

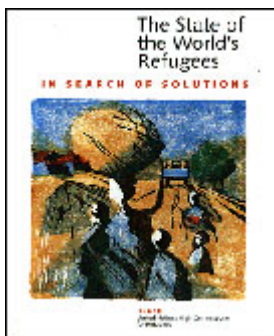
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IN SEARCH OF SOLUTIONS

Protection, Integration and Repatriation



Extract from "The State of the World's Refugees 1995 - In Search of Solutions"

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"Protecting human rights", Chapter 2, (p. 82-89)

Protection, integration and repatriation

It is now widely acknowledged that voluntary repatriation and reintegration represents the most appropriate solution for a large proportion of the world's refugees. It is the solution that most exiled populations appear to prefer. As suggested already, many refugees go back to their homeland as soon as they can, even if conditions there are not completely safe. It is also the favoured solution of host governments, many of whom would like to avoid the indefinite presence of refugees on their territory, and of donor states, who would be pleased if the resources which they commit to long-term refugee relief programmes could be used more productively.

Past efforts to protect the human rights of refugees have in some senses obstructed the goal of repatriation and reintegration. For many years, when a large proportion of the world's asylum seekers were escaping from communist countries, it was assumed (with some justification) that they would not want or be able to go home. For this reason, and in order to discredit the eastern bloc, substantial efforts were made by the western states to ensure that refugees could



either settle in their country of asylum or move on to another country and integrate with the local population there.

This emphasis on settlement outside the country of origin was institutionalized in the 1951 UN Refugee Convention, which set out in considerable detail the various economic, social and civil rights to which exiled populations are entitled. In a whole range of areas - housing, education, social security and employment, for example - the Convention stipulates that refugees should be treated on a basis 'not less favourable' than that accorded to other foreigners. By treating refugees in this manner, it was felt, refugees would become assimilated in their new countries, and would avoid the kind of social marginalization that might result if they were given only a second-class status.

Economic and social benefits

Refugees in the less developed regions of the world have gained relatively few material benefits from the economic and social provisions of the Refugee Convention, for the simple reason that the countries to which they flee are typically very poor and lacking in basic amenities. While refugees living in organized camps have often benefited from services which are as good as (if not better than) those available to the surrounding population, exiled populations in the less developed countries generally find themselves in more difficult socio-economic circumstances than those they experienced in their homeland.

The situation of refugees who have made their way to the industrialized states of Western Europe, North America and Australasia is quite different. Many of these exiles have found that their standard of living, although poor by local standards, is considerably better than they could expect at home. If they cannot find work, they are at least entitled to social security payments. Normally, refugees in the industrialized states are entitled to free education and medical treatment. At the same time, the organized integration programmes usually provided in such societies - language classes, special housing programmes, counselling services, as well as training and employment initiatives - have enabled many refugees and, more significantly, their children, to adapt successfully to life in the western world. As a result, they have generally been less inclined to repatriate than refugees who have found asylum in less affluent countries.

This inclination has been reinforced by the presence of supportive national and ethnic communities in most of the industrialized states. Iranians granted asylum in France, for example, or Zairians who have found refuge in Belgium, or Sri Lankan Tamils offered protection in Britain have been able to draw upon the help, advice and resources of thousands of compatriots who have already settled in those countries, whether as refugees or under some other immigration status. When such supportive communities exist, the desire for a refugee to go home and to reclaim his or her own culture and identity may be considerably weakened.

Rights of residence

The tendency of refugees to remain in the industrialized states indefinitely has been reinforced by two additional factors: the reluctance of host countries to



withdraw the right of residence from people once they have been granted asylum, and the general absence of organized repatriation programmes in such societies. Under the terms of the 1951 UN Refugee Convention, a state has the right to withdraw refugee status from any individual once it is safe for that person to return to their homeland. In practice, however, the industrialized states have not invoked this provision, even in relation to refugees from countries where the persecuting regime has been replaced by a democratically elected government which maintains high human rights standards.

In the less developed countries, it is common practice for UNHCR to organize voluntary repatriation programmes for exiles who wish to return to their homeland. In situations where it is evidently safe for refugees to go home, UNHCR actively encourages them to take advantage of such arrangements.

Although organized voluntary repatriation programmes have been established for certain groups of refugees in the industrialized states - Argentinians, Chileans, Namibians and South Africans, for example - such initiatives tend to be the exception rather than the rule. In general, refugees who wish to go home have been expected to organize their own repatriation from their country of asylum and their own reintegration in their country of origin. Given the expense, complexities and risks involved in this process, it is hardly surprising that many choose not to do so. Moreover, given the chronic instability of many countries of origin, refugees who want to return to their homeland often wait until they have become naturalized citizens of their asylum country. In that way, they are able to keep their future options open.

Governments in the developed world have generally been reluctant to promote the return of refugees, largely because the issue of repatriation - even on a voluntary basis - has become extremely sensitive in countries with substantial immigrant and ethnic minority populations.

While most of the industrialized states still subscribe to this philosophy of non-repatriation in relation to settled foreign residents, governments are now undertaking a serious reappraisal of the kind of protection which they provide to newly-arrived refugees. Is it possible, they are asking, to provide such people with the safety and security which they need and to which they are entitled, while simultaneously encouraging them to consider voluntary repatriation and reintegration as the ultimate solution to their plight? That is the subject of the following discussion.

Temporary protection or permanent asylum?

Whether asylum should lead to integration, or whether it should be a means of providing protection until repatriation is possible, has become a particularly pertinent issue in relation to former Yugoslavia, where, it was initially assumed, the international community would succeed in finding a speedy solution to the war. On the basis of this assumption, and in the context of a broader range of measures intended to address the humanitarian crisis in the region, the concept of 'temporary protection' was devised.

This notion is not an entirely new one. It was used by the states of South-East Asia when they agreed to admit the Vietnamese boat people on a provisional basis, pending their resettlement in third countries. Pakistan has always insisted that the many Afghan refugees living on its territory have been granted only



temporary asylum, and will be expected to go home once conditions have improved in their homeland. A related concept is also referred to in the 1990 US Immigration Act, which offers the possibility of granting 'temporary protected status' to citizens of countries experiencing armed conflict and other extraordinary conditions.

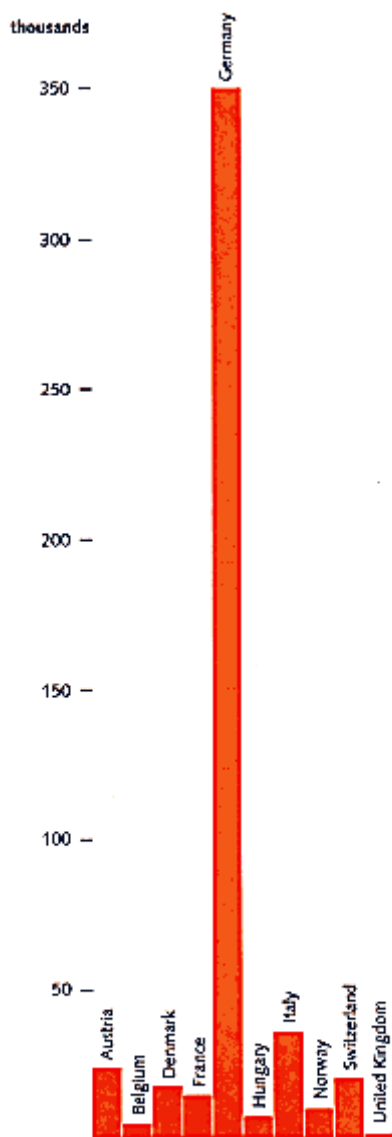
It is in the context of former Yugoslavia, however, that the notion of temporary protection has been developed most systematically as a means of resolving refugee problems. On 29 July 1992, at the first UNHCR-sponsored conference on former Yugoslavia, the High Commissioner for Refugees formally requested governments to give temporary protection to people fleeing from the conflict and associated human rights violations in former Yugoslavia.

There were three key elements to this proposal. First, former Yugoslavs were to be admitted to countries of refuge and guaranteed protection against a forcible return to any country where their life or liberty would be at risk. Second, in relation to their rights and entitlements while in the country of refuge, the beneficiaries of this arrangement were to be treated 'in accordance with internationally recognized humanitarian standards.' And third, the former Yugoslavs would be allowed to remain in the country which had admitted them until the time when a safe return to their country of origin became possible. At that point, they would generally be expected to repatriate with assistance from the international community. Some 700,000 people from former Yugoslavia had been granted temporary protection in Europe by the first quarter of 1995, the largest number of them in Germany.

Fig. 2.1 Former Yugoslav citizens with temporary protection in Europe, 1995



Fig. 2.1
Former Yugoslav citizens with
temporary protection in Europe, 1995



Statistics dated 1 January 1995. Only former Yugoslav citizens admitted under temporary protection arrangements are indicated. Countries with fewer than 2,000 beneficiaries of temporary protection are not shown.

As the following paragraphs indicate, the temporary protection arrangement has a number of actual and potential advantages, both for the beneficiaries themselves and for the countries which have admitted them.

Providing immediate security. The former Yugoslavs who have been granted temporary protection in Western Europe have generally not been obliged to go through the lengthy procedures which European governments normally use to approve or reject individual applications for asylum. As a result of this dispensation, the beneficiaries have enjoyed an immediate guarantee of security

and have been spared the anxiety of waiting to find out whether their request for refugee status has been successful.

Recognizing protection needs. Faced with a steady increase in the number of people seeking asylum on their territory, the world's more prosperous countries have in recent years tended to adopt increasingly restrictive interpretations of the criteria for refugee status. In many instances, people fleeing from armed conflict have been refused refugee status on the grounds that they cannot demonstrate an individual fear of persecution in their country of origin. The temporary protection approach has circumvented this difficulty, and has helped to establish a consensus that international protection should be given to people whose safety is at risk, whether or not they fall within a particular interpretation of the refugee definition.

Simplifying procedures. The procedures employed to assess individual asylum applications in the industrialized states have in recent years been overwhelmed by the number of people claiming refugee status. By granting temporary protection to the many former Yugoslavs seeking refuge on their territory, governments have been spared the task of dealing with a potentially unmanageable number of individual applications.

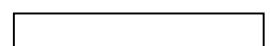
Encouraging generosity. As suggested already, one of the principal reasons why politicians and the public in the industrialized states have hardened their attitude towards asylum seekers is the perception that refugees have no real desire to return to their homeland, even if conditions become safe there, but would rather remain and enjoy the material benefits of life in the western world. By limiting asylum to the period when a safe refuge is actually required, the temporary protection approach promises to allay such fears. As experience with the former Yugoslavs has demonstrated, governments may feel that they can afford to be more generous to a group of asylum seekers if their presence will not become a permanent one.

Facilitating repatriation. Temporary protection, or 'return-focused protection', as one European government has called it, obliges all of the parties concerned to give serious consideration to the question of an eventual repatriation. Knowing from the beginning that they will be expected to return to their homeland when conditions have improved, beneficiaries of temporary protection can prepare themselves psychologically and in more practical ways for the day when safe return becomes possible. At the same time, the temporary protection approach will oblige host governments and UNHCR alike to consider the neglected question of how repatriation from the industrialized states can most effectively be facilitated.

Resolving the conflict. The temporary protection approach provides host governments with a tangible incentive to address refugee problems at their source, in the country of origin. Expressed more simply, if states want to see the speedy return of the people they have temporarily admitted to their territory, then they must use all of the means which they have at their disposal to create the conditions necessary in the country of origin for safe repatriation to take place.

The question of entitlements

Given the relatively short period of time since the introduction of temporary protection for former Yugoslav citizens, it is difficult to say whether all of the



potential advantages identified above will be realized, particularly those relating to the longer-term future of the beneficiaries. Nevertheless, it is possible to identify some of the key questions which have been raised by the introduction of temporary protection in Europe, and which must be addressed more systematically if similar approaches are to be introduced elsewhere.

First, what entitlements should be accorded to the beneficiaries of temporary protection? As indicated already, one of the reasons why refugees tend to stay indefinitely in the industrialized states is because they very quickly develop social connections there, adapt to the way of life and become accustomed to the standard of living which such societies have to offer. Should people with temporary protection be prevented or discouraged from establishing such ties to their country of refuge? And if so, can that objective be achieved without violating their human rights?

If social and economic integration really is a disincentive to voluntary repatriation, as some governments appear to believe, then the most rational means of ensuring the eventual repatriation of people granted temporary protection would be to accommodate them in isolated camps, to bar them from seeking employment, to discourage them from learning the local language and to prevent their family members from joining them. While such measures have already been employed in a number of states, these strategies are likely to prove politically unacceptable if maintained over an extended period of time.

Some of the measures which can be taken to discourage integration can also be challenged on legal and ethical grounds. Given that at least some of the people who are granted temporary protection would qualify for refugee status if their request for asylum was to be considered on an individual basis, they cannot be arbitrarily deprived of the rights to which they are entitled under the UN Refugee Convention. And as they have already been recognized as people who are in need of international protection, it seems perverse to treat them in a less generous manner than asylum seekers from other countries, many of whom will ultimately be refused refugee status.

How temporary is temporary?

Second, in view of the fact that conditions in a country of origin may not improve as quickly as initially anticipated, at what point should the beneficiaries of temporary protection have their asylum claims examined on an individual basis, or, alternatively, be offered the full range of rights and entitlements enjoyed by people who are recognized as refugees under the 1951 Convention?

When the temporary protection approach was introduced in 1992, there were hopes that the war in former Yugoslavia might not be prolonged. Now, however, three years later, there is still no certain prospect that conditions will improve sufficiently to permit the safe return of many people who have fled from the war, especially those originating from areas where their ethnic or religious group was not, or is no longer, in the majority.

At some stage, therefore, host governments will have to recognize that people with temporary protection must be offered greater certainty about their future and offered a standard of treatment which may make them less inclined to repatriate, even if it becomes safe for them to do so. Clearly, conditions which are



appropriate for a period of several weeks cannot be prolonged for months or years without prejudicing the human rights of the people concerned. Moreover, in some cases, beneficiaries of temporary protection may have suffered such grievous abuses in their country of origin that the prospect of voluntary repatriation should not be entertained at all.

Safe return

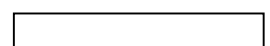
A third set of issues relates to the withdrawal of temporary protection and the notion of safe return. With regard to these topics, it may simply suffice to list some of the questions which arise in connection with the future of the former Yugoslavs, and to which there are currently no definitive answers. Who, for example, will determine whether it is safe for these people to go home? How much time must elapse after the hostilities and associated human rights violations have ceased before it can be deemed safe for people to return? What will happen to people who lose their temporary protection but who do not want to go home? And what solution will be found for those whose homes lie in areas which have been occupied by members of another ethnic group, or which have come under the control of another government as a result of a negotiated settlement to the conflict?

Fourth, to what extent will temporary protection - like the right to remain - be misused by states who wish to limit their obligations to refugees? When the temporary protection proposal was introduced in 1992, it was as part of a broader package of measures which was intended to provide asylum seekers with both the immediate protection they required and an eventual solution to their plight. One important element of this package was that receiving countries should maintain open borders for new arrivals from former Yugoslavia. That principle has not been fully respected.

People escaping from war-affected areas of former Yugoslavia, particularly Bosnia and Herzegovina, have encountered serious difficulties in gaining access to countries of refuge over the past three years. This situation has arisen partially because of the persistence of the war and the limitations which this has imposed on freedom of movement. But as a paper by UNHCR's Division of International Protection has pointed out, it also derives from the actions taken by other governments in Europe. 'Even when departure is not blocked by fighting or hostile local elements, entry into neighbouring states is often refused for lack of required documentation,' it states. 'Most of the countries that provide temporary protection,' the paper continues, 'have imposed visa requirements or similar restrictions on Bosnians.'

Resolving root causes

Fifth and finally, certain questions arise with regard to the claim that the temporary protection approach will provide countries of refuge with an incentive to address the root causes of refugee movements in the country of origin. It could now be regarded as somewhat fanciful to suggest that the states of Western Europe have tried any harder to resolve the war in former Yugoslavia, simply



because of their desire to witness the return of people to whom they have granted temporary protection.

The governments of Western Europe have many reasons - economic, political, military and diplomatic - to bring the war in former Yugoslavia to an end, all of which loom far larger in the mind of key decision-makers than the refugee question. And yet even these important strategic interests have not motivated the governments concerned to take the kind of decisive action that might have halted the fighting and human rights abuses which have provoked such massive displacements, and which are now preventing those refugees from returning to their homes.

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