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I. Introduction

Historically, turning points have been moments of drastic change, generating upheavals, turmoil and often violence, yet also inspiring heroism, dramatic improvement and hope for the future. The problem facing any historian of twentieth century events is to figure out the parameters of the various turning points and to assess, critically and rationally, the consequences and probable implications of tumultuous events worldwide. It is a truism that we live in an extraordinarily fast-paced world, a fact proven by the hectic series of transformations affecting the Soviet Union in recent months. The incredible speed of events in that generally ponderously slow political system have already been labelled "revolutionary." Analyzing the possible impact of those events in terms of the likely consequences for human rights worldwide is a daunting task but one which needs to be undertaken urgently, not least because the Russian people, in defying their communist rulers have charted a new course of popular participation that is likely in the next few years to galvanize and inspire the citizens of other nations who still suffer under the yoke of communist and other forms of dictatorship. This current enthusiasm for democracy opens a window of opportunity for the implementation of human rights norms and for their acceptance worldwide. It is an opportunity that ought to be seized by human rights activists everywhere for there may never be a moment again when dictatorship is so threatened, when popular participation is so strong, and when global cooperation among the powerful nations is at its peak.

At the time of writing, Soviet President, Mikhail Gorbachev is tenuously hanging onto power, seeking desperately to control the revolution that he initially sponsored.[1] Soviet republics are declaring

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    1. See *Irresistible Force, Movable Object*, THE ECONOMIST, Sept. 7, 1991, at 45-47.

their independence and freedom from central control.[2] The mono-
lithic Soviet "empire" appears to be coming to an end. Should the
present democratic movement continue and should there be no fur-
ther coups in the Soviet Union, the conversion of the former USSR
into a loose union of democratic, near-sovereign states is likely to
proceed with vigor and speed. This development is going to require
some dramatic reappraisals both about the Soviet Union and about
its likely future influence. We will need to create practical proposals
and new approaches to ensure that the young democracies survive
and that constitutionally established human rights become a guaran-
tor and permanent safeguard for those nations against the return of
dictatorship. Recent events have shaken the strong grip of the con-
cept of State sovereignty which is now apparently no longer viewed
as sacrosanct. This development has tremendous implications for
human rights because violations of human rights in a particular na-
tion have often been shrugged off by outsiders as being an internal
matter and not within the purview of a foreign state to interfere. The
people of the Soviet Union who manned those barricades and risked
all to oppose the coup led by hardliners in the Communist party have
demonstrated clearly that politics in this decade are going to be radi-
cally different from the past. We all must adjust to this new reality
that has so suddenly appeared as Soviet nationalism is being re-
placed by Russian and other forms of ethnically-based nationalism.
The world's strongest totalitarian state has disintegrated from within
as a clamor for freedom and democracy has toppled what was con-
sidered to be an entrenched monolithic system.

II. Background

It would be worthwhile briefly to elucidate the situation in the
decades following the Second World War so that we might be able
to assess the impact of these tremendous changes in recent months.
While scholars have debated at length about the validity of the right
to self-determination, events in this century have largely validated
both the existence and the legitimacy of that important human right.
The mid-point of the twentieth century saw the process of national
self-determination well under way in much of Asia and struggles for
that goal underway in parts of Africa. The dissolution of the British
and French imperial empires and the creation of a motley of inde-
pendent, sovereign states did not solve, however, the problems of the
area because new national boundaries were arbitrarily based on for-
mer colonial territorial demarcation lines and, in Africa in particu-
lar, ignored natural ethnic and tribal divisions of territory. The result

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2. *Id.*

was that the newly independent governments immediately confronted a clamor of claims for more local power, for less interference from the center and for greater freedom politically and economically for the component provinces and regions. Where the former imperial structure had appeared to favor a particular indigenous group, there were rivalries built into the post-colonial government, rivalries that led in some cases like Nigeria to civil war. The lack of attention by the departing colonial powers to human rights, particularly to the wishes of various ethnic groups, left Africa an easy prey to military dictators, who in the name of stability, crushed all resistance and violated every conceivable right of their people. Two tyrants whose actions brought them notoriety around the world were Idi Amin of Uganda and Jean-Bedel Bokassa of the Central African Republic.

    Too often, in the newly-independent nations, the survival of democracy and of some human rights depended on the personality of the ruler who inherited the mantle of power from the European colonial government. In India, Prime Minister Jawaharlal Nehru firmly believed in democratic principles and upheld these even at the cost of political stability in the country. His daughter, Indira Gandhi, more ruthless and pragmatic a politician than her idealistic father, declared a state of emergency in June 1975[3] when she feared a threat to the survival of her government. Democratic principles were for a while sacrificed to her zeal to retain power. India's nearest neighbor, Pakistan, fell into dictatorship soon after independence in 1947, and except for brief but valiant attempts at democratic government, has largely succumbed to military rule.

    To suggest that government in much of the Third World is personality-oriented is to state the obvious. To conclude that human rights can depend on the character and inclination of a ruler is equally to recognize the realities of political life in much of the Third World. While I am not necessarily equating democracy and human rights, it is widely recognized that a democratic system of government is the best possible guarantor of the implementation and acceptance of human rights, as that type of government usually implies the rule of law, judicial independence and legal safeguards against tyranny. While these safeguards did not prevent an emergency from being declared in India, Indira Gandhi's sudden suspension in January 1977 of the state of emergency and the reversion to democratic systems, resulted in her defeat in the parliamentary elections held that year.[4] The opposition had warned the people of India that they had to make a choice between democracy and dictatorship. They chose democracy.

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3. *See generally* STANLEY WOLPERT, A NEW HISTORY OF INDIA (1989).
4. *Id.* at 403-405.

While the nations of Africa and Asia were gaining political in-
dependence after the Second World War, the states of Eastern Eu-
rope fell victim to Stalin's ambition and became members of the
Warsaw Pact, independent in name but tightly controlled by the So-
viet Union, a point underscored during the abortive Hungarian revolt
of 1956 and the unsuccessful Czechoslovakian uprising of 1968. The
rivalry of the North Atlantic Treaty Organization and the Warsaw
Pact manifested itself in the realm of arms and nuclear weapons
build-up. The two Superpowers also competed all over the world in
the attempt to expand their spheres of influence and extended their
rivalry to smaller countries via an elaborate system of patron-client
relationships that generated political instability, economic chaos and
both terrorism and dictatorship in Africa, Asia and Latin America.
The Third World became the battleground for the Cold Warriors
who exploited ethnic, religious and tribal rivalries to their advantage
by bankrolling opposing groups. It no longer mattered which element
was right or wrong or who had popular support and who lacked it.
With modern weapons and supplies, tactical training and enough
funding from the outside source, any group could wage an almost
unending war against its opponents.

The Cold War rivalry soon generated its own momentum. If the
government of a small country became a client of a Superpower, it
was almost automatically assumed that the opposing Superpower
would support its neighboring opponents. One has only to examine
the modern history of the Middle East to demonstrate the dangers of
such patron-client relationships.

III.   The Refugee Crisis

As governments rose and fell in rapid succession in small coun-
tries, human rights violations became more serious. Terror became
the principal instrument of rule and the victims of that terror even-
tually voted with their feet, as the saying goes, by fleeing to the
nearest safe haven they could find. In recent decades, violations of
the right to life, liberty and security[5] have resulted in millions of
men, women and children fleeing from Cambodia, China, Nicara-
gua, Afghanistan and a number of other countries. Millions more
have fled hunger and poverty, famine and drought that have been
largely the result of civil war and governmental neglect, particularly
in Ethiopia. "Superpower and regional rivalries have created major
refugee flows in the Horn of Africa, Indochina, Central Asia and
Central America."[6] Approximately fifteen million people have fled

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5.   U.N.G.A. Res. 217A (III) (1948), 3(1) GAOR Res. 71, U.N. Doc. A/810 (1948).
6.   Loescher, *Refugees and Foreign Policy*, in HUMAN RIGHTS AND FOREIGN POLICY,
133 (D. Hill ed. 1989).

from their homes in recent years to escape from violence and excru-
ciating poverty, both serious violations of human rights. A small
number have found permanent homes in the West, while most lan-
guish in camps in Third World countries, which today play unwilling
host to about 90% of the world's refugee population.[7] Though the
Universal Declaration of Human Rights states that: "Everyone has
the right to seek and to enjoy in other countries asylum from perse-
cution,"[8] as Richard Plender wryly comments, "[I]t seems tolerably
clear, however, that the right to enjoy asylum means no more than
the right to enjoy it if it is granted."[9] The crucial question to deter-
mine is whether the possible end of the Cold War, the dismember-
ment of the Soviet Union and the proliferation of popular democratic
governments in many parts of the world will open a window of op-
portunity for resolution of the refugee crisis.

No one would dispute the fact that an international solution to
the refugee problem is both overdue and urgent. Fifteen million peo-
ple, displaced from their natural environment and transplanted to
other regions of the world, cannot but have a tremendous effect on
the societies which now house them. While some nations have re-
acted with compassion, refugees are not universally welcomed and
indeed are treated in some cases worse than criminals.[10] Concepts of
humane deterrence have been formulated in Southeast Asia largely
to keep out Vietnamese refugees.[11] Draconian discriminatory mea-
sures have been applied to Tamils from Sri Lanka in the state for-
merly known as West Germany. The Canadian Government passed
the Refugee Reform Act and the Refugee Deterrents and Detention
Act in 1988 aimed at limiting the number of refugees who select
Canada.[12] The Government of the United States of America, under
the Presidency of Ronald Reagan, deported thousands of Salvadoran
refugees to an uncertain fate in their homeland on the basis that
they were economic migrants and not refugees.[13] Clearly, refugees
are no longer welcome in most nations of traditional refuge. The
sheer pressure of numbers has led to "compassion-fatigue"[14] and to

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7. *See* The Times (London), 14 (weekly ed. 1989).
8. U.N.G.A. Res. 217A (III) (1948), 3(1) U.N. G.A.O.R. Res. 71, U.N. Doc. A/810
(1948).
9. Plender, *The Legal Protection of Refugees*, in HUMAN RIGHTS FOR THE 1990's 51
(R. Blackburn and J. Taylor, ed. 1991).
10. *See* Panjabi, *The Global Refugee Crisis: A Search for Solutions*, 21 CAL. W. INT'L.
J. 247-63 (1990-1991).
11. McNamara, *The Origins and Effects of Humane Deterrence Policies in South-East
Asia*, in REFUGEES AND INTERNATIONAL RELATIONS 123-33 (G. Loescher and L. Monahan ed.
1989).
12. *See* D. MATAS, CLOSING THE DOORS: THE FAILURE OF REFUGEE PROTECTION
(1989).
13. *See* Delli Sante, *Central American Refugees: A Consequence of War and Social
Upheaval?*, in REFUGEE LAW AND POLICY 87-107 (V.P. Nanda ed. 1989).
14. Cels, *The Refugee Policies of West European Governments: A Human Rights Chal-*

attempts to deflect the refugees onto other receiving nations,[15] a move that invariably results in enlarging the scope of restrictive national legislation to stem the human tidal wave.

Looking at the surface picture of the world's political situation, there has probably never been a more propitious moment to resolve the world's refugee crisis and to alleviate the misery of so many millions of desperate people. The political arena is no longer plagued by rivalry of the kind that split the planet into two camps for over four decades. If the current disintegration of the Soviet Union continues and if the member republics proceed along the path to democratic reform and a loose federation with minimal central control,[16] what used to be the Soviet Union is not likely to be a major player in the international arena for some time to come. The massive economic problems of the area and the emergence of sharp ethnic divisions will probably be a major preoccupation of both local and central authority structures in that area. While it is still too early to suggest that the Cold War is over, the failure of the Soviet coup of August 1991, the heroism of the young men who died at the barricades defending the Russian "White House" and the startling rapid political changes that have ensued in that country, have served to deflect the attention and energy of the Soviet people to resolving their very serious internal problems. That being the case, Soviet client states and Soviet-sponsored revolutionary groups are no longer likely to get the financial, military and technical assistance on which they depend for their survival. Castro's Cuba presents a case in point. If Soviet clients are simply going to wither away, there would appear to be little necessity for much interference by the Free World in the political tangles of Afro-Asian and Latin American states.

The present enthusiasm for democracy has swept not merely Eastern Europe but parts of the Third World as well. Though a number of countries in the Third World still languish under dictatorship, the example provided by the people of Moscow is also likely to inspire popular democratic revolutions elsewhere. Certainly, the geriatric leadership in Beijing must be extremely nervous about the failure of hardline communism in the Soviet Union.

ABC television news recently reported from China that when visiting British Prime Minister John Major attempted to mingle with

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lenge at our Doorsteps, in HUMAN RIGHTS AND FOREIGN POLICY 168 (D. Hill ed. 1989).

15. Cels, *Responses of European States to de facto Refugees*, in REFUGEES AND INTERNATIONAL RELATIONS 196 (G. Loescher and L. Monahan ed. 1989).

16. That this is possible is demonstrated by the creation at the end of August 1991 of an agreement between the republics of Russian and Kazakhstan to ensure efficient handling of food supplies through the creation of institutions that would be largely independent of the central government and by the later formulation (at time of writing) of proposals to create a new commonwealth or community from the former Soviet republics.

the crowd in Beijing, the Chinese onlookers were pushed back and one man who managed to shake hands with the Prime Minister was later arrested.[17] While the Chinese rulers have for the moment succeeded in terrorizing their people, they are well aware that time and the momentum of the growing democratic tide are not on their side. If popular movements establish control in a number of countries presently under dictatorship, there would be a basis on which to establish a firm foundation for the implementation of human rights.

There are, however, a few dangers inherent in the present volatile situation. First, turning points are always risky in that no one knows the precise direction that events will take. Political instability may well become a significant problem as large countries break up into smaller nations. That is the price the world may well have to pay for democracy. As the price paid for stability was reckoned to be too high by the victims of dictatorship, one can only assume the new direction is the preferred choice of millions.

Second, while some ideologies and ideological underpinnings have been largely discredited, one "ism" that has not is nationalism. Indeed, a more regionalized form of nationalism, focusing on one's own ethnic, religious or linguistic group has now replaced the sense of loyalty to the larger entities that became the sovereign states after the Second World War. When communities seek to become nations, thereby exercising their right to self-determination, they can create petty wars, political upheaval and chaos. While there may be a development toward smaller nations with borders based along historical ethnic boundaries rather than arbitrary demarcation lines drawn up by colonial administrators or central governments, there is still no solution to the problem of minorities. Decades of post-War existence as large sovereign states implied a fairly free movement of people. There are now Russians living in Lithuania; there are Sikhs scattered and settled all over India; and Serbs and Croats who have been neighbors for years are presently killing each other. The issue of minority rights that has so plagued the post-War world is by no means solved simply because a number of significant minorities have been able to claim and, in some cases, now achieve a demand for national self-determination. Indeed, the very proliferation of successful claims may inspire more and more groups to demand similar rights. Where two claims are based on the same land area, conflict is inevitable.

However, if the concept of government with the consent of the governed becomes universally accepted and some day implemented, and if this political philosophy is accompanied by a healthy measure of tolerance-tolerance based on the shared memories of mutual suf-

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17. Evening News (ABC television broadcast, Sept. 3, 1991).

fering under dictatorship—there may well be hope for a positive so-
lution to many of the ethnic tensions that currently plague this
planet. Communal tensions may well be the single greatest threat to
the survival of these young, vulnerable democratic states. Commu-
nalism may generate so much violence that the general public may
opt for the stability of dictatorship. This is why the moment has to
be seized now to enshrine human rights in the new democratic states
and to attempt to resolve some global human rights problems like
the refugee crisis, before it is too late.

The ultimate factor which will determine the success or failure
of the great democratic experiment will be not politics but econom-
ics. We live in a world where there is no longer popular toleration of
great economic inequities. In the end, communism in the Soviet
Union may have died because it degenerated into a system of ex-
traordinary privilege for a few and a combination of repression and
deprivation for the many. With time, the world has matured in its
political awareness—an awareness also produced by the technologi-
cal marvels of communication that are so commonplace today. There
is now a realization that dictatorships, whether fascist, communist,
military or tinpot all result in systemic privilege for the few at the
expense of the majority of the population. While the North Ameri-
can and European capitalist democracies are by no means free of
privilege, the relative personal freedom and the possibility of some
upward mobility in such societies have to an extent dulled the sharp-
ness of resentment against injustice. The relative abundance of food
and basic necessities has ensured that social anger will not reach the
levels of revolution. The existence of democratic institutions also acts
as a safety valve to direct energies to reforming within the system
rather than seeking simply to destroy it completely.

Given the premise that we may well be on the brink of a brave
new world, how can this possibility be utilized to assist the cause of
human rights? Most human rights scholars would probably agree
that the major problem is the non-implementation of basic and fun-
damental rights. The purpose of this article is to suggest some ways
in which the brave new world might decide to tackle the problem of
the non-implementation of human rights by resolving its most glar-
ing consequence, the refugee question.

IV. The United Nations and the International Promotion of
Human Rights

International law provides many guidelines for action, if nations
will only find the will to create an internationally viable and fair
solution. The preamble of the United Nations Charter commits

member nations "to reaffirm faith in fundamental human rights."[18]
The purposes of the United Nations include: the maintenance of in-
ternational peace and security,[19] the development of "friendly rela-
tions among nations based on respect for the principle of equal rights
and self-determination of peoples,"[20] the achievement of "interna-
tional cooperation in solving international problems of an economic,
social, cultural, or humanitarian character,"[21] and the promotion of
human rights.[22] The member nations of the United Nations have
produced detailed definitions and elucidations of human rights.[23] The
principles are established on paper; implementation of these ideas
poses the next challenge.

The membership of the United Nations may well expand in the
near future if the Baltic states and the various republics now break-
ing away from the Soviet Union seek to play an international role.
Indeed, the Baltic States have already obtained membership in the
United Nations.[24] There is likely to be far more cohesion in the Se-
curity Council, a trend already demonstrated by the Superpower co-
operation during the Gulf War. An absence of Superpower rivalry in
the United Nations, a regeneration of an effective role for the World
Organization and an emphasis on the implementation of principles of
human rights in the resolution of international problems may well
produce a solution. It is essential that the world's political leaders
agree to cooperate to resolve the refugee problem as they have
agreed in the recent past to fight Saddam Hussein. Without the co-
operative will at this level, there will be no solution.

Following the Gulf War, when Saddam Hussein's troops un-
leashed a reign of terror against the Kurds, the world community
acted to provide emergency aid for the Kurdish refugees. Later,
United States troops set up camps to house the displaced and the
United Nations took measures to establish an enclave within Iraq
where the Kurds could feel relatively safe. A few years ago, some of
these actions would have been regarded as a gross violation of the
sovereign territorial integrity of Iraq. Obviously, in certain cases, the
national sovereignty argument is bent to fit particular circumstances.
While one would not advocate wholesale interference by the United

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18. Charter of the United Nations, Preamble.
19. *Id.* Chapter 1, art 1.1.
20. *Id.*
21. *Id.*
22. *Id.*
23. U.N.G.A. Res. 217a(III) (1948), 3(1) U.N. GAOR Res. 71, U.N. Doc. A/810
(1948). International Covenant on Economic, Social and Cultural Rights, U.N.G.A. Res. 2200
(XXI (1966), 21 U.N. GAOR Supp. (No. 16) 49, U.N. Doc. A/6316 (1967). International
Covenant on Civil and Political Rights (1966), U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR
Supp. (No. 16) 52, U.N. Doc. A/6316 (1967).
24. The Globe and Mail (Toronto), Sept. 18, 1991, at All, col. 1-4.

States or the United Nations in the internal affairs of countries, the precedent has been established in the Kurdish case and this situation has given a new, significant role to the United Nations as guarantor of the safety of a minority population. While the United Nations has played a similar role in other crises, notably in the Middle East, the extent of Superpower cooperation during the Gulf War has certainly given the World Organization a new lease on life and a greater relevance in world events. Such measures, if they signal a new attitude in world politics, could make resolution of the refugee crisis a distinct possibility.

V.   Alternatives for Aiding Refugees

Traditionally, there have been three ways of dealing with refugees: they can either be permanently resettled in a third country; they can be settled in the country of initial refuge; or they can be repatriated back to their own country. Resettlement in third countries, particularly Western nations is becoming increasingly difficult because of national legislative restrictions imposed by the governments of those countries. Though third country resettlement is still a possibility, the option is narrowing very quickly. The Canadian Government has recently been criticized for encouraging wealthy Hong Kong immigrants to settle in Canada while rejecting applicants who do not have the means to "buy" their way into Canada.[25] The permanent settlement of refugees in the country of primary refuge is also becoming difficult. Those nations, largely, third world countries, have limited land and economic resources. The poverty of their own populations precludes much assistance to refugees. Clearly the preferred solution for both refugees and for host countries would appear to be repatriation.

Yet to be a viable alternative, repatriation has to be voluntary. Forced deportation of refugees back to their home countries amounts to refoulement and is a violation of widely-accepted norms of international law. To ensure that repatriation is voluntary, refugees must be provided with a sense of security about their fate should they return. Recently, extensive measures were taken to reassure Kurdish refugees about the safety of their home villages.[26] These measures included visits under international protection by some refugees to their home villages, so that they could survey the situation for themselves and be assured of the safety of their families if they returned.[27] Iraqi soldiers were also pressured to leave Kurdish areas to

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25. Who Gets In (National Film Board, Canadian film 1989).

26. *See Waiting for Dohuk*, THE ECONOMIST, May 18, 1991, at 46-47.

27. *Id.*

enable repatriation to occur without any threatening atmosphere.[28]

Voluntary repatriation has clear advantages over the other solutions. First, it returns the refugee to a familiar environment, to his or her own culture. There is probably no greater satisfaction for any exile than the fact of being able to return home. Repatriation also provides a solution to the growing economic and social problems created by refugees in host countries. Third World host countries have especially felt the strain of accommodating waves of foreigners. Even the comparatively wealthier nations of the Western world have found their resources stretched by huge refugee inflows. Their own citizens have reacted with xenophobia, fear that the refugees will compete for jobs and racism-trends that have prompted national governments to assuage such antipathy by passing laws to restrict refugee flows into the country. Obviously, voluntary repatriation provides the only viable solution for all parties concerned, and once the will to implement this kind of solution exists, the next step would be for the United Nations to use its extensive machinery and experience to create pragmatic and practical proposals for international discussion.

One major obstacle to be overcome relates to the classic definition of a refugee, a definition that has linked the concept of a refugee to the political situation generated by the Cold War. The definition has little validity or relevance in the context of the present world as most of the refugees find when they encounter the bureaucratic red tape awaiting them in receiving states. According to the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees, a refugee is described as being

> a person who has a 'well-founded fear of being persecuted for
> reasons of race, religion, nationality, membership of a particular
> social group or political opinion, [and] is outside the country of
> his nationality and is unable or, owing to such fear, is unwilling
> to avail himself of the protection of that country.'[29]

Whatever validity this definition had for Eastern European refugees, fleeing from communism, the context of modern politics requires a broader definition to accommodate the reasons why people flee from their homes in this era. Generalized persecution and random violence can be as life threatening as individual persecution and specific targeting by terrorist or government assassins. Gervase Coles has suggested that the era up to the end of the 1950s witnessed an East-West flow of refugees as thousands escaped the communist states of Eastern Europe.[30] Now refugees are inclined to move from South to

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28. *Id.*
29. NANDA, REFUGEE LAW AND POLICY 4 (1989).
30. Coles, *Approaching the Refugee Problem Today*, in REFUGEES AND INTERNATIONAL RELATIONS 373 (G. Loescher & L. Monahan ed. 1989).

North[31] though the legal definitions and approaches to resolving the crisis still reflect the thinking and attitudes of the earlier East-West flow.[32] "Once refugee flows tended to be intermittent; now they have become steadier and more prolonged."[33] Barry Stein commented on today's refugees:

> Rather than fleeing because of individual fear of persecution, they have fled generalized violence, internal turmoil, situations involving gross and systematic violations of human rights . . . . Most contemporary refugees are externally displaced persons rather than 'classic' refugees. They are not fleeing a political controversy that involves them personally. Often they are getting out of harm's way rather than fleeing persecution.[34]

It is now apparent that famine and poverty induced by governmental indifference can be as valid a reason for a person to leave his home and search frantically for food. After all, even animals rush to sources of food. Why should human beings be chastised for doing so and be subjected to the torment of not being classified as refugees but as "economic migrants" and therefore not worthy of acceptance by other nations. As any number of historians, political scientists and economists from Third World nations would point out, the European nations have for a few hundred years played havoc with the economies of Afro-Asia by converting them from largely self-sufficient barter agrarian systems to cash-crop systems dependent on the whims of world prices. The consequences of such past actions have now manifested themselves in the form of a global crisis of mammoth proportions, as those nations are unable to sustain their populations, to provide adequate social services or to alleviate the hunger and misery of their people. Ved Nanda explains that "environmental disaster, harsh economic conditions, and massive violations of human rights have forced much larger numbers of people to flee danger."[35]

It is time now to stop debating about precise definitions and bureaucratic reasons why a refugee flees and start deciding what we can do to return these people to a decent life in their own countries and prevent others from fleeing in future. As Coles suggests, experience "has provided abundant evidence of the futility of trying to define a refugee by a particular motivation for departure."[36] It is quite apparent that the classic definition of a refugee has now outlived its usefulness. In the 1984 Cartagena Declaration, representatives from

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31. *Id.*
32. *Id.* at 373-75.
33. V. NANDA, REFUGEE LAW AND POLICY 5 (1989).
34. B.N. Stein, *The Nature of the Refugee Problem,* in HUMAN RIGHTS AND THE PROTECTION OF REFUGEES UNDER INTERNATIONAL LAW 52 (A.E. Nash ed. 1988).
35. NANDA, *supra* note 33, at 5.
36. Coles, *supra* note 30, at 385.

Central America extended the refugee definition to include those fleeing from "generalized violence" and even "serious disturbances of public peace."[37] The Cartegena Declaration on Refugees "provides a comprehensive framework for the protection of refugees, including fugitives from violence, conflicts and mass violations of human rights."[38] The earlier African Convention on Refugees (1969) states that "member states shall 'use their best endeavors, consistent with their respective legislations, to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.' "[39] The African (Banjul) Charter on Human and Peoples' Rights accords special protection for those seeking asylum.[40] Given the more compassionate instruments of regional law now in existence, there is no particular reason why any part of the world should continue to apply the old persecution-oriented definition and use this as an excuse to restrict the rights of refugees. National legislation ought not to become a tool for chipping away at human rights accorded in instruments of international law. Indeed, such restrictive national legislation that limits the rights of refugees has come in for serious criticism in Canada.[41]

In view of the present emphasis in some regions on the creation of a fair system that will accord protection to refugees today, the next step would be to determine not so much who qualifies as a refugee but how to assist ALL those who have fled to return home. While some attempts at repatriation have taken place, most of the world's present group of refugees are still unable to find a permanent home anywhere. Should international agreement not be possible on a comprehensive solution, there is still the possibility of regional resolution, though implementation could be difficult without the encouragement and financial support of the North American and European nations. With respect to a related matter, Renteln observes that:

> [A]n advantage of regional human rights organizations over international ones is that the locally proposed standards can be more compatible with indigenous valves. Consequently, implementation of those standards is less likely to be regarded as cultural imperialism. States will be more inclined to comply with rules which are concordant with their political culture.[42]

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37. NANDA, *supra* note 33, at 7.

38. Plender, *supra* note 9, at 52.

39. Plender, *supra* note 9, at 52-53 (quoting OAU Convention Governing Specific Aspects of the Refugee Problem in Africa, June 20, 1974, 1001 U.N.T.S. 46).

40. OAU Document CAD/LEG/67/3/Rev. 5 (1981). *See* NANDA, *supra* note 33, at 7.

41. *See* D. MATAS, *supra* note 12.

42. A. RENTELN, INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM 37 (1990).

While regional systems have progressed considerably in recent years, the fact still remains that the refugee crisis is an international matter involving several countries in their capacity as home states, nations of primary refuge or of eventual settlement and aid donor nations. A regional approach may not suffice except in a fairly limited sense.

The problem is compounded by the fact that refugees have fled from a variety of political conflicts. Afghan refugees have fled foreign intervention; Sudanese and Sri Lankans have escaped from internal turbulence; Nicaraguans have fled from ideological conflict compounded by foreign interference. Apartheid policies in South Africa have sent thousands of victims to neighboring African states for refuge. Famine and civil war have driven thousands more out of their homes in Ethiopia.[43] Time does not necessarily render a solution more likely. Indeed, as the Palestinian case clearly demonstrates, time is not on the side of a peaceful solution of any refugee problem. Whether or not the international conference and ensuing discussions on the Middle East will be able to find some resolution of the problem of the Palestinian displacement remains to be seen. Besides the refugees in the Middle East (refugees from 1948 and 1967), "there are still . . . Eritrean and Rwandese refugees from the 1960s; [and] Indo-Chinese, Saharawi, Burundian, Afghan, and Ogaden Somalis from the 1970s."[44] Most recently, Albanians in record numbers have been fleeing economic deprivation in their country and have created severe problems for the Government of Italy as they have attempted to land in the port cities of that nation. If the world does not act quickly to stem this tide of human movement and if conditions are not created to enable people to live in their own countries, the social, political and economic consequences of this refugee crisis will engulf us all. It is surely unconscionable to assume that only a small percentage of the people on this planet are entitled to safety and security, enough food to eat, adequate shelter and basic necessities of life. While the wealthier nations may choose to feel this way, these countries cannot hope to survive as islands of prosperity and safety in a world gone mad. Refugee situations are inherently international in character, implying as they do, movement of people from one nation to another. As Guy Goodwin-Gill has commented: "A refugee movement necessarily has an international dimension, but neither general international law nor treaty law obliges any state to provide durable solutions."[45] Indeed, it would be virtu-

43. *See* V. Nanda, *supra* note 33, at 5.

44. Cuny & Stein, *Promotion of Spontaneous Repatriation*, in REFUGEES AND INTERNATIONAL RELATIONS 295 (1989).

45. Goodwin-Gill, *Voluntary Repatriation*, in REFUGEES AND INTERNATIONAL RELA-

ally impossible for one government to create a solution. The search for solutions and the entire process for implementation of any plan have to be internationally undertaken and the United Nations would appear to be the only viable forum for such an arduous task.

There have been cases of states undertaking voluntary repatriation of refugees to a neighboring state. In 1971 civil unrest in Pakistan between the Western and the Eastern parts of that nation drove millions of its citizens to neighboring India. The cost to India was staggering, given its own limited resources. One estimate places the cost of feeding eight million Pakistani refugees at $200 million a month.[46] The number of East Pakistani refugees in India eventually soared to ten million.[47] The Indian Government finally decided that repatriation was the only possible solution and implemented this in the context of its own act of intervention in East Pakistan, a military action that brought the state of Bangladesh into being. Whatever justification India may have had in that crisis, the concept of humanitarian intervention by one state against the government of another is still too controversial and too fraught with the possibility of abuse to accept for a multiplicity of situations.[48] It is far safer to rely on an international forum like the United Nations, effectively mobilized to create conditions conducive for voluntary repatriation, even if this involves establishing safe havens within the refugees' home state for minorities to exist in peace. The office of the United Nations High Commissioner for Refugees (UNHCR) could undertake such tasks, given solid support and funding by the World Organization. Its objectives would include, "promoting dialogue, acting as intermediary, and facilitating communication, but also the active pursuit of return where prevailing circumstances are appropriate."[49] There are precedents for the involvement of UNHCR in repatriation schemes. The High Commissioner's office monitored repatriation of refugees to Ethiopia between 1984 and 1985 and between 1986-1987 and also participated in measures of resettlement of returning Guatemalan refugees in 1987.[50]

There are two priorities to be considered in this aspect of the problem: peaceful conditions in the refugees' home states and a measure of economic development to enable the returnees to begin a new life in their former homes. Should a substantial majority of members of the United Nations decide finally to discard the persecution-ori-

TIONS 262 (1989).

    46. S. WOLPERT, A NEW HISTORY OF INDIA 389 (1989).
    47. Coles, *supra* note 30, at 378.
    48. For an interesting view on humanitarian intervention, *see* F. TESON, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY (1988).
    49. Goodwin-Gill, *supra* note 45, at 274.
    50. *See Id.* at 289.

ented traditional definition, a move that will undoubtedly be welcomed in many quarters, the possibility of working with, rather than against, the home governments of the refugees becomes more likely. The classic definition laid the blame squarely on the home government by labelling it the "persecutor." Whatever psychological boost this definition may have given political egos during the Cold War, it certainly prevented for years any discussions between host nation and home state regarding repatriation. The cooperation of the home government is essential for the implementation of repatriation. Without that active assistance and without the will on the part of the home state, nothing effective can be done to alleviate the misery of these fifteen million men, women and children.

Some states that generate huge refugee flows are themselves in desperate economic shape. Vietnam is a case in point, an example of a nation with an economy crippled by war and foreign boycotts—a nation that has much to gain by being accepted as a bona fide member of the international community. The benefits for its population from a greater measure of international acceptance may well prevent further refugee flows. The United States, Canada and Western Europe have already accommodated thousands of refugees from this region.[51] Thousands are still suffering in ghastly conditions in crowded camps in Hong Kong, daily dreading deportation back to Vietnam.[52] For them, there is at present little hope. The misery inflicted on these innocent people reflects on all of us. We cannot continue simply to ignore their plight and assume that it is not our problem.

If the prevailing philosophy at the United Nations is to be less inclination to lay blame on nations for past problems and the creation of more pragmatic solutions for the future, then international efforts to secure repatriation could proceed on the basis of mutual goodwill. While a totalitarian government may not be willing to receive back its people who have fled, the experience with United Nations firmness in dealing with Iraq (a totalitarian state by any standards) indicates that the force of world public opinion and international pressure can effect positive change. Admittedly, the Iraqi situation is unique in that the area was devastated by war. However, the Iraqi experience is now known to every dictator on the planet and most would hardly be willing to endure the fate of Saddam Hussein during the Gulf War. The new world order has substantially more chance of succeeding if it is based on United Nations mechanisms, if it utilizes United Nations resources and if it is based on international rather than Superpower involvement in the establishment of human rights.

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51. R. BACH, REFUGEES AND INTERNATIONAL RELATIONS 315 (1989).
52. The Times (London), 7 (weekly ed. 1990).

Accordingly, if the home government of a refugee group can be persuaded and or pressured to receive back those who have fled and to guarantee their safety in their own communities, with United Nations supervision in the area and with the possibility of United Nations military intervention, should any attempts be made to massacre the refugees, voluntary repatriation might become possible. There is one inducement that might make this kind of agreement not only possible but quite attractive from the point of view of the government as well. Indeed, such measures have already met with some limited success in a few cases. The World Organization could channel development aid to those nations that are willing to welcome back their refugees and to target that aid to the very areas where the refugees will be settling. There is a possibility of greater acceptance of refugees locally among their own population if they appear to be coming home accompanied by international teams to assist in the digging of wells, to train farmers to grow food, to build schools, medical clinics and basically to create a new order and better life for both the returnees and for those who stayed. There are few governments today that would deny their people better services of these fundamental necessities particularly when these services are provided by the United Nations and do not have the "political strings" often associated with aid from a Superpower.

Funding these projects will naturally be a major expense, but the channelling of aid via the United Nations with the ultimate objective of lessening the number of refugees, would appear to be a practical, viable method of resolving the problem. Taxpayers in countries like Canada and the United States might prefer to fund permanent resettlement programs that promise to make the refugees self-sufficient, rather than subsidizing unending charity handouts of emergency aid year after year. It would be hard to estimate the international and national cost of refugees to the receiving states. International aid, humanitarian charity given by central governments, provincial budgets for social services, private donations to refugee assistance groups, all of this totalled is undoubtedly a significant sum if all of North America and Western Europe are counted. If we also calculate the contribution of the host nations in the Third World, the amount the world spends to look after refugees will definitely be in the billions of dollars every year. Using a fraction of this amount each year to resolve the problems of groups of refugees would seem to be a much fairer and more practical utilization of the resource.

It is not my intention here to discuss the refugees' right to development or to debate the controversial subject of development aid and human rights. The topic has been dealt with expertly else-

where.[53] However, whether or not anyone has a right to development, looking at the matter from a practical viewpoint, if the developed nations of the world do not provide this type of assistance to the developing nations, the consequences of poverty, hunger and famine inevitably have to be borne by the wealthier nations in the form of relief for refugees. What I am suggesting is a way of avoiding refugee flows before they begin by utilizing technical and financial aid to provide basic necessities, such as food, and to return these societies to a measure of the self-sufficiency that they enjoyed before the West turned their economies, political systems and cultural traditions upside down during the imperial era. By making them self-sufficient now, we alleviate the plight of millions whose problems will continue to be borne by us in the West for years to come unless we act decisively at this moment when the world appears to have reached a stage of mutual cooperation and interest in democratic systems that we have not seen before.

If the ultimate aim of this whole process is to create a climate conducive to the survival and implementation of human rights, it will require more than the provision of security and economic development, though those are two crucial elements in the program. Human rights require active, vigilant and concerned citizens in every nation —citizens who are not afraid to speak out against any sign of repression, who have forums and outlets through which they can express themselves and who can generate local support and the assistance of world public opinion. Human rights have to become an integral part of the constitutions and governmental systems of all states. Where there is an established rule of law, where there is judicial independence and a sense of adherence to legal norms, human rights can not only survive but thrive. Given the current popular fascination with democracy in many parts of the world, given the extent of people's commitment to that elusive but tantalizing concept called "freedom," the time is ripe for the established democratic states to assist the new democracies to incorporate human rights protection into their constitutional and legal systems. The mutual sharing of experience in the creation of human rights charters and in their effective implementation can best be accomplished under the aegis of the United Nations which already has the expertise and the institutional machinery to generate such discussion.

The democratic states must be prepared to provide far more assistance: the training of lawyers in human rights concepts, the training of judges in international law, advice about the creation of human rights committees to act as watchdogs over the actions of

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53. *See* K. TOMASEVSKI, DEVELOPMENT AID AND HUMAN RIGHTS (1989).

governments. Such activities are already underway in a number of countries. However, a global, cohesive program needs to be put in place to extend the sporadic, scattered efforts into a coherent international effort that will reduce violations and hopefully provide effective remedies for victims. To make these suggestions is not to underestimate the achievements already made. A number of dedicated human rights activists working through the Committees of the United Nations and through various non-governmental organizations have catalogued and collected evidence of rights violations, insisted on honest reporting procedures by governments, questioned practices that do not seem in accordance with international human rights principles and have also aroused world public opinion by taking rights abuse cases to the media in the democratic states.

It has to be realized that the time has also come to stop the hairsplitting and quibbling about the primacy of civil and political or social and economic rights. Whether rights are first generation (civil and political), second generation (economic and social) or third generation (solidarity rights) is hardly the issue, given a new commitment to practical implementation. The primacy and priority of rights are not as significant as the achievement and establishment of all rights. To suggest that the rights of individuals conflict with social rights and that the former are more significant than the latter is again to create and raise obstacles where the time has now come to destroy barriers and walls and move forward boldly. If individuals in the poor nations have a degree of political choice, a decent standard of living, security and freedom to live according to the tenets of their own cultural traditions, that situation would grant them most of the fundamental rights significant to their survival. Whether the human rights a peasant in Vietnam or Nicaragua could some day enjoy are classified first, second or third generation rights would be largely meaningless to him. What he will recognize and appreciate is a plot of land, enough food for his family, peace from marauders, both terrorist and governmental, and some hope for his children to acquire a better life. While we academics split hairs over the need to secure this peasant's first, second or third generation rights and the logical order in which these should be accorded to him, the peasant might well find our debates of little relevance to the realities of his own existence.

It is also important that we in the Western world understand that the only hope for a successful implementation of human rights lies in the free acceptance by the peoples of Third World countries of human rights concepts. Human rights must be perceived not as

some exotic Western import, transplanted from another society.[54] To be meaningful and relevant, human rights have to become part and parcel of the indigenous way of life of the people of these nations. To a large extent the shrinking of the planet, a consequence of modern communication systems, has familiarized people around the world with the concepts of human rights. Human rights activists have one tremendous advantage. The principles they espouse and propagate are inherently welcome to most people in most nations. Opposition tends to come largely from ruling elites who sense a loss of privilege and from religious hardliners who foresee a decay of traditional values and ways of life.

The opposition of ruling elites was clearly demonstrated in the aborted coup of August 1991 in the Soviet Union. It is likely that privileged elites will now be very much on the defensive and will have to bend flexibly to the winds of change or be broken by a storm of popular protest. The nation to watch in this regard is, of course, China.

The issue of traditional religious opposition is likely to be more contentious in the long run. Islam as it is practiced today, adheres to certain concepts regarding the status and role of women that are incompatible with principles of human rights as enunciated in instruments of international law. Hindu social systems like caste also establish patterns of segregation that are inconsistent with the precepts of human rights. The situation of caste and Hinduism is probably easier to resolve in the long term. The constitution of free India outlaws discrimination on the basis of caste.[55] Time and the process of industrialization accompanied by the inevitable modern mixing of populations, classes and groups will inevitably erode the validity and relevance of caste to Indian society. The Islamic example does, however, pose a challenge. Islam has proven to be a very popular religion and its adherents continue to grow in numbers particularly in Africa, where its fundamental reliance on the equality of all men has brought it many new followers. Fundamentalist elements of Islam have also in recent years established a political platform that decries and derides Western concepts as decadent, corrupt and morally bankrupt. Islamic orthodoxy has taken women back several hundred years by enjoining them to don the veil, stay out of political affairs, focus on their families and eschew the temptations of Westernization. The drastic change in the lifestyle of the women of Iran following the success of the Khomeini revolution in 1979 provides only one example of this. The differences between East and West were further

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54. *See* R.K.L. Panjabi, *Describing and Implementing Universal Human Rights*, 26 TEX. INT'L L.J. 189 (1991).
55. W. DAS & T.S. NARULA, HOW STATES ARE GOVERNED 291 (1965).

dramatically evident during the Gulf War when female American
military personnel were dispatched to Saudi Arabia and they person-
ally encountered the very confining lifestyle of Muslim women.

While some traditionalist Islamic leaders have opposed Western
concepts, including human rights, there is now evidence that more
moderate elements do not see as much problem with the adoption of
human rights into an Islamic framework of society. Mohammed Al-
lal Sinaceur of Morocco, Director of the Philosophy Division,
UNESCO, "argues that there is no incompatibility between Islamic
ethics and the fundamental principles underlying human rights;
though he stresses that 'human rights in Islam are human rights in
the light of Islam' and calls for an Islamic Declaration of Human
Rights and Public Liberties."[56] Abdullahi Ahmed An-Na'im pro-
poses "the elimination of all forms and shades of guardianship and
superiority of men over women in Islamic law as imperative in the
best interest of both women and men."[57] If Islam can accommodate
human rights and find some inherent assimilation with these con-
cepts, there is certainly hope for other traditional systems. An-Na'im
clarifies one aspect of this problem:

> [C]ertain standards of human rights are frequently violated
> because they are not perceived to be culturally legitimate in the
> context of the particular country. To the extent that political
> regimes and other dominant social forces can explicitly or im-
> plicitly challenge the validity of certain human rights norms as
> alien or at least not specifically sanctioned by the primary values
> of the dominant indigenous culture, they can avoid the negative
> consequences of their violation.[58]

The impetus to formulate any such charters of assimilation
must come from within the traditional communities and cannot be
imposed by outsiders. All the West can do in such cases is to provide
an example of the advantages of having established human rights
within any society and stand ready to provide advice and assistance
should that be requested. Recently, the women of Kuwait put up a
valiant resistance against the Iraqi invaders, risking violence, torture
and death to participate in the Kuwaiti resistance movement.[59] Their
heroism and the martyrdom of some very brave women have inspired
Kuwaiti men and women to demand fundamental political rights for
women in that society. Time may well be on the side of the moderate

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56. L.J. MACFARLANE, HUMAN RIGHTS: REALITIES AND POSSIBILITIES 7 (1990) (quoting
Sinaceur, *Islamic Tradition and Human Rights*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN
RIGHTS (P. Ricoeur, 1986)).
57. Abdullahi Ahmed An-Na'im, *Islam, Islamic Law and the Dilemma of Cultural Le-
gitimacy for Universal Human Rights*, in ASIAN PERSPECTIVES ON HUMAN RIGHTS 46 (1990).
58. *Id.* at 32.
59. *See* LOS ANGELES TIMES, Oct. 16, 1991, at 1, col. 5.

element of Islam in its search for an accommodation of Islam with human rights concepts. The entire process of implementation will depend on assimilation and accommodation so that human rights become neither Eastern nor Western but universal in their relevance and scope.[60]

VI.   Conclusion

Ultimately, the solution of the refugee crisis and the creation of a climate conducive to the achievement of human rights for all peoples depend, not so much on the proliferation of written instruments—though that too has an initial significance—but on the attitudes of governments, leaders and people around the world. An attitude of commitment to effecting such improvement in the lives of the millions who do not now enjoy even a basic standard of living or fundamental freedom is a prerequisite to any effective action. International law in this area has grown with the European system, the American system and the African system;[61] legal precedents multiply; dictators receive thousands of condemnatory letters when they violate the human rights of individuals. However, fifteen million men, women and children still languish in a status of exile with little hope for fulfilling that most basic of human needs, a home of one's own, a country to which one can belong. Over 50% of the world's refugees are children.[62] We are presently growing a generation of exiles in refugee camps around the world, a generation that has not experienced the benefits of a settled life, an established home, a generation that has no grasp of permanency a generation, that lives day by day on the charity handouts of a largely neglectful world. Each day the numbers of these children of exile multiply. They now number in the millions. For how much longer can we continue to procrastinate about these children and their future? For how much longer can we go on ignoring their plight and simply assume that a little aid thrown their way will salve our consciences and hush their cries?

History is replete with examples of people going into exile. North American civilization as it now exists was founded by such people who fled from many countries in search of a better life. People have always been on the move in history. However, the size of these population movements has never been as great, nor has their plight ever been quite as tragic. The new refugees, unlike those of the past have no hope for the future. Most of them have no new

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60.   *See* R.K.L. Panjabi, *supra* note 54, at 189-204.
61.   An Asian Charter of Human Rights, encompassing the many nations of that large continent, continues to be an elusive but tantalizing goal of human rights activists.
62.   Loescher, *Refugee Issues in International Relations*, in REFUGEES AND INTERNATIONAL RELATIONS 24 (1989).

world in which to build another life. It is, therefore, incumbent on us to do all we can at least to give them back their old life in their former homes where they can live in peace and dignity. The new world order which has led to the demise of hardline communism in its major stronghold, the proliferation of democratic systems and global cooperation on a scale not seen since the end of the Second World War, provides a unique opportunity for the world to tackle the issue of the crisis of the refugees and the human rights violations implicit in their desperate plight. If we forego this opportunity and continue to stave off a permanent solution, we will bear a heavy burden of responsibility to the future. Unless we act decisively now, the number of refugees will continue to grow—their needs will increase and the sheer length of their exile will make resolution more and more difficult. There is hardly a human rights issue that is more compelling or more urgent than this one. It would be perilous to ignore our responsibilities in this matter.