of the violation of international refugee law.

In the wider context of the human rights system, teaching must aim at: "(i) Fostering the attitudes of tolerance, respect and solidarity inherent in human rights; (ii) Providing knowledge about human rights, in both their national and international dimensions, and the institutions established for their implementation; (iii) Developing the individual's awareness of the ways and means by which human rights can be translated into social

³⁴ See also special issues on refugees, of topical journals such as *INTERNATIONAL MIGRATION REVIEW*, *infra*, note 26; and *DISASTERS*, Volume III, Number 4, a publication of the International Disaster Institute, with an editorial entitled "Refugees—1984".

³⁵ UNESCO recommendation, *supra* note 21, at paragraph 33(a).

and political reality at both the national and international levels".³⁶ Within the context, the teaching of this subject should emphasize the indivisibility of human rights and their "internationalization".

Suggested syllabi

International refugee law could be taught either at the undergraduate or the graduate level, as a course in the Faculty of Arts and Sciences, and in the Faculty of Law. As a course in the Faculty of Arts and Sciences (including the departments of history and the social sciences), it would have to analyze the refugee problem not only from a legal but also from a general, historical, and comparative perspective with some emphasis on refugee behavior, health, adjustment, and resettlement. As a course in the Faculty of Law, it would have to accentuate the international protection of refugees as a surrogate mechanism for the consular and diplomatic protection customarily due, but now absent from the country of their nationality.

Refugee law could likewise be taught in institutes, conferences, seminars, colloquies, and round tables among the general public, including jurists, law enforcement officers, and social workers, in cooperation with such associated agencies as UNHCR and the International Red Cross.

Syllabi are available for teaching the course in these two faculties. One set of syllabi was prepared by Prof. Jovica Patrnogic; another syllabus was prepared by Prof. Barry A. Stein of the Social Science Department, Michigan State University. Prof. Stein³⁷ has been teaching the four (4)-credit course entitled "Refugees, Displaced Persons, Hostages and Exiles" since 1975, as a regular part of the university curriculum. In January 1979, he informed us that: "The course attracts senior undergraduates and beginning graduate students from history and the social sciences. It has been very well received and in the last two years I have had to turn away many interested students".

Prof. Patrnogic's syllabi are set out hereunder, as Annexes A and B.

³⁶ UNESCO International Congress on the Teaching of Human Rights, Final Document, SS-78/CONF. 401/33, at 2.

³⁷ Prof. Stein is the guest editor of the special issue of INTERNATIONAL MIGRATION REVIEW on "Refugees Today", scheduled for release in the latter half of 1980. He can be contacted for further information on this special issue, and for a refugee research bibliography, as follows:

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Annex A

*MODEL LECTURE
INTERNATIONAL PROTECTION OF REFUGEES*

A. GENERAL TRAINING

Without prejudicing the conceptual unity of Human Rights, this general training course might be given to all university students, including those taking special university courses on different subjects. This training seeks to impart general knowledge in the field of international protection of refugees, and in principle does not concentrate on legal aspects of this protection. It is mainly intended for national officials dealing with refugees, for high school students university students, (except law students), etc.

The following outline is suggested:

- I. *General introduction*
 - a. Short historical treatment of the problem of refugees faced by the international community.
 - b. Human Rights as basis of the protection of refugees.
- II. *Refugees*
 - a. Concept and definition of the term "refugee".
 - b. Different categories of refugees.
 - c. Refugees and displaced persons.
- III. *Granting of asylum*
 - a. Concept and definition of asylum.
 - b. National constitutions and granting of asylum.
 - c. Asylum and international protection of refugees.
 - d. Regional or international solutions.
- IV. *Protection of refugees in international instruments*
 - a. Basic instruments on Human Rights and International Humanitarian Law applicable to the protection of refugees.
 - b. Convention relating to the status of refugees, Protocol relating to the status of refugees, and the Statute of the Office of the United Nations High Commissioner for Refugees.
 - c. Other international instruments relating to the protection of refugees.
 - d. Regional instruments for the protection of refugees.
- V. *United Nations and the protection of refugees*
 - a. Role of the United Nations.
 - b. United Nations High Commissioner for Refugees.
 - c. United Nations Relief and Works Agency for Palestine Refugees in the Near East.
- VI. *International Red Cross (and other voluntary organizations) and the protection of refugees*
- VII. *Minimum humanitarian standards for the protection of refugees; some fundamental principles*

MODEL LECTURE
INTERNATION PROTECTION OF REFUGEES

B. BASIC TRAINING

This would deal with all the international aspects of the protection of refugees, priority being given to the specific aspects of refugee problems at regional levels, in particular in the developing countries. It is intended for students at the advanced levels of the faculties of law, political science, and international relations, as well as for high officials dealing with refugees.

The following outline is suggested:

I. *General introduction*

- a. Short historical treatment of the problem of refugees. (Chronological account, area by area, of the problems of refugees faced by the international community, specifically by UNHCR.)
- b. Human Rights system and the international protection of refugees. (Human rights as basis of the protection of refugees.)
- c. International Humanitarian Law and refugees. (Protection of refugees in armed conflict situations, civil wars, etc.)

II. *Refugees*

- a. The general concept of refugees. (Notion, general concept with pragmatic and ideological aspects, international protection, categories of refugees.)
- b. The most important elements for a legal definition of the term "refugee", international and national levels. (General definition, evolution of the definition in international law.)
- c. Refugees and displaced persons. (Relationship and distinction.)

III. *Institution of asylum*

- a. Asylum and international law. (General and specific nature of asylum, Refugee Convention and asylum, Draft Convention on Territorial Asylum, OAU Convention.)
- b. Asylum and the internal law of states. (Constitutions and national legislation.)
- c. Asylum and Human Rights instruments. (Declaration on territorial asylum, U.N. resolutions, regional instruments.)
- d. Regional or global solutions.

IV. *Protection of refugees laid down by Human Rights instruments*

- a. International instruments of universal application:
 1. Universal Declaration of Human Rights
 2. International Covenant on civil and political rights
 3. International Covenant on economic, social and cultural rights
 4. International Convention on the elimination of all forms of racial discrimination

5. Convention on the prevention and punishment of the crime of genocide
 6. Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity
 7. Final Act of the International Conference on Human Rights (Proclamation of Tehran).
 - b. International instruments relating to refugees
 1. U.N. General Assembly Declaration on territorial asylum
 2. Convention relating to the status of refugees
 3. Protocol relating to the status of refugees
 4. Statute of the Office of the United Nations High Commissioner for Refugees
 5. Convention relating to the status of stateless persons
 6. Convention on the reduction of statelessness
 7. Agreement and Protocol relating to refugee seamen
 - c. International instruments of regional application:
 1. OAU Convention governing the specific aspects of refugee problems in Africa
 2. European Convention for the protection of Human Rights and fundamental freedoms
 3. American Convention on Human Rights signed at the Inter-American specialized conference on Human Rights
 4. The Latin American asylum conventions
 5. European Agreement on the abolition of visas for refugees
- V. *Protection of refugees in International Humanitarian Law*
- a. Geneva Convention relating to the protection of civilian persons in time of war.
 - b. Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts.
- VI. *International institutions for the protection of refugees*
- a. Introduction: (Criteria for distinguishing institutions, missions and functions; fields of action, juridical and technical aspects of institutions.)
 - b. Intergovernmental institutions:
 1. United Nations High Commissioner for Refugees:
 - functions of the institution
 - criteria for action
 - international protection of refugees under the mandate of UNHCR
 - use of "good offices" by the High Commissioner
 - material assistance to refugees
 - protection of displaced persons
 - the co-ordination of major humanitarian tasks

2. United Nations Relief and Works Agency for Palestine Refugees in the Near East:
 - functions of the agency
 - material assistance to refugees
 - c. Non-governmental institutions:
 1. International Red Cross:
 - International Committee of the Red Cross
 - League of National Red Cross Societies
 - International voluntary organizations
- VII. *Basic Human Rights principles on the protection of refugees*
- a. What are the basic Human Rights principles relating to refugees? (notion, definition, how to determine basic Human Rights principles.)
 - b. Relationship between general principles of international law and basic Human Rights principles relating to refugees.
 - c. Basic Human Rights principles — fundamental humanitarian principles on the protection of refugees. (Minimum humanitarian standards):
 1. Respect for human beings
 2. Right to life, liberty and security
 3. Granting of asylum
 4. *Non-refoulement*
 5. Limitation of expulsion
 6. Economic and social rights
 7. Family unity — reunification of refugee families
- VIII. *Further prospects in the development of the international protection of refugees.*
- a. Towards a special branch of International Law: International Refugee Law.