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Learning from Rwanda: Addressing the Global Institutional Stalemate in Refugee Crises

LESLIE E. SCHAFER

INTRODUCTION

One of the greatest global challenges of the past half century has been to define the role of the international community to deal with refugee movements. From the aftermath of World War II to the present, nations of the world have adapted solutions to protect those threatened by violent conflict occurring in their home country. However, the legal regime, within which the community works, was primarily crafted immediately following World War II. In some instances, the United Nations has been successful in stepping quietly around the strictures of international refugee law in order to deal effectively with the crisis at hand. Yet, without fundamental change, the international community will continue to act in an ad hoc and many times unorganized fashion in response to situations that produce major refugee movements.

Recent refugee flows show that the majority of those who flee their country come from developing nations. In dealing with these modern situations, the international community has turned its focus from protective measures to providing humanitarian aid, both as emergency and developmental help to impoverished nations rent by violence. However, international aid alone cannot fulfill the protective commitment that refugees so desperately need. By examining the recent example of conflict in Rwanda, the inadequacies of many current practices in refugee aid become more clear. Changes in the substantive

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1. These conflicts diverted United Nations' activities (through the actions of the United Nations High Commissioner for Refugees) from a focus on protection of refugees through solutions such as repatriation and resettlement to "helping people in flight and trying to keep them alive in camps." LAWYERS COMMITTEE FOR HUMAN RIGHTS, THE UNHCR AT 40: REFUGEE PROTECTION AT THE CROSSROADS 34 (1991).
and procedural approaches of the international community regarding refugees are necessary to achieve lasting resolutions to the seemingly interminable problems of internal conflict in the developing countries of the world.

Part I will briefly describe the current legal refugee regime, focusing on the 1951 Convention relating to the Status of Refugees (Geneva Convention), as well as exposing some pertinent regional agreements that have modified the legal definition of "refugee." Part II will explain the backdrop of modern refugee flows, using the example of the recent Rwandan crisis to illustrate several steps in international refugee protection. Part III will synthesize the problems presented in Part II as related to the definitions of Part I, and suggest solutions that will lead to an international framework that adequately addresses the modern complexities of refugee-producing situations.

I. THE LEGACY OF REFUGEE PROTECTION: FROM WORLD WAR II TO RWANDA

In 1950, the United Nations set up the office of the United Nations High Commissioner on Refugees (UNHCR) to help remedy the massive displacements of people from the violence of World War II. The Geneva Convention defined the mandate of the UNHCR very narrowly. As the world experienced further mass refugee flows, that mandate was redefined. More recently, protection for refugees has been expanded through regional agreements and the "good offices" of the UNHCR. This part will describe the legal framework pertaining to refugees that has been developed by the United Nations, as well as supplemental refugee definitions adopted by the Organization for African Unity and the Cartagena Declaration, in order to facilitate an analysis of the overlapping regimes with reference to the recent crisis in Rwanda.

2. Id. at 5.
3. This definition limited the term "refugee" to include people displaced before the Convention was signed, and drew narrow geographical requirements. See Convention relating to the Status of Refugees, July 28, 1951, chap. I, art. 1, 189 U.N.T.S. 137, 152-56 [hereinafter Geneva Convention].
4. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 5.
5. Id. at 6. The "good offices" of the UNHCR allow the agency to step outside its official mandate to help people threatened in refugee-like situations. Id. at 32.
A. Laying the Foundation: The Statute of the UNHCR

In late 1949, the United Nations General Assembly decided to create an agency to address international refugee situations.6 Late the following year, the General Assembly adopted the Statute of the Office of the United Nations High Commissioner for Refugees (Statute).7 The Statute provided, in broad terms, a framework for the 1951 Geneva Convention relating to the Status of Refugees and subsequent Protocol relating to the Status of Refugees (New York Protocol).

According to this Statute, the UNHCR is to “provid[e] international protection” to refugees and “seek[] permanent solutions for the problem of refugees” through “voluntary repatriation” or “assimilation within new national communities.”8 Specifically, the Statute provides a narrow definition of the term “refugee,”9 and describes eligibility requirements, including examples to which UNHCR competence “shall not extend”10 as well as when such competence “ceases.”11

Additionally, the Statute provides that “[t]he work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.”12 The General Assembly or the Economic and Social Council of the United Nations provides “policy directives” for the UNHCR.13

B. The Definition of a Refugee

After the adoption of the Statute on December 14, 1950, the General Assembly pushed forward, convening a conference at Geneva in 1951 to draft a convention that would define the legal status of refugees. The Geneva

8. Id., Annex, ¶ 1. “Voluntary repatriation” is the voluntary return of a refugee to his/her homeland; “assimilation” will be discussed further as “resettlement,” a solution that entails integrating a refugee into a country other than his/her country of origin.
9. The “refugee” definition is substantively similar to that of the Convention as explained in subpart B, which will be the basis of further discussion.
11. Id. ¶ 6.
12. Id. ¶ 2.
13. Id. ¶ 3.
Convention was adopted in July 1951 and entered into force in April 1954. One of the goals of the Geneva Convention was “to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement.” As such, the Geneva Convention still serves as the definitive international agreement on the status of refugees, with the modifications discussed below.

From this Convention comes the basis of the modern legal definition of a “refugee,” which applies to any person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

A close reading of the italicized terms above evinces the strictures of the legal definition of a refugee. Only those falling within the prescribed categories can be considered “refugees” within the parlance of the United Nations international community.

The Protocol relating to the Status of Refugees expands the definition of a “refugee” by specifically deleting the words “as a result of events occurring before 1 January 1951 and” as well as “as a result of such events,” which allows those who fit the substantive but not timing requirements of the Geneva Convention to be considered legal refugees.
C. Expulsion and Refoulement

In addition to Article 1 of the Geneva Convention, where the refugee definition is set out, two other Articles are pertinent to the discussion of refugee problems in the context of this paper. Article 32 prohibits the expulsion of "a refugee lawfully in [a Contracting State's] territory save on grounds of national security or public order." Also, Article 33 forbids a specific type of expulsion known as "refoulement." To "refoule" a refugee means to return a refugee "to the frontiers of territory where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion." Through later discussion, this Note will show how the lines between what constitutes refoulement or expulsion and the facilitation of voluntary repatriation are not always clear-cut.

D. Regional Agreements on Refugees

Although the Geneva Convention and the New York Protocol provide the international framework for refugee protection, several regional agreements provide the basis of supplementary definitions that broaden the mandate of protection in different parts of the world. In particular, these agreements broaden the definition of a refugee to deal with the realities of modern flows of people fleeing civil wars.

In 1969, still in the wake of newly found independence of many of its members, the Organization of African Unity (OAU) adopted a refugee definition and other provisions germane to the refugee problems in Africa. After using the Geneva Convention definition, the OAU adds:

20. Id.
21. Although some European documents such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention on Extradition are sometimes cited as bases for extending protection, this paper is focused on crises in the developing world, which usually entail temporary protection of refugees in a nation proximate to the refugee producing country, so European sources are not discussed here.
The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin.\textsuperscript{23}

Another international instrument that redefines the term “refugee” was the product of the colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, held in 1984 in Cartagena, Colombia.\textsuperscript{24} This definition “includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”\textsuperscript{25}

These more modern definitions of the term refugee should be borne in mind throughout the remainder of this Note. Some of the problems surrounding international involvement in refugee crises, such as that of Rwanda in the mid-1990s, are intimately related to the international definition of a refugee, which delineates explicitly who should benefit from international protection. Other difficulties include defining the degree to which repatriation is actually voluntary and when refoulement has occurred. Yet, the stalemate in refugee crises is not due solely to a lack of modern definitions. Other layers of the situation will be added in Part II, exploring the factual backdrop of modern internal conflicts that produce refugees generally, and the context of Rwanda in particular.

II. STUDYING RWANDA: A MODERN REFUGEE CRISIS

A. The Root of the Problem: Internal Conflict with Global Implications

Most developing countries that are experiencing internal conflict are in “post-colonial” situations where people are struggling to determine the political


\textsuperscript{24} “Although a non-binding instrument, the [Cartagena] Declaration has been accepted and is being applied by the Latin American States to the degree that it has entered the domain of international law.” REFUGEES 1993, supra note 22, at 166.

\textsuperscript{25} Id.
identity of their countries. The resulting civil wars often have global implications. Some theorists believe that, generally, internal conflict threatens global security. More specifically, the phenomenon becomes international in nature when people flee their homelands, seeking temporary asylum or resettlement outside their country of origin. The effects of such crises are felt globally as refugees resettle or repatriate, changing ethnic and political balances within States and regions. Looking at the historical background of Africa, and in particular Rwanda, shows how many developing countries are dealing with independence and struggling with political identities in the modern world.

1. The History of Political Unrest in Post-Colonial Countries

In pre-colonial Africa, forms of political control varied, but one common characteristic in most traditional societies was the sanctity of kingship. In Rwanda, "[t]he king lived at the center of a large court and was treated like a divine being." European explorers observed the presence of monarchy in several parts of the Interlakes region of Africa, theorizing that superior invaders from the North (Ethiopia or Egypt) had subjugated the inferior masses. During the late nineteenth century in Rwanda, a Tutsi monarchy ruled over the majority Hutu population. From the outset, colonial powers attempted to work with and through the existing system of governance; in turn, Tutsis used the colonial presence to enlarge their territory.

By affirming Tutsi dominion, and through other practices, colonial powers entrenched Tutsis as superior and Hutus as inferior. For example, before colonialization, the king was the head of an otherwise decentralized system of different chiefs. These men were charged with different functions that overlapped geographically; one chief took care of landholdings, another ruled the people, and a third was in charge of pastures. In 1929, the Belgian
authorities condensed these three functions under the domain of one chief, the vast majority of whom were Tutsi.\textsuperscript{34}

After the end of World War II, “the growing spirit of democracy” led Belgian trustees to encourage the Hutus to become educated and take part in their society.\textsuperscript{35} Several political parties emerged; Tutsis struggled to maintain some power while Hutus exercised their newly granted rights.\textsuperscript{36} In the fall of 1959, an attack on a Huti leader began the violence. Hutus responded by setting afire thousands of Tutsi homes.\textsuperscript{37} Thousands of Tutsis were killed; over a hundred thousand fled into exile, mostly to Uganda.\textsuperscript{38} At formal independence in 1962, the Huti majority was “firmly in control of the country,” representing a full reversal of the traditional relations between the Tutsis and Hutus.\textsuperscript{39}

The early 1970s saw regional disorder that began with violence in Burundi. This ignited anew ethnic tensions in Rwanda that led to a coup in 1973 by the Chief of Staff of the Army, who instituted a single party government to ensure stability.\textsuperscript{40} The exiled Tutsis in Uganda were effectively kept from returning to their homeland by strict conditions set by the government that allowed repatriation only in limited circumstances.\textsuperscript{41} Later, the second-generation Tutsi refugees formed the Rwandan Patriotic Force (RPF).\textsuperscript{42} This military force attempted to return to Rwanda in 1991 from Uganda, but was contained by Zairean and French supporters of the Huti government.\textsuperscript{43}

Realizing the potential for conflict, regional leaders came together in an attempt to move forward toward democratic elections.\textsuperscript{44} Tensions rose; factions split the new political parties. On April 6, 1994, the President of Rwanda and the President of Burundi were both killed when their plane was attacked and destroyed.\textsuperscript{45} Blaming the attack on the Tutsis, Huti extremists seized the

\begin{enumerate}
\item Id.\textsuperscript{34}
\item Plaut, \textit{supra} note 30, at 236.\textsuperscript{35}
\item See id.\textsuperscript{36}
\item Id.\textsuperscript{37}
\item Id.\textsuperscript{38}
\item Id.; \textit{GLOBAL STUDIES: AFRICA, supra} note 27, at 122.\textsuperscript{39}
\item Plaut, \textit{supra} note 30, at 236.\textsuperscript{40}
\item \textit{GLOBAL STUDIES: AFRICA, supra} note 27, at 121.\textsuperscript{41}
\item Id.\textsuperscript{42}
\item Plaut, \textit{supra} note 30, at 237. In May 1997, Laurent Kabila took over the government of Zaire, proclaiming himself President and changing the country’s name to the Democratic Republic of Congo. Throughout the remainder of this Note, both terms will be used interchangeably to denote what is today the Democratic Republic of Congo, depending upon the appropriate time frame reference.\textsuperscript{43}
\item The Arusha Accord laid down a method of power sharing among groups before democratic elections would be held. \textit{GLOBAL STUDIES: AFRICA, supra} note 27, at 122.\textsuperscript{44}
\item See Plaut, \textit{supra} note 30, at 237.\textsuperscript{45}
\end{enumerate}
government and began the Tutsi slaughter, intending to wipe out the Tutsi population of Rwanda to prevent further reprisals.\textsuperscript{46} By September 1994, Rwanda's population was half of what it had been only months earlier.\textsuperscript{47}

2. The Short Fuse of Ethnicity

Political struggles, such as the repeated slaughters in Rwanda, have their roots in ethnic tensions that were in place before colonization, but exacerbated by the colonials.\textsuperscript{48} By creating the borders of the African States, colonial powers forced populations into continued interaction with one another.\textsuperscript{49} Among the more than fifty States in Africa, there exist over a thousand distinct ethnic groups based on common language, religious beliefs, pre-colonial social and political groups, and modes of subsistence.\textsuperscript{50}

It is difficult for an outsider to differentiate between Hutu and Tutsi; they share a common language and many have intermarried.\textsuperscript{51} Historically, the Tutsi ruled; they owned the cattle that the Hutus herded, and the fields in which the Hutus planted.\textsuperscript{52} According to an epic poem:

\begin{quote}
[T]he godlike ruler, Kigwa, fashioned a test to choose his successor. He gave each of his sons a bowl of milk to guard during the night. His son Gatwa drank the milk. Yahutu slept and spilled the milk. Only Gatutsi guarded it well. The myth justifies the old Rwandan traditional social order, in which the Twa were the outcasts, the Hutu servants, and the Tutsi aristocrats.\textsuperscript{53}
\end{quote}

These ethnic loyalties echo other alignments and roots of discord around the world. From the Kurds in Iraq to the separation of Czechoslovakia into

\begin{footnotes}
\textsuperscript{46} Id. at 238.
\textsuperscript{47} Global Studies: Africa, \textit{supra} note 27, at 122. The decline is attributed both to deaths and the flight of many Rwandans to neighboring countries.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
\textsuperscript{51} Global Studies: Africa, \textit{supra} note 27, at 122.
\textsuperscript{52} See id.
\textsuperscript{53} Id. The Twa ethnic group make up about 1% of Rwanda’s population and are commonly referred to as Pygmies. Id.
\end{footnotes}
ethnically determined republics, the world has witnessed a wave of “ethnic nationalism” that has become a potent factor in world politics.\textsuperscript{54} Ethnic loyalties implicate core values of peoples that are political in nature. Identifying with such groups may “serve as the basis for social relations [and] the development of new patterns of culture.”\textsuperscript{55} In the developing world, where economic opportunities are limited and unequally distributed among ethnic groups, appeals to group identities serve as powerful motivators.\textsuperscript{56}

Through recognition of new countries such as the Czech Republic and the disintegration of Yugoslavia into ethnic republics, the international community has recognized ethnicity as a legitimate basis of political organization.\textsuperscript{57} However, the nations of modern Africa continue to remain, for the most part, dedicated to maintaining the borders set by colonial powers.\textsuperscript{58}

Preserving the States formed by colonization ensures continued political tensions among the several ethnic groups that comprise developing States. As violence is ignited and repeatedly erupts in ethnically diverse nations, refugee flows become more problematic and complex. Repatriation efforts are undermined by the continuous threat of violence within the country of origin.\textsuperscript{59} In addition, prospects for resettlement and integration into the host country are dim; as discussed above, ethnic hatred led second-generation exiled Rwandans in Uganda to disunite themselves and return home, spurring more violence.\textsuperscript{60}

3. \textit{The Global Context of Internal Conflict}

Although the ethnic struggles of developing nations seem to be internal matters that do not directly affect the international community at large, several facets of such “civil” wars evince the global nature of the problems faced by developing countries. From the past domination by developed countries to current humanitarian aid given to developing nations, the patterns of conflict within nations are partially caused and perpetuated by the influences of the larger international community. Also, managing ethnic conflicts has become central to the “business of maintaining international peace and security” for the

\begin{itemize}
\item \textsuperscript{54} See Lewis, supra note 48, at 181.
\item \textsuperscript{55} Id. at 182.
\item \textsuperscript{56} See id.
\item \textsuperscript{57} See id.
\item \textsuperscript{58} See id.
\item \textsuperscript{60} See Plaut, supra note 30, at 236-37.
\end{itemize}
United Nations and individual governments.\textsuperscript{61} Most important here is the reality of the mass exodus of peoples that often accompanies internal struggles.

The international community through the UNHCR is committed to protecting refugees from governments that torture or persecute their own citizens. However, in recent years, changes have been made in how the international community involves itself in such struggles. The main agency providing relief to refugees is the UNHCR. As an intergovernmental organization, the actions of the UNHCR in refugee situations are often profoundly affected by concerns of the several governments from which the agency receives funds.

Recently, in attempting to offer comprehensive solutions to refugee problems, the UNHCR has begun providing development aid, as well as helping internally displaced persons to rebuild their lives.\textsuperscript{62} Although these global efforts are noble in intent, the effective protection of refugees is compromised by the fragmentation of responsibility within agencies.\textsuperscript{63} As the example of Rwanda will show in the following sections, the primary goal of refugee protection must be provided in a framework where physical rights are guaranteed along with legal rights so that effective, durable solutions can be crafted.

The work of the United Nations extends beyond the humanitarian efforts of the UNHCR. To achieve the goals of “containment of ethnic conflicts, support for self-determination [and] promotion of democracy,” the Charter of the United Nations allows for “coercive” as well as “peaceful” measures.\textsuperscript{64} Under this rationale, the United Nations has been involved in the periodic violence that explodes in Rwanda.\textsuperscript{65}

In June 1993, to help implement the Arusha Accord, the United Nations created a military monitoring force, the United Nations Uganda-Rwanda Observation Mission.\textsuperscript{66} Troops were also deployed under a subsequent resolution adopted in October 1993, the U.N. Assistance Mission to Rwanda (UNAMIR).\textsuperscript{67} However, the presence of these forces did not stop arms deployment to Rwandan military, rebels, or civilians. When the slaughter

\textsuperscript{61} David J. Scheffer, UN Engagement in Ethnic Conflicts, in INTERNATIONAL LAW & ETHNIC CONFLICT 147 (David Wippman ed. 1998).
\textsuperscript{62} See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 7.
\textsuperscript{63} Id.
\textsuperscript{64} See Scheffer, supra note 61, at 148.
\textsuperscript{65} See PRUNIER, supra note 28, at 206.
\textsuperscript{66} Id. at 194.
\textsuperscript{67} Id.
began, U.N. troops "had neither a mandate nor equipment enabling them to do anything."\textsuperscript{68}

Remedial actions were also attempted by State actors. France reacted by announcing its intention to intervene in Rwanda in mid-June 1994.\textsuperscript{69} After France smoothed relations with the RPF, the U.N. Security Council "gave to the French an intervention mandate under Chapter 7 of the UN Charter."\textsuperscript{70} Although French forces succeeded in creating a Safe Zone in the southwest of Rwanda, the killings continued.\textsuperscript{71} As the troops prepared to leave at the end of August 1994, people staying in the Safe Zone decided to flee to safety in other countries, causing new refugee flows.\textsuperscript{72}

\section*{B. The Host Country: Temporary Asylum or New Death Camps?}

To aid people uprooted by World War II, the first response of the international community was to send asylum-seekers home.\textsuperscript{73} However, it soon became clear that a blanket policy of repatriation did not fit the needs of every refugee. Many of those in Europe sent back East ended up in Stalin’s labor camps.\textsuperscript{74} As a result, resettlement abroad began to be considered as preferable to repatriation.\textsuperscript{75}

In developing countries where internal conflict explodes suddenly, temporary asylum is often provided by neighboring States until voluntary repatriation becomes feasible.\textsuperscript{76} Determining the possibility of returning refugees to countries of origin is a complex process. Finding appropriate times to promote repatriation often threatens to sacrifice humanitarian protection of refugees by the international community.\textsuperscript{77} Repatriating people to countries of origin where conflict still rages "merely shift[s] the problem" geographically

\begin{enumerate}
\item \textsuperscript{68} Id. at 234.
\item \textsuperscript{69} Plaut, supra note 30, at 239.
\item \textsuperscript{70} PRUNIER, supra note 28, at 288-90. Although the French wanted an "allied" effort, only Senegal would agree to send troops to help French forces. \textit{id}.
\item \textsuperscript{71} Plaut, supra note 30, at 239. For example, the RPF “massacred several hundred people in early July” after taking possession of the city of Butare. \textit{PRUNIER, supra note 28, at 306}.
\item \textsuperscript{72} \textit{PRUNIER, supra note 28, at 310}. Hutus fled into Burundi and Tutsis returned from Burundi to Rwanda. \textit{id}.
\item \textsuperscript{73} LAWYERS COMMITTEE FOR HUMAN RIGHTS, \textit{supra note 1}, at 22.
\item \textsuperscript{74} \textit{id}.
\item \textsuperscript{75} \textit{id}. at 23.
\item \textsuperscript{76} GIL LOESCHER \& ANN DULL LOESCHER, \textit{THE GLOBAL REFUGEE CRISIS 11} (1994).
\item \textsuperscript{77} LAWYERS COMMITTEE FOR HUMAN RIGHTS, \textit{supra note 1}, at 90.
\end{enumerate}
and thus fails as a durable solution.  

During the refugee flows from Rwanda, camps were set up in Zaire to accommodate those who fled. As reports filtered in about conditions in the camp, evidence accumulated that pointed out the failure of the international community to protect the exiles. In addition, it seemed that the humanitarian aid sent to refugees was being used by those who had perpetrated the genocide.

1. The Life-Threatening Conditions of Refugee Camps

Shortly after Hutu extremists took control of the Rwandan government, the RPF began an offensive to prevent further massacres of the Tutsis. As the RPF advanced until virtually all of Rwanda (except the Safe Zone in southwestern Rwanda) was at their disposal, between one and two million Hutus fled the country. Soon after refugee camps were established in eastern Zaire, cholera and other diseases swept through the temporary havens claiming many lives.

The refugees had been led to the camps by the former leaders of their communities, and a civil order headed by former local officials was established. Also among the Hutu refugees were the extremists that had led the slaughter of the Tutsis. Much evidence shows that the military forces hiding among the refugees took control of the distribution of food in the camps. Remaining in the camps along with genuine refugees, those responsible for the genocide had the time and the place to rebuild their forces. Finally, when thousands of Hutu refugees were found murdered and dumped in camp latrines, it became obvious that the international community had failed to keep its promise of protecting the refugees. Other victims are thought to have been killed as examples to the other refugees to ensure continued control of the camps by the armed extremist militia. When refugees flocked to camps for

78. Id. at 68.
79. Plaut, supra note 30, at 238.
80. Id. at 239.
81. See id.
82. Prunier, supra note 28, at 313-14.
84. Frelick, supra note 83, at 29.
85. Id at 30.
86. Id.
87. Id.
protection, the political atmosphere of the genocide followed them, creating a state of war in the camps.\footnote{Prunier, supra note 28, at 314.}

2. The Double-Edged Sword of Humanitarian Aid

The refugee situation in Zaire was not the first time that humanitarian aid had been misused by military forces. During ongoing conflict between Somalia and Ethiopia in 1988, it was reported that "refugees were being recruited by the government to fight the rebels."\footnote{Lawyers Committee for Human Rights, supra note 1, at 63.} Losing sight of long-term comprehensive solutions and viewing relief aid as an answer to refugee protection problems eviscerates the international community's commitment to protecting the legal rights of refugees in circumstances of temporary asylum.\footnote{See Frelick, supra note 83, at 24.}

Rather than keeping people alive until a more durable solution becomes feasible, emergency food aid can actually put refugees in danger of losing their lives. When peacekeeping personnel are not present to monitor food aid to refugees or internally displaced persons, the intended beneficiaries sometimes become the targets of violence.\footnote{In Liberia, more than thirty people were murdered shortly after receiving food bags from humanitarian aid workers in 1996. "Emergency food aid meant to save lives instead put them in mortal danger." Id. at 33.} Emergency humanitarian aid should not be viewed as a solution to the complex refugee crises in the developing world. At most, it should be considered one part of a framework that can protect refugees' legal rights, keeping people alive and healthy until the conflict they have fled is resolved, or resettlement becomes a realistic option to end their flight.\footnote{See supra note 83 and accompanying text.}

C. Repatriation: The Effects of an Incomplete Political Struggle

When people flee their home country in search of protection from an explosive civil war, the help they find in the first country of asylum is temporary. Refugees subsist in camps until they can be resettled or returned home. In developing countries, potential victims of internal conflict are most often sent back to their home country after the conflict has subsided.\footnote{Id. at 33.} Many times, the issues disputed during the violence are not resolved among the parties. An uneasy peace may have fallen over the country; however, the
repatriation of refugees tests the stability of the new political order of the nation. As the refugees filter back into the country, the effects of an incomplete resolution to a political struggle are felt anew. First, the survivors and repatriates themselves face economic warfare and continued violence as they attempt to rebuild their shattered lives. Second, the fragile government of the country of origin faces new threats as it tries to reintegrate the refugees into society. Finally, as repatriation takes place, the role of the international community comes into question; the host country and those nations that offered protection are sending the refugees back to the country in which they were abused—but at what cost?

1. Challenges to Survivors Upon Return

Because many countries where internal conflict has erupted come to only tentative agreements to stop the violence against their own people, it has become the role of the UNHCR and the international community to ensure that repatriation is voluntary and safe for those returning. Returning to the country of origin may pose risks similar to those the refugees faced before they fled.

In Rwanda, the genocide continues today; survivors are hunted down while Hutu witnesses are intimidated into silence or killed. Through this silent continuation of the slaughter, many killers will ensure that their accusers will be silenced forever. Although the government has pledged to punish the perpetrators of the violence of 1994, those who publicly accuse the murderers are often killed before action is taken. Much of the violence takes place in the countryside. There, many villagers fear that the return of the refugees will spark a new wave of mass killings. Thus, upon their return, many refugees are subjected to aggression by their former neighbors. These scare tactics prevent the successful reintegration of those repatriated.

In addition to violence, returnees also face economic challenges. During the initial violence, many fled as their homes were destroyed and looted. With no property and no home, returnees and survivors become “internal migrants;”

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94. See GORMAN, supra note 59, at 7.
95. AFRICAN RIGHTS, supra note 83, at 3.
96. Id. at 5.
97. Id. at 19.
98. Plaut, supra note 30, at 239.
99. See AFRICAN RIGHTS, supra note 83, at 46.
100. Id. at 3.
although they have returned to their home country, they continue to live like unwanted refugees. A lack of adequate housing and the means to rebuild exacerbates the situation. In addition, even if the homes and businesses of the refugees still stand, they are oftentimes occupied by other survivors of the genocide. Further, if the returnees demand the return of property seized during the 1994 violence, they may be placing their lives at risk again.

In short, the return of the refugees to their home country evinces the imperfect nature of the temporary resolution to the internal violence that prompted their original flight. As illustrated by the situation in Rwanda, the returnees face both renewed violence and economic challenges as they attempt to rebuild their lives. Although the government struggles to protect the rights of the returnees, the balance of internal stability is threatened by the influx of the refugees. By turning a deaf ear to the concerns of the refugees, the new Rwandan government has helped to perpetuate the genocide.

2. The Governmental Struggle to Maintain Peace

After the explosions of violence quiet, the government is left to put the pieces of their war-torn nation back together. As a fragile peace is established, the international community looks for the first opportunity to allow the refugees to return to their country “voluntarily.” In Rwanda, public officials have faced attacks from all sides as refugees return. As explored above, the concerns of the refugees push the government to integrate the returnees into society. In addition, the influx of the refugees triggers a reaction from the extremists who threaten the legitimacy of the government through continued violence. Finally, the political agenda of the international community pressures the new government to make bold moves that may lead to renewed conflict. As a result, the government of Rwanda has been pushed and pulled in many directions—cornered into making promises it may not be able to keep.

The present government of Rwanda is led by a coalition of Tutsi and Hutu moderates; however, Hutu extremists are threatened by the return of the

101. Id.
102. Id. at 11.
103. Id. at 10.
104. Id. at 3.
105. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 138-39. In August 1994, the UNHCR canceled the “first organized repatriation convoy from Goma after death threats to the returnee candidates from [former government military forces no longer officially in power].” PRUNIER, supra note 28, at 310.
refugees and further governmental efforts to remedy the past. The President has promised that “those responsible for the killings will be brought to justice.” Yet, survivors and returnees continue to be killed.

Government officials are also threatened. When local officials are attacked because of their capacity as public figures, the current leadership loses its mantle of legitimacy. Fearing for their lives, “fewer decent people are prepared to accept positions of responsibility” as representatives of the new government. Without representatives to maintain local political relations, political instability is perpetuated.

III. GLOBAL INVOLVEMENT: CREATING INTEGRATED SOLUTIONS TO COMPLEX PROBLEMS

As the Rwanda example shows, modern refugee crises are complicated and problematic. When the international community becomes involved in a refugee situation, the primary goal of the international commitment should be the protection of the refugees. However, due to the complexity of many situations, proper solutions to problems faced by the country of origin are not always easily defined. In the short term, the international community must find effective ways to protect refugees in camps. Looking at long-term goals, the United Nations and individual nations must create strategies to implement durable solutions and attempt to understand the dynamics underlying refugee crises.

The tragic state of affairs that continues in Rwanda and the violence that has overtaken the Democratic Republic of Congo indicate the imperfections of the current system of refugee protection. The lessons of Rwanda should instruct the international community on which approaches to refugees are successful and which approaches potentially place refugees at risk. First, the role of the international community in responding to refugees must be rethought.

107. “Outspoken” survivors that advocate accountability are likely targets. AFRICAN RIGHTS, supra note 83, at 19.
108. Id. at 3.
109. See M’Bokolo, supra note 27, at 180.
Retooling the UNHCR substantively and procedurally will allow the agency to work more effectively. Next, traditional solutions such as repatriation and resettlement should be considered, along with updating procedures to allow these options to help resolve modern refugee predicaments. Finally, a study should be conducted to assess the role of ethnicity in the politics of the developing world. Ongoing political conflict in Central Africa illustrates the importance of understanding the implications of ethnic hatred in internal conflict.

A. Updating the Mandate of the UNHCR

One way to improve the effective protection of refugees is to pinpoint the roles of the international community in general, and the UNHCR specifically, in situations that result in the mass exodus of refugees. The functions of international involvement can be viewed and critiqued on two different and interrelated levels. The breadth of the mandate of the UNHCR should be reviewed and refined. By defining its sphere of action, the UNHCR can return its primary focus to refugee protection within a clearly stated international mandate.

As discussed above, the UNHCR has developed in an *ad hoc* fashion, responding and adapting to new refugee needs.\(^{111}\) Thus, because of its very nature, the agency has remained active in international crises precisely by disregarding its express mandates of 1951 and 1967. The international community's need for the UNHCR has changed drastically since the Protocol was signed.\(^{112}\) Indeed, some feel a desperate need to convene a conference to revise the 1951 Convention.\(^{113}\)

Protection has been compromised through the increased breadth of the agency's mandate. Through its progressive workings during different phases of refugee aid, the UNHCR and the international community have allowed the mandate of the agency to be broadened to include efforts not anticipated in its original express jurisdiction.\(^{114}\) Such remedial efforts are said to encourage political and economic stability and indirectly ensure less migration for

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111. LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 1, at 5.
112. *See id.* at 2-6.
113. *Id.* at 130.
114. After the Algerian civil war, the UNHCR helped to reintegrate returnees into the community. Following civil war in the Sudan, the agency helped the internally displaced. *Id.* at 32.
economic reasons among younger nations.\textsuperscript{115}

One way the mandate of the UNHCR was broadened was by viewing refugee problems as a process to be addressed at different phases of flight and return. This view resulted in protection measures being instituted at various times commencing in the country of origin, during flight, or within the country of first asylum.\textsuperscript{116} In addition, the UNHCR has also continued its involvement in post-repatriation, reintegrating returnees into their homelands. Additionally, it has addressed concerns of the internally displaced, who never formally qualified for legal protection of the agency because they remained in their home country during the crisis that threatened them.\textsuperscript{117}

Related to widening the scope of protection during a violent crisis, the mandate of the UNHCR has also grown to encompass the administration of much infrastructure aid. This is a remedial measure to implement repatriation that discourages subsequent migration for economic reasons. However, these preventive efforts are of equivocal value at best. Funds provided for development by the International Monetary Fund and the World Bank have failed to solve Africa’s economic crisis.\textsuperscript{118} Also, the UNHCR has traditionally found development funds problematic, particularly in Africa.\textsuperscript{119} Because the developing world remains unstable politically, it is difficult to predict accurately what combination of aid will prevent a political uprising. By understanding the ethnic conflicts that form the impetus behind much of the violence, infrastructure aid will be more effectively distributed.

Another problematic facet of humanitarian aid is reflected in the UNHCR funding structure. Donors want the UNHCR to help “develop” impoverished countries; yet, nations are mistrustful of the direct appropriation of funds by the agency.\textsuperscript{120} Donor governments increasingly earmark funds, restricting the agency’s involvement in infrastructure aid situations.\textsuperscript{121} Such discretionary funding by governments allows States, not the international community as a whole, to choose worthy aid recipients. The adoption of a broader international definition of the term “refugee” would strengthen arguments that aid is helping those legally recognized as “refugees.”

\textsuperscript{115} See id. at 97.  
\textsuperscript{116} Id. at 25.  
\textsuperscript{117} See Fredriksson, supra note 110, at 48.  
\textsuperscript{118} M'Bokolo, supra note 27, at 180.  
\textsuperscript{119} LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 105.  
\textsuperscript{120} Id. at 88.  
\textsuperscript{121} Id. at 135.
Discussion of the role of the UNHCR as an intergovernmental organization shows that over-breadth of the mandate is only partly responsible for the ineffectiveness of the UNHCR; the structure of the international system also contributes to the problems of refugee protection. Ideally, the UNHCR would be an apolitical agency, defending the rights of refugees around the globe without preferring one nation's victims over any other's. In fact, through restrictive funding measures, the preferences of the donor countries often color the actions of the UNHCR with decidedly political hues. Also, agency efforts are often undermined when individual governments or other branches of the United Nations fail to support the assessments of the High Commissioner. As an intergovernmental organization, the UNHCR can only be as successful as its donors will allow. A new Convention should be called to solve the procedural and substantive problems that face the agency. The mandate of the UNHCR should be redefined with the challenges of the developing world in mind.

An express modern mandate for the UNHCR should be narrowly tailored substantively. Developmental aid and infrastructure aid should be differentiated, limiting the scope of the UNHCR to immediate post-crisis help. For example, because the UNHCR has had difficulty administering developmental aid in the past, this sort of aid should be left to the United Nations Development Programme (UNDP). A new convention should also consider updating the definition of a "refugee." As shown above, a broader definition would more clearly reflect the work of the UNHCR today and make stronger arguments for donor involvement in crises.

Factoring developmental functions out of the UNHCR equation would allow the agency to focus on protecting those who have fled their countries. Recalibrating the agency to deal effectively with victims of violence should help the UNHCR respond to extreme situations. Instead of juggling the responsibilities of international emergencies with those of economic migration, the UNHCR would work with the UNDP in efforts to coordinate aid in search of comprehensive solutions that include resettlement and repatriation.

122. Statute, supra note 7, ¶ 2.
123. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 135-36.
124. See Frelick, supra note 83, at 25.
125. The UNDP can address the more “developmentally” centered concerns of economic migrants. See GORMAN, supra note 59, at 10.
B. Reassessing Durable Solutions

In attempting to answer the complexities posed by refugee flow in the developing world, a lesson should be taken from the past. Specifically, the UNHCR should review lasting solutions for the massive flows of people that accompany violent political upheaval within a nation. Repatriation and resettlement have been tools used successfully to abate the waves of those fleeing violence. Working these traditional approaches into comprehensive solutions will better serve the safety of the refugees who rely on the UNHCR for protection.

Repatriation, as overseen by the UNHCR, requires that the agency work with both sides of the return effort, recognizing the special assistance and protection the returnees need in their homeland. This role serves a dual function: first, to ensure that the return is a voluntary undertaking by the refugees; and second, to safeguard the rights of the refugees upon their return. Adequately fulfilling these roles maintains the focus upon protection by the international community.

The principle of nonrefoulement has long been regarded as a cornerstone that guides the repatriation of refugees. This concept forbids a country in which refugees have sought temporary asylum from returning them against their will to the country from which they fled. However, many situations have given rise to countries of asylum sending away refugees when the voluntary nature of their repatriation was, at best, questionable. For example, the Zairean government returned about 17,000 refugees to Rwanda in the fall of 1995. It is unclear whether the Rwandans returned out of fear of rebel forces within Zaire or whether they simply wished to return home.

Ensuring the safety of the refugees upon return has also proven a stumbling block for the UNHCR. Additional Rwandans cited a mistrust of the government as the primary concern in their recent refusal to return home. Ongoing strife in other developing countries shows that the safety of refugees depends upon a successful conclusion to the political upheaval that sparked the

126. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 139-40.
128. Id.
129. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 141-56.
131. Id.
refugee flow; this is a difficult guarantee to enforce for an extended period of
time.133

Due to the effects of recurrent violence in the developing world, some
believe that third-country resettlement is the best viable approach to modern
refugee problems. Theoretically, this concept sidesteps the problems
encountered by attempts to repatriate refugees by eliminating the country of
origin from the ultimate solution. Thus, it specifically deletes the possibility of
refoulement and avoids physical threats that refugees potentially face upon their
return.134

Additionally, using resettlement as a tool in volatile refugee situations,
taking into account their special “social composition . . . or ethnic background,”
may give specific relief to minority groups.135 Using this solution will provide
permanent homes to those who have been, in effect, exiled by a new political
regime in their homeland.136

Unfortunately, Rwandans have also defied the concept of resettlement as a
lasting solution to the internal conflict between the Hutus and the Tutsis. The
1994 massacres were attributed in part to the return of second generation
Rwandans living in Zaire as a result of violent conflict that arose during and
immediately after independence.137 More recently, the continued efforts of the
Democratic Republic of Congo to repatriate refugees from this decade’s conflict
has precluded a second attempt at resettlement for many Rwandans.138

C. Addressing the Issue of Ethnicity

The genocide in Rwanda during 1994 should be viewed as a point in a
continuum dating at least as far back as 1959 and extending into the future.
Placing modern refugee crises within the context of their ethnic roots will allow
the international community to fill in the particulars of assessing durable
solutions and determining a modern refugee situation. Without understanding
the causes of the violence precipitating the refugee flows, a modern refugee
definition and solution assessment cannot be successful.139

133. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 1, at 62-64.
134. See supra note 126 and accompanying text.
135. See Fredriksson, supra note 110, at 54.
136. Id.
137. See GLOBAL STUDIES: AFRICA, supra note 27, at 122-23.
138. See supra notes 134-36 and accompanying text.
139. Looking back to the Geneva Convention, the goals of the international community in relation to
refugees are clear. Timing restrictions show the intent to deal with those made refugees “as a result of events
A recurring theme in the problems of protecting refugees from developing countries is the political uncertainty that persists in many developing nations. This instability can be seen as a product of "economic adversity, political uncertainty and social inequities" that permeate developing nations. These factors often identify different ethnic groups as the key players in the struggle for power. The deep-seated conflict between the Hutus and Tutsis exemplifies the nature of ethnic ties in violent political internal conflicts. In addition, continuing violence within the Democratic Republic of Congo evinces the ongoing nature of the regional ethnic rivalries involved. Accounting for these ethnic relations when viewing the problems of modern refugees may allow lasting political solutions to an otherwise dismal scenario.

The actions of the United Nations in response to the 1994 violence in Rwanda have been criticized as "display[ing] a degree of indecision seldom seen even in that body’s chequered history of decision-making." This hesitancy is partly due to the competing pulls of territorial political sovereignty and self-determination within the context of ethnic conflict. Although the United Nations has supported the use of force "to overcome colonial control," many member States will not encourage separatism. Thus, "the General Assembly has yet to recognize self-determination as a freestanding principle[,] the implementation of which . . . is integral to the resolution of major ethnic conflicts." The situation in Rwanda can partially be explained as a "crisis of the institution of the State." When resources are monopolized by one ethnic community, those ethnic groups excluded form groups with the goal of destroying the State. Modern African States have been unable "to construct

occurring before 1 January 1951." Geneva Convention, supra note 3, at 152. This was not a treaty meant to stand for all time, but to implement solutions for immediate problems related to refugees.

141. See Lewis, supra note 48, at 182.
142. See Scheffer, supra note 61, at 150-51.
143. Plaut, supra note 30, at 238.
144. Id. at 150.
145. Id. at 151.
146. Id. at 151.
148. Id. at 567.
an institution of the State... that functions and accommodates the diverging and often conflicting interests of the diverse ethnic nationalities within its borders.\textsuperscript{149}

Due to this failure of the institution of the State in developing countries, perhaps some form of self-determination should be supported to remedy ethnic conflicts and their attendant refugee problems. One approach will involve promoting "ethnic self-determination" and/or "regional integration" to seek better ethnic relations.\textsuperscript{150} These political solutions would have drastic facial implications—the map of Africa would be redrawn.\textsuperscript{151}

The concept of ethnic self-determination has gained legitimacy throughout the world.\textsuperscript{152} However, independent African nations have generally opposed changing their boundaries.\textsuperscript{153} In addition, as discussed above in Part II, the international community, through the United Nations, has recognized only a qualified right to self-determination.\textsuperscript{154} Yet, the recent independence of Eritrea from Ethiopia may signal the beginning of a new attitude toward ethnic self-determination.\textsuperscript{155}

Another route to improved relations may lie in regional integration, whereby smaller countries, such as Rwanda and Burundi, are subsumed into a larger State, such as the Democratic Republic of Congo. Although present political tensions belie this possible solution, "desperate economic realities" may encourage African States to reconsider this option.\textsuperscript{156}

Redrawing maps may seem too distant on the horizon to clear the pressing political tensions in the developing nations of the world. However, it is possible

\textsuperscript{149} Id. at 566. Although the cited article focuses on Africa, the countries in Eastern Europe that are experiencing refugee producing ethnic conflict are in similar circumstances because of their past under the USSR, which acted as a sort of colonial power by drawing territorial boundaries and providing institutional mechanisms.


\textsuperscript{151} Id.

\textsuperscript{152} Lewis, supra note 48, at 182. This trend is also echoed through international acceptance of self-determination principles in the former Yugoslavia. For a good discussion on self-determination of the French in Quebec, see Fernando R. Teson, Ethnicity, Human Rights & Self-determination, in INT’L LAW & ETHNIC CONFLICT, 86-111 (David Wippman ed. 1997).

\textsuperscript{153} Mazrui, supra note 150, at 28.

\textsuperscript{154} See Scheffer, supra note 61, at 151.


\textsuperscript{156} Mazrui, supra note 150, at 29.
that the regional integration evinced through the European Union and other pacts such as the North American Free Trade Agreement may encourage developing States to consider integration and help the world move into the twenty-first century more peacefully.\textsuperscript{157}

\textbf{CONCLUSION}

The continuing repercussions of the strife in Rwanda may lead a casual observer to become frustrated with the poor results that have been achieved. Perhaps the situation in the tiny African State is the product of a series of anomalies that no efforts could adequately address. However, modern trends in refugee flows point to the contrary. Today, the overwhelming majority of the world's refugees come from developing countries.\textsuperscript{158} Also, other conflicts "suggest that ethnic hatred [has become] the main cause of refugee movements."\textsuperscript{159} As a result, Rwanda begins to look less like an anomaly and more like a harbinger of the challenges to come. Thus, the international community should move quickly to learn from the circumstances of Rwanda.

The continuing struggles in Rwanda, and Central Africa in general, are in part the result of a series of global institutional stalemates. Creating comprehensive solutions to the political problems of the developing world suggests changes at many levels of international involvement. The role of the UNHCR should be redefined to deal more specifically with modern refugee challenges. A new refugee definition is needed to address the complexities of modern crises. Also, focus should return to protecting refugees through practical reliance on traditional remedial solutions, such as resettlement and repatriation. Finally, acknowledging ethnic hatred as a root cause of many of today's refugee challenges is an important step in crafting solutions. By preferencing self-determination in post-colonial countries where the institution of the State has failed, new approaches, such as regional integration and ethnic self-determination, can be explored.

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\textsuperscript{157} See id.
\textsuperscript{158} \textsc{Gorman}, supra note 59, at 7.
\textsuperscript{159} \textsc{Lawyers Committee for Human Rights}, supra note 1, at 93.
\end{flushright}