torture, as well as from cruel, inhuman, or degrading treatment, and to benefit from security of person moreover inhere equally in citizens and aliens.[127]

As previously analyzed, an action may be defined as "cruel or inhuman" if it meets most, but not all, of the criteria for torture; for example, the specific intent requirement may not be met, or the level of pain may not rise to the same level of severity.[128] But actions which are not cruel or inhuman are also prohibited if they are "degrading," meaning that they are intended to humiliate the victim, or show an egregious disregard for his or her humanity.[129] More generally, the duty to ensure "security of person" means that states are required to take measures to protect persons being repatriated from foreseeable attacks against their personal integrity, and perhaps also their property.[130] By way of example, the treatment afforded a long-term Rwandan resident of Tanzania by authorities enforcing a bilateral repatriation agreement likely amounted to both degrading treatment, and to a failure to ensure his security of person:

> I was grazing livestock; they came and beat me up. In the confusion, I was taken one way and the livestock in another. They took the money I had in my pocket, and told me, "Rwandan go home."[131]

denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decisions cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity of their citizens living abroad": *Burgos v. Uruguay*, UNHRC Comm. No. 52/1979, decided July 29, 1981, per Member Tomuschat (concurring). This jurisprudence has been expressly affirmed by the International Court of Justice in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) ICJ Gen. List No. 131, decided July 9, 2004.

127 "Aliens ... must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment ... Aliens have the full right to ... security of the person": UN Human Rights Committee, "General Comment No. 15: The position of aliens under the Covenant" (1986), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 140, para. 7.

128 See chapter 4.3.2 above, at pp. 454–455.

129 Ibid. at pp. 456–457. Thus, for example, the UN Human Rights Committee has expressed its concern that "in the course of [Swiss] deportation of aliens there have been instances of degrading treatment and use of excessive force" in contravention of Art. 7 of the Covenant: "Concluding Observations of the Human Rights Committee: Switzerland," UN Doc. CCPR/CO/73/CH, Nov. 5, 2001, at para. 13.

130 See chapter 4.3.3 above, at p. 458.

131 *Internews*, Apr. 15, 2003. The same report noted that "[t]he President of the National Repatriation Commission, Sheik Abdul Karim Harerimana, [said] ... that the move by the Tanzanian government caught more than the evictees by surprise. 'We had not anticipated this'": ibid.

The "in dignity" prong of the UNHCR repatriation standard is particularly unwieldy. Two of the concerns said to define whether repatriation can be conducted in dignity – the existence of an unconditional right to return, and acceptance of the returnee by authorities with restoration of rights – are more appropriately canvassed in the context of the protection prong of the cessation inquiry itself.[132] Nor is there any need to rely on the "in dignity" concept to proscribe the risk of "manhandling," since such concerns are encompassed by the duty to ensure a safe return grounded in Arts. 7 and 9(1) of the Civil and Political Covenant.[133] And while UNHCR is clearly right to argue that repatriation would be undignified if it leads to the arbitrary separation of family members, the real constraints on state actions would be made more clear if grounded in specific human rights obligations.[134] The Human Rights Committee has expressly observed that the right to freedom from arbitrary or unlawful interference with family life inheres despite the (former) refugee's status as a non-citizen:

> The Covenant [on Civil and Political Rights] does not recognize the right of aliens to enter or reside in the territory of a State party. However, in certain circumstances an alien may enjoy the protection of the Covenant *in relation to entry or residence*, for example, when considerations of non-discrimination, prohibition of inhuman treatment and *respect for family life* arise ... [Non-citizens] may not be subjected to arbitrary or unlawful interference with their privacy, *family*, home, or correspondence [emphasis added].[135]

Indeed, there is a firm basis to assert a customary legal duty on states to avoid acts which arbitrarily interfere with family unity, at least where family is defined to include only an opposite-sex spouse and minor, dependent children.[136]

[132] See text above, at pp. 925–928. [133] See text above, at pp. 946–947.

[134] Reference should be made in particular to Art. 17 of the International Covenant on Civil and Political Rights, and to Arts. 10(1), 23, and 24 of the International Covenant on Economic, Social and Cultural Rights, UNGA Res. 2200A(XXI), adopted Dec. 16, 1966, entered into force Jan. 3, 1976 (Economic, Social and Cultural Covenant). See generally chapter 4.6 above.

[135] UN Human Rights Committee, "General Comment No. 15: The position of aliens under the Covenant" (1986), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 140, paras. 5 and 7. See also UN Human Rights Committee, "General Comment No. 17: Rights of the child" (1989), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 144, para. 5: "The Covenant requires that children should be protected against discrimination on any grounds ... Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field ... particularly as between children who are nationals and children who are aliens."

[136] See chapter 4.6 above, at pp. 543–547.

By focusing on the human right to be free from *unlawful or arbitrary* interference with family unity, the legally binding nature of state obligations is made more clear. Lawful repatriation consequent to cessation of refugee status is, of course, not sensibly deemed either arbitrary or unlawful *per se*. The relevant question is thus whether the *way* in which repatriation is effected renders an otherwise permissible act either arbitrary or unlawful. It will ordinarily be possible to respect family unity even while pursuing repatriation, for example by ensuring that the family as a whole is safely returned to the home country. On the other hand, at least where the laws of the host state grant citizenship to all children born on its territory, it may be necessary to delay repatriation of the family unit until any citizen children reach the age of majority, since earlier removal would deny them the right to live in their own country.[137] Indeed, a recent decision of the Supreme Court of Canada invoked international law to require that account be taken of the rights of Canadian-born children before ordering the deportation of their non-Canadian mother.[138] A similar caution has been insisted upon by the UN Human Rights Committee in upholding a challenge to the deportation from Australia of a stateless married couple from Indonesia and their thirteen-year-old son (who was a citizen of Australia):

> It is certainly unobjectionable under the Covenant that a State party may require, under its laws, the departure of persons who remain in its territory beyond limited duration periods. Nor is the fact that a child is born, or that by operation of law such a child receives citizenship either at birth or at a later time, sufficient of itself to make a proposed deportation of one or both parents arbitrary. Accordingly, there is significant scope for States parties to

[137] Under the Convention on the Rights of the Child, UNGA Res. 44/25, adopted Nov. 20, 1989, entered into force Sept. 2, 1990 (Rights of the Child Convention), states "undertake to respect the right of the child to preserve his or her identity, including nationality ... [and to ensure that no] child is illegally deprived of some or all of the elements of his or her identity": ibid. at Art. 8. Governments agree to "ensure that a child is not separated from his or her parents against their will, except when ... such separation is necessary for the best interests of the child": ibid. at Art. 9. Moreover, "applications by a child or his or her parents to enter ... a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner": ibid. at Art. 10. And under no circumstance may any of the rights guaranteed in the Convention be withheld on a discriminatory basis, including on the basis of "the child's or his or her parent's or legal guardian's ... national ... origin ... or other status": ibid. at Art. 2.

[138] "The United Nations Declaration of the Rights of the Child (1959), in its preamble, states that the child 'needs special safeguards and care.' The principles of the Convention [on the Rights of the Child] and other international instruments place special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights. They help show the values that are central in determining whether this decision was ... reasonable": *Baker v. Canada*, [1999] 2 SCR 817 (Can. SC, July 9, 1999).

> enforce their immigration policy and to require departure of unlawfully present persons. That discretion is, however, not unlimited and may come to be exercised arbitrarily in certain circumstances. In the present case, both authors have been in Australia for over 14 years. The authors' son has grown [up] in Australia from his birth 13 years ago, attending Australian schools as an ordinary child would and developing the social relationships inherent in that. In view of the duration of time, it is incumbent on the State party to demonstrate additional factors justifying the removal of both parents that go beyond a simple enforcement of its immigration law in order to avoid a characterization of arbitrariness.[139]

Applying this principle, the Committee has gone on to determine that a deportation decision which interrupts family unity will ordinarily be deemed arbitrary where the significance of a state's reasons for removal does not outweigh the degree of hardship that would be occasioned to the family as the result of the deportation.[140]

[139] *Winata v. Australia*, UNHRC Comm. No. 930/2000, UN Doc. CCPR/C/72/D/930/2000, decided July 26, 2001, at para. 7.3.

[140] "[I]n cases where one part of a family must leave the territory of the State party while the other part would be entitled to remain, the relevant criteria for assessing whether or not the specific interference with family life can be objectively justified must be considered, on the one hand, in light of the significance of the State party's reasons for the removal of the person concerned and, on the other, [in light of] the degree of hardship the family and its members would encounter as a consequence of such removal. In the present case, the Committee notes that the State party justifies the removal of Mr. Madafferi by his illegal presence in Australia, his alleged dishonesty in his relations with the Department of Immigration and Multicultural Affairs, and his 'bad character' stemming from criminal acts committed in Italy twenty years ago. The Committee also notes that Mr. Madafferi's outstanding sentences in Italy have been extinguished and that there is no outstanding warrant for his arrest. At the same time, it notes the considerable hardship that would be imposed on a family that has been in existence for 14 years. If Mrs. Madafferi and the children were to decide to emigrate to Italy in order to avoid separation of the family, they would not only have to live in a country they do not know and whose language the children (two of whom are already 13 and 11 years old) do not speak, but would also have to take care, in an environment alien to them, of a husband and father whose mental health has been seriously troubled, in part by acts that can be ascribed to the State party. In these very specific circumstances, the Committee considers that the reasons advanced by the State party for the decision of the Minister overruling the Administrative Appeals Tribunal [ ] to remove Mr. Madafferi from Australia are not pressing enough to justify, in the present case, interference to this extent with the family and infringement of the right of the children to such measures of protection as are required by their status as minors. Thus, the Committee considers that the removal by the State party of Mr. Madafferi would, if implemented, constitute arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the authors, and additionally, a violation of article 24, paragraph 1, in relation to the four minor children due to a failure to provide them with the necessary measures of protection as minors": *Madafferi v. Australia*, UNHRC Comm. No. 1011/2001, UN Doc. CCPR/C/81/D/1011/2001, decided July 26, 2004, at para. 9.8.

A final concern with the free-standing "in safety, and with dignity" standard is that it likely overstates the real obligations of governments undertaking mandated repatriation.[141] As the preceding discussion makes clear, international human rights law precludes the right to effect an otherwise lawful repatriation only in circumstances of fairly clear risk.[142] Thus, for example, there is reason to question the legal authority for UNHCR's view that repatriation cannot lawfully be undertaken unless the (former) refugees have access in the destination to "material security (access to land or means of livelihood)."[143] To the contrary, international human rights law guarantees only a basic right to access the necessities of life,[144] not a full-blown right to have either property[145] or

[141] The difficulty stems in part from the tendency, discussed above at pp. 929–935, to conflate the rules that govern UNHCR's work as an agency with those that circumscribe the repatriation authority of state parties to the Refugee Convention. The elaboration of the meaning of repatriation in safety and with dignity is textually said to define the ways in which UNHCR will conduct *its* repatriation work. But the language of safety and dignity is included in resolutions of the Executive Committee addressed to the authority of states, and UNHCR follows the recitation of its institutional positions with the assertion that it is part of the "responsibilities of the host country" to "respect the leading role of UNHCR in promoting, facilitating and coordinating voluntary repatriation": UNHCR, "Voluntary Repatriation Handbook," at 8–10.

[142] The most extensive rights to non-return apart from those which follow from Convention refugee status are those which are based on application of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221, done Nov. 4, 1950, entered into force Sept. 3, 1953. The House of Lords has recently suggested that in principle the breadth of such rights may in fact be quite extensive: see *R (Ullah) v. Special Adjudicator; Do v. Secretary of State for the Home Department*, [2004] UKHL 26 (UK HL, June 17, 2004). Yet, to date, the primary additional basis for implying a duty of non-return has in fact been the duty under Art. 8 of the European Convention, ibid., to the protection of private life: see *Boultif v. Switzerland*, (2000) 22 EHRR 50 (ECHR, Aug. 2, 2001).

[143] UNHCR, "Voluntary Repatriation Handbook," at 11.

[144] This may be derived from Arts. 6, 7, 9, and 10 of the Civil and Political Covenant, as well as from Art. 11 of the Economic, Social and Cultural Covenant. See generally chapter 4.4 above.

[145] See chapter 4.5.1 above, at pp. 518–521. Perhaps the strongest affirmation of a right to property, and specifically of a right of returning refugees to receive restitution for property of which they were deprived, is based on the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, UNGA Res. 2106A(XX), adopted Dec. 21, 1965, entered into force Jan. 4, 1969 (Racial Discrimination Convention). Under Art. 5(d)(v), state parties agree to eliminate racial discrimination (i.e. discrimination based on "race, color, or national or ethnic origin") in regard to "[t]he right to own property alone as well as in association with others." On the basis of this provision, the Committee on the Elimination of Racial Discrimination has "emphasize[d]" that "refugees ... have, after their return to their homes of origin, the right to be restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments

a job.[146] Even the expert charged by the United Nations with studying the issue of the property rights of returning refugees has focused his work on housing rights, noting that these rights "are enshrined in international human rights and humanitarian law to a far greater degree and encompass far more under international law, substantively speaking, than ... property rights more generally."[147] Second and more critically, the position that repatriation can be ordered only if it results in return to conditions of material security unhelpfully confuses the standards which should govern the way in which repatriation is *conducted* with considerations of the qualitative standards which must prevail in the place of destination. The latter questions are part of the cessation inquiry itself, not of the definition of permissible means of repatriation.[148]

The European Union's Temporary Protection Directive moves more closely towards the codification of a legally oriented set of constraints on the effectuation of repatriation. The Directive acknowledges that the repatriation of those no longer entitled to protection must be "conducted with due respect for human dignity."[149] But it implements that principle by way of two, quite specific injunctions. First, the Directive denies member states the right to repatriate persons no longer in need of protection if they "cannot, in view of their state of health, reasonably be expected to travel ... where for example they would suffer serious negative effects if their treatment were interrupted."[150] A delay in repatriation is also sanctioned (though, regrettably, not required) so as to "allow families whose children are minors and attend school in a Member State ... to complete the current school period."[151] The specificity of each of these constraints can readily be linked to a duty to conduct repatriation with due regard for human rights obligations –

or statements relating to such property made under duress are null and void": UN Committee on the Elimination of Racial Discrimination, "General Recommendation No. XXII: Refugees and displaced persons" (1996), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 214, para. 2(c). Art. 5 (in contrast to, for example, the Covenant on Civil and Political Rights) expressly recognizes property rights as a form of civil right. But it must be recalled that the purpose of this part of the Convention is clearly to proscribe race-based discrimination. It is legally doubtful that the duty not to discriminate in regard to property rights on grounds of race can be said to give rise to an affirmative obligation to recognize property rights in the first place.

146 See chapter 6.1.1 above, at pp. 739–740.

147 S. Pinheiro, "Housing and property restitution in the context of the return of refugees and internally displaced persons, Preliminary report of the Special Rapporteur submitted in accordance with Sub-Commission resolution 2002/7," UN Doc. E/CN.4/Sub.2/2003/11, June 16, 2003, at para. 5.

148 It is likely that at least some core aspects of material security are relevant to whether or not protection is available in the refugee's state of origin, the third prong of UNHCR's recommended approach to assessment of Art. 1(C)(5)–(6): see text above, at pp. 927–928.

149 EU Temporary Protection Directive, at Art. 22(1).

150 Ibid. at Art. 23(1). 151 Ibid. at Art. 23(2).

in the one case, the right to basic healthcare,[152] in the other the right of children to access primary education.[153] These constraints moreover do not confuse the question of whether repatriation is warranted at all with the distinct set of issues regarding whether repatriation may be lawfully carried out at a particular moment, and if so, what precautions are required given the circumstances of the individual concerned.[154] They are instead appropriately directed simply to averting the adverse effects of repatriation on the human rights (to access basic healthcare, and to benefit from primary education) of those to be repatriated by setting relevant constraints on the timing or means by which otherwise lawful repatriation may be effected.[155]

7.2 Voluntary reestablishment

It might be argued that reestablishment in the country of origin while the risk of being persecuted there persists should not sensibly be considered to be a solution to refugeehood. At one level, it is clearly no solution at all: the likelihood of harm befalling the refugee is made all the more real by reentry into the state where the threat exists. But it is a solution, at least if viewed from the perspective of the host state. That country's protection obligations have been "solved" by the decision of the refugee to assume the risks of life in the home state, so long as the decision to return home has truly been voluntary (that is, there was no direct or indirect *refoulement*) and the decision is firm (as evinced by reestablishment in, not simply return to, the country of origin).

[152] This right is guaranteed by Art. 12 of the Covenant on Economic, Social and Cultural Rights. See generally chapter 4.4.3 above.

[153] This right is guaranteed by Art. 13(2)(a) of the Covenant on Economic, Social and Cultural Rights. See generally chapter 4.8 above.

[154] While not required by law, it is both more practical and respectful of refugee autonomy to encourage (former) refugees to return home of their own initiative wherever possible. To this end, the extension to them of a generous deadline for departure, together with a readjustment allowance for voluntary compliance, may be of value. See M. Castillo and J. Hathaway, "Temporary Protection," in J. Hathaway ed., *Reconceiving International Refugee Law* 1 (1997) (Castillo and Hathaway, "Temporary Protection"), at 21. It is unlikely, however, that such a program will be successful when refugees are not convinced of the safety of return. For example, a British initiative for failed asylum-seekers from Afghanistan in early 2003 – under which individuals were offered £600 and families £2,500 to go back to a "safe area" inside Afghanistan – is reported to have attracted only thirty-nine applicants, far short of the target of 1,000: N. Morris, "Protests at first enforced return of Afghans since war," *Independent*, Apr. 29, 2003, at 6; R. Ford, "Afghan refugees put on aircraft back to Kabul," *Times*, Apr. 29, 2003, at 7.

[155] See text above, at pp. 945–950.

Refugee Convention, Art. 1(C)(4)
This Convention shall cease to apply to any person falling under the terms of section A if:

. . .

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution.

Civil and Political Covenant, Art. 12

. . .

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned right[] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

From the perspective of general international law, the cessation of refugee status upon voluntary reestablishment in the country of origin makes good sense. Most obviously, the alienage requirement of the refugee definition[156] reflects the legal limits of a state's right to project its protective authority on the international plane:[157] individual governments generally have no right to assert authority over non-citizens, even for positive purposes, outside their own jurisdiction.[158] When an individual otherwise entitled to be recognized as a refugee opts freely to leave the jurisdiction of a protecting state, that country is simply no longer positioned to assist him or her, at least in the direct sense envisaged by the Refugee Convention.

Equally important, cessation of refugee status upon voluntary reestablishment reflects the autonomous right of every refugee to decide for himself or

[156] The refugee definition limits protection to a person "*outside* the country of his nationality . . . [or in the case of a stateless person] *outside* the country of his former habitual residence" owing to a well-founded fear of being persecuted for a Convention reason: Refugee Convention, at Art. 1(A)(2). See generally Hathaway, *Refugee Status*, at 29–63.

[157] See generally chapter 3.1.1 above.

[158] There is, of course, a live debate about where the so-called right of humanitarian intervention persists (or has even been reinvented) in the post-UN Charter era. This debate does not, however, have any direct relevance to issues of jurisdiction relevant to refugee law. See chapter 3.1.1 above.

herself when protection abroad is no longer desired.[159] Under international law, a refugee has the presumptive right to return home – whether for reasons adjudged objectively sound, or not.[160] Under Art. 12 of the Civil and Political Covenant, "[e]veryone shall be free to leave any country."[161] As such, the primary duty of the host state is "to avoid interfering with the freedom to leave."[162] While the right to leave may be subject to limited forms of restriction,[163] it is doubtful that any of these could justify even a well-meaning refusal of departure on grounds of the risks that persist in the home country.[164]

[159] See e.g. UNHCR, "Ceased Circumstances Guidelines," at para. 19: "Voluntary repatriation can take place at a lower threshold of change in the country of origin, occurring as it does at the express wish of the refugee, who may also have personal reasons for repatriating, regardless of the situation prevailing in the country of origin."

[160] See generally H. Hannum, *The Right to Leave and Return in International Law and Practice* (1987). The well-established nature of the legal right to return to one's country as codified in the Civil and Political Covenant seems not always to be recognized even by senior officials. Commenting on the return of refugees to Bosnia, the International High Representative there claimed, "'We've invented a new human right here, the right to return after a war ... It's absolutely astonishing, a huge success by Bosnians and the international community that has gone unrecognised'": J. Glover, "Absolute power," *Guardian*, Oct. 11, 2002.

[161] Civil and Political Covenant, at Art. 12(2).

[162] M. Nowak, *UN Covenant on Civil and Political Rights* (1993) (Nowak, *ICCPR Commentary*), at 206. The host state is also jointly responsible with the individual's state of citizenship to make any relevant travel documents available. "In order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents": UN Human Rights Committee, "General Comment No. 27: Freedom of movement" (1999), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 173, para. 9. Importantly, however, so long as the refugee remains under the host state's authority, that country remains responsible for protection of basic rights, such as physical security. There is therefore a duty to respond meaningfully to efforts by private parties to prevent refugees from exercising their right to return home, as when twenty-four Burundian refugees were killed in Tanzania's Kibondo district by persons apparently opposed to their effort to go home: "24 Burundian refugees killed in Tanzania," *UN Integrated Regional Information Networks*, Jan. 31, 2002. See generally chapter 4.3 above.

[163] This right may be subject only to "restrictions ... which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant": Civil and Political Covenant, at Art. 12(3).

[164] Specifically, the fact that Art. 12(3) allows restrictions necessary to protect "the rights and freedoms *of others* [emphasis added]" suggests that a restriction would not be permissible in order to protect the rights and freedoms of the refugee himself or herself. See Nowak, *ICCPR Commentary*, at 216–217, and N. Jayawickrama, *The Judicial Application of Human Rights Law* (2002) (Jayawickrama, *Judicial Application*), at 468–469.

Perhaps the only legally valid form of constraint on a refugee's decision to return home would be where such return would threaten the stability in the state to which the refugee plans to return. Because Art. 12(3) of the Covenant does not constrain the scope of valid limitation to relevant considerations which exist in the state from which departure is contemplated, a restriction on voluntary departure might be found valid if its purpose were to ensure public order (*ordre public*) or safety *in the destination state*. For example, it is arguable that return might be constrained where the destination country is faced with a massive return of refugees that it cannot immediately accommodate in a secure way, or without critical risk to the human rights of those already there. But the requirement that any restriction on departure be both necessary[165] and proportionate,[166] as well as the overarching duty to ensure that restrictions imposed "are consistent with the other rights recognized in the Covenant" (including, for example, the duty of non-discrimination[167] based on status as refugees[168]), means that any limitations on freedom to depart the host country would have to be both strictly provisional, and carefully implemented.[169]

[165] "Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result": UN Human Rights Committee, "General Comment No. 27: Freedom of movement" (1999), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 173, para. 14.

[166] "The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided": ibid. at para. 15.

[167] "The application of the restrictions permissible under article 12, paragraph 3, needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status": ibid. at para. 18. See also UN Committee on the Elimination of Racial Discrimination, "General Recommendation No. XXII: Refugees and displaced persons" (1996), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 214, para. 2(a): "All ... refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety."

[168] See chapter 2.5.5 above, at p. 127.

[169] Nowak similarly takes a cautious view of this authority. "It is more difficult to evaluate which *restrictions on the freedom to leave the country* ... are permissible in the interests of public order. It is only clear from the historical background and the [Human Rights] Committee's holding in *González del Rio v. Peru* [UNHRC Comm. No. 263/1987, UN Doc. CCPR/C/40/D/263/1987, decided Nov. 6, 1990] that States have a limited right to

The home state of a refugee has even less legal authority to constrain return. Art. 12(4) is emphatic that "[n]o one shall be arbitrarily deprived of the right to enter his own country."[170] Specifically, none of the limitations available to constrain departure may be invoked by the refugee's own state to limit the right of return.[171] The only form of restriction which is allowed is one adjudged not to be "arbitrary," a notion included in the Covenant to validate restrictions consequent to lawful exile.[172] The contemporary stance of the Human Rights Committee affords states only slightly more latitude to impose restrictions on return:

> The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. *The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable* [emphasis added].[173]

This firm stance on the duty to readmit is justified, in the view of the Committee, by the "special relationship" of an individual to his or her own country.[174]

Significantly, the Human Rights Committee has affirmed that "[t]he right to return is of the utmost importance for refugees seeking voluntary repatriation [*sic*]."[175] And by virtue of the language used, the duty to readmit under Art. 12(4) is not restricted to those who are the formal citizens of the state. Rather,

> [t]he wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country." The scope of "his own country" is broader than the concept "country of his nationality." It is not limited to nationality in a

prevent persons who have been accused of a crime from leaving the territory of the State [emphasis in original]": Nowak, *ICCPR Commentary*, at 213. More generally, the Human Rights Committee has warned that "[i]n adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. art. 5, para. 1); the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution": UN Human Rights Committee, "General Comment No. 27: Freedom of movement" (1999), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 173, para. 13.

[170] Civil and Political Covenant, at Art. 12(4).

[171] Nowak, *ICCPR Commentary*, at 218. [172] Ibid. at 219.

[173] UN Human Rights Committee, "General Comment No. 27: Freedom of movement" (1999), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 173, para. 21.

[174] Ibid. at para. 19. [175] Ibid. at para. 19.

> formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence ... [O]ther factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country.[176]

There is thus a clear legal foundation for what appears, in any event, to be an essentially unstoppable social phenomenon: the preparedness of refugees to risk even their safety in order to go home. For example, refugees returned to Sarajevo even while the fighting there was still ongoing:

> No one – not UNHCR, not the International Committee of the Red Cross, not the Bosnian government's Ministry of Refugees – admits to knowing how many refugees or displaced people from Sarajevo have returned to the city ... Some of the people trying to get back into the city, particularly after the Croats and Muslims began fighting each other, had a difficult time. Often they were pinned down on the road from Herzegovina to Sarajevo by the fighting ... People still continue to come to Sarajevo, crossing Mount Igman by bus and using the tunnel to enter the city, although the Serbs now shell its entrance in Butmir.[177]

In making their own decisions about return, these refugees were opting for what is clearly the predominant solution to refugeehood: voluntary reestablishment in the state of origin. Indeed, Stein notes that between 1975 and 1991, more than 90 percent of refugee returns were self-directed efforts by refugees themselves, accomplished without any significant international assistance.[178]

From a practical perspective, there are many steps that can be taken to ensure that refugees make the best choices possible.[179] Most clearly, efforts to

[176] Ibid. at para. 20.
[177] P. Reed, *Sarajevo: Spontaneous Repatriation to a City Under Siege* (1995), at 20–22.
[178] B. Stein, "Policy Challenges Regarding Repatriation in the 1990s: Is 1992 the Year for Voluntary Repatriation?," paper presented at the Tufts University Fletcher School of Law and Diplomacy, Apr. 15, 1992. "The majority of refugees who repatriated voluntarily in past years did so spontaneously and it is likely that spontaneous repatriation will continue to be a regular feature of refugee return": UNHCR, "Voluntary Repatriation Handbook," at para. 3.3.
[179] Castillo and Hathaway, "Temporary Protection," at 19–21.

provide them with current and specific information about conditions in the home country are key. The UNHCR Executive Committee has also recommended the facilitation of carefully managed visits by home country representatives to meet with refugees abroad.[180] Of perhaps greatest value, representatives of a refugee population may be assisted to undertake a "look-see" visit to the home state, and to report back on conditions there to the community in exile. For example, in 2002 UNHCR helped five representatives of the Namibian refugee population in Botswana to return to their homes in Caprivi province to assess the suitability of return. Based on their positive assessment, nearly half of the refugee population opted to go home.[181] Other countries provide comparable assurances on a more individuated basis, guaranteeing refugees the right to resume their refugee status should efforts to reestablish themselves in the home country ultimately prove unviable.

Somewhat more controversially, host governments may offer financial incentives to refugees who agree to go home. Such initiatives can be sensible investments in human capital. For example, a British initiative administered in cooperation with the International Organization for Migration provided an "installation grant" of £210 and a modest salary top-up to well-educated Afghans living in the United Kingdom who agreed to return home and to contribute to the rebuilding of their home country.[182] But Britain later promoted a more assertive repatriation plan, under which Afghan families agreeing to go home would receive a grant of up to £2,500. The British Refugee Council and Amnesty International expressed their concern that despite the optional nature of the initiative, it could in practice prove too

[180] The Executive Committee "[a]cknowledge[d] the usefulness, in appropriate circumstances, of visits by representatives of the countries of origin to refugee camps in countries of asylum within the framework of information campaigns to promote voluntary repatriation": UNHCR Executive Committee Conclusion No. 74, "General Conclusion on International Protection" (1994), at para. (z), available at www.unhcr.ch (accessed Nov. 20, 2004).

[181] "Many refugees have expressed a strong desire to return home, especially after a 'go and see' visit by representatives of the refugee community in June. 'One young man who went on the go and see visit was so enthusiastic [that] he wanted UNHCR to take him immediately,' recalled a staff member of the UN refugee agency in Namibia": "UNHCR starts repatriating Namibian refugees in Botswana," *UNHCR News Stories*, Aug. 13, 2002. "The principle of go-and-see is as old as UNHCR itself, and aims at refugees making an on-the-spot assessment of the security situation, interacting with their relatives, seeing the state of their properties. The visits also ensure that there are adequate facilities in the areas of return – such as education, health, water supply and any other facilities necessary": "Repatriation of refugees from Botswana to Namibia begins," *UN Integrated Regional Information Networks*, Aug. 14, 2002.

[182] J. Steele, "Afghan exile puts his mind at his country's service," *Guardian*, June 19, 2002, at 13.

strong a motivation for refugees to opt for return at a time when conditions in Afghanistan were still far from secure.[183] A comparable Australian plan was even more aggressive, offering Afghan refugee families their cost of travel and a grant of up to A$10,000 to go home – a sum amounting to five years' income for the average Afghan. In announcing the program, the Immigration Minister gave refugees only twenty-eight days to accept the offer, with the warning that any Afghans not ultimately recognized as refugees would be subject to mandatory return without compensation.[184]

While such plans have been encouraged by UNHCR,[185] they raise the specter of an infringement of the cardinal requirement of voluntariness in a refugee's decision to go home. There may in practice be very little real space for self-determination when a poor refugee is offered a sum of money significantly beyond his or her own financial dreams, leading to allegations of bribery or blackmail.[186] Particularly when such an offer must be accepted within a short timeframe, and is made when conditions in the home country are not objectively safe,[187] there is reason to be concerned that a superficially generous offer may unfairly skew what should be a genuinely voluntary decision by the refugee to give up his or her protected status.

Fundamentally, a voluntary decision to go home should be a decision reached without external inducement, and certainly without coercion of any kind. In contrast, Burundian refugees in Tanzania reported that they returned home despite uncertainty about the security situation there in part because "they

[183] A. Travis, "Afghans offered £2,500 to go home," *Guardian*, Aug. 21, 2002, at 1.

[184] K. Lawson, "Afghan detainees to be offered $2,000 each to go home," *Canberra Times*, May 24, 2002, at A-3.

[185] Human Rights Watch, "Afghanistan Unsafe for Refugee Returns – UN Refugee Agency Sending 'Misleading' Message," July 23, 2002.

[186] This allegation was reportedly made by Simon O'Neil, a spokesperson for the Australian Refugee Action Collective: P. Barkham, "Australia offers Afghan asylum-seekers £3,800 to go home," *Guardian*, May 24, 2002, at 6.

[187] Even as the British and Australian plans to encourage Afghan repatriation were being promoted, for example, "Human Rights Watch investigations in recent months have found that conditions inside Afghanistan are still extremely unstable and that risk of persecution exists for certain groups. Continuing factional rivalry between General Abdul Rashid Dostrum's Junbish forces and General Atta Mohammed's Jamiat troops has created a security vacuum in northern Afghanistan, leading to a rise in attacks on humanitarian aid agencies and Afghan civilians. Armed conflict between the two factions has increased over a wider area of the north in recent weeks, affecting at least four different districts during the week of July 8. At the same time, ethnic Pashtuns, a minority in the north, continue to flee targeted violence, rapes of women and children, seizure of farmland and demands of money by local commanders in Farah and Faryab province. Human Rights Watch has also documented ongoing lawlessness and abuses by warlord forces in the south and west of the country": Human Rights Watch, "Afghanistan Unsafe for Refugee Returns – UN Refugee Agency Sending 'Misleading' Message," July 23, 2002.

were being 'encouraged' by Tanzania to go home."[188] It later came to light that the "encouragement" included actions in violation of international law, such as limiting access by the refugees to food rations, and restricting their movements outside of refugee camps.[189] The decision of some Angolan refugees to return home from Zambia was similarly tainted by a policy of cutbacks in food rations in the camps.[190] Despite the movement having been characterized by officials as a "spontaneous return," one returning refugee saw matters quite differently:

> We left Mahewa [refugee camp] to come here because there was no food there ... When we first went there, we got enough food. But later we suffered as the food we received was not enough. We thought, let's go back to our country, which could be better.[191]

In such circumstances, return cannot truly be said to be voluntary, with the result that the standard for cessation under Art. 1(C)(4) is not met, and refugee status does not come to an end. Indeed, violations of refugee rights as a tool of coercion can readily amount to acts of indirect *refoulement*.[192]

Importantly, refugee status does not come to an end simply because a refugee chooses, even with complete freedom, to return to his or her country of origin. The second requirement for valid cessation of refugee status is that the refugee be not just physically inside the country of origin, but rather that he or she be *reestablished* there. The original draft of this provision, which would have revoked the refugee status of any person who "returns to his country of former nationality,"[193] was rejected by the Ad Hoc Committee on the grounds that it might bar persons who had been forcibly repatriated to their state of origin, as well as those who had chosen to return to their country of origin only temporarily.[194] The substitute language, which sets the

[188] "Another 800 refugees to return home to Burundi," *UN Integrated Regional Information Networks*, May 30, 2002.

[189] "Burundian refugees returning home from Tanzania," (2003) 135 *JRS Dispatches* (July 1, 2003).

[190] "'Of course some refugees told us they will be returning to Angola because the half-ration of the food was not good for them,' [UNHCR local representative] Gubartalla told a news conference in Lusaka. 'But I believe that if we did not have the cease-fire and the peace process starting in Angola, nobody would have ... come and said they want to go back to Angola'": "Thousands of Angolan refugees living in Zambia return home," *SAPA-AP*, June 13, 2002.

[191] "Refugees returning, but little aid available," *UN Integrated Regional Information Networks*, July 5, 2002. "Officials are talking about a 'spontaneous' return. But it was prompted not only by a longing to be on home soil, but also by recent cutbacks in rations to refugees in the camps in Zambia": ibid.

[192] See chapter 4.1.2 above, at pp. 318–321.

[193] UN Doc. E/AC.32/L.4, Jan. 18, 1950, at 3.

[194] See e.g. Statement of the Director of the International Refugee Organization, UN Doc. E/AC.32/L.16, Jan. 30, 1950, at 2. In the result, the decision of the Swiss Federal Court in the *Romanian Refugee Case*, 72 ILR 580 (Sw. FC, Mar. 3, 1969), at 581, holding that "[w]here

cessation threshold at voluntary reestablishment in the country of origin,[195] was thus intended to ensure that only persons who have willingly resettled in their state of origin are subject to cessation of refugee status. As Weis observed, "[i]f a person returns to his country of origin for a temporary stay without re-establishing himself, and then returns to the country where he was recognized as a refugee, this should not lead to *ipso facto* loss of refugee status."[196]

It is therefore incumbent on state parties to afford refugees the opportunity to explain the reasons for their trip home, which may or may not evince reestablishment there. For example, a tribunal sensibly determined that the return of a Salvadoran refugee for two-and-a-half months in order to attempt to save her marriage did not amount to reestablishment there. In particular, there was evidence that she had never stayed more than three nights in the same place, had avoided public transportation, had identified herself as a foreigner, and had prepared answers to questions which might have exposed her real identity.[197] A similarly exceptional and transient presence was found to exist in the case of a Sri Lankan refugee who had returned home briefly to care for his ill mother.[198] In general, the potential for reestablishment arises either where the refugee has been present in the home state for a prolonged period of time, or regularly returns there for shorter periods of time. In such circumstances, the refugee bears the onus to demonstrate that he or she is objectively unable to benefit from protection of basic human rights in the country of origin, and thus continues to be a refugee.

Most critically, it would work against the goal of promoting autonomous solutions to refugee status for Art. 1(C)(4) to be treated as the basis for penalizing refugees who return home to "test the waters" in their country of origin. If refugees are to be encouraged to attempt to return home, they must have some assurance that they can resume refugee status in the event

a refugee returns, even temporarily, to the State from which he fled and thereby submits himself to its power, he expresses his conviction that the essential ground for obtaining the status of refugee – a well-founded fear of being persecuted – has disappeared," should be viewed as bad law. While it is legally doubtful that there is truly a subjective element to refugee status at all (see Hathaway, *Refugee Status*, at 66–75), whatever implications might arguably be drawn from a "subjective element" should in any event not be allowed to contradict the clear language and history of Art. 1(C)(4) of the Refugee Convention.

[195] Statement of Mr. Henkin of the United States, UN Doc. E/AC.7/SR.165, Aug. 19, 1950, at 16. The amendment was adopted on a vote of 13–0 (2 abstentions): ibid. at 18, and was addressed to the situations of both persons with formal nationality, and those who are stateless.

[196] P. Weis, "The Concept of the Refugee in International Law," (1960) 87 *Journal du Droit International* 928, at 978.

[197] *C89–00332* (Can. IRB, Aug. 27, 1991), reported at (1991) 5 *RefLex* 41.

[198] *Shanmugarajah v. Canada*, (1992) FCJ 583 (Can. FC, June 22, 1992). See also *Mitroi v. Canada*, (1995) FCJ 216 (Can. FC, Feb. 8, 1995), where no adverse inference was drawn from the decision of a refugee from Romania briefly to travel to that country as a tourist.

that actual conditions at home prove unviable for a safe reintegration. The drafters' insistence on evidence of reestablishment, rather than simply of return, sensibly ensures that this critical objective is safeguarded.

7.3 Resettlement

If a refugee cannot lawfully be repatriated and does not choose freely to resume life in his or her own country, a third solution to refugee status is for the refugee to move to another state which is willing to grant him or her a durable form of immigrant status. Resettlement has traditionally been contemplated either because the state in which a refugee first arrives declines to provide ongoing protection, or because a refugee wishes to make his or her home in some other country.

> **Refugee Convention, Art. 30 Transfer of assets**
>
> **1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.**
>
> **2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.**

> **Refugee Convention, Art. 31 Refugees unlawfully in the country of refuge**
>
> . . .
>
> **2. The Contracting States shall not apply to the movements of [refugees coming directly from a territory where their life or freedom was threatened] restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.**

The first form of resettlement, based on the absence of a durable solution in the first country of arrival,[199] was foreseen as early as the 1936 and 1938

[199] As the representative of Italy noted in the Ad Hoc Committee, "[a]s a matter of fact, the question of naturalizing refugees did not generally arise in his country which, by reason of its geographical position and of certain other special considerations, could only offer them temporary hospitality": Statement of Mr. Malfatti of Italy, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 29.

Refugee Conventions. In each case, it was agreed that any refugee required to leave a state's territory "shall be granted a suitable period to make the necessary arrangements."[200] Indeed, the 1938 Convention,[201] and more particularly the refugee regimes administered by the Intergovernmental Committee for Refugees (IGCR) and the International Refugee Organization (IRO), assumed that there was little likelihood that refugees would be accommodated in the first asylum country.[202] Under these arrangements, most persons recognized as refugees were instead expected to resettle in overseas states.

There has been a recent renaissance of interest by some governments in mandatory resettlement schemes similar to those pioneered by the IGCR and IRO. A crucial difference, however, is that these new initiatives have been conceived and operated by particular states, rather than by an international refugee agency. Most (in)famously, the so-called "Pacific Solution" administered by the Australian government saw refugees arriving to seek its protection being diverted for status assessment outside its territory, and presented with no alternative to accepting offers of resettlement negotiated on their behalf.[203] A similar initiative was proposed in 2003 by the British government, which sought to have refugees arriving in the European Union sent for processing to a non-EU country from which resettlement into the Union would be arranged for persons recognized as genuine refugees.[204] Both the UNHCR and an informal grouping of core members of the European Union, in addition to Australia, Canada, New Zealand, Norway, Switzerland, and the United States – the Intergovernmental Consultations on Refugees, Asylum and Migration Policies – have since taken up the call to devise organized resettlement schemes as part of a broader agenda to reform the mechanisms of refugee protection.[205]

[200] Provisional Arrangement concerning the Status of Refugees coming from Germany, 3952 LNTS 77, done July 4, 1936 (1936 Refugee Convention), at Art. 4(1); Convention concerning the Status of Refugees coming from Germany, 4461 LNTS 61, done Feb. 10, 1938 (1938 Refugee Convention), at Art. 5(1).

[201] "With a view to facilitating the emigration of refugees to oversea countries, every facility shall be granted to the refugees and to the organizations which deal with them for the establishment of schools for professional re-adaptation and technical training": 1938 Refugee Convention, at Art. 15.

[202] See generally J. Hathaway, "The Evolution of Refugee Status in International Law: 1920–1950," (1984) 33 *International and Comparative Law Quarterly* 348.

[203] Australia, Department of Immigration and Multicultural Affairs, "Refugees and Humanitarian Issues: Australia's Response" (Oct. 2001), at 5.

[204] The plan was designed "to achieve better management of the asylum process globally through improved management and transit processing centres": Letter from Tony Blair, UK Prime Minister, to Costas Smitis, European Council President, Mar. 10, 2003.

[205] The evolution of these recent initiatives is summarized in J. Hathaway, "Review Essay: N. Nathwani, Rethinking Refugee Law," (2004) 98(3) *American Journal of International Law* 616.

Such programs can in theory be operated without infringing the Refugee Convention if the non-consensual diversion into a resettlement scheme occurs before the refugee concerned is "lawfully in" a state party[206] and hence entitled to the more elaborate protections against expulsion found in Art. 32. So long as the requirements of Art. 33 (*non-refoulement*) are scrupulously observed, a refugee not yet lawfully in a state may be required to accept resettlement to another country, even one not of his or her choosing.[207] Importantly, however, a state which detains or otherwise restricts the movement of refugees pending their removal for purposes of status assessment or resettlement abroad is bound to respect the requirements of Art. 31(2) of the Refugee Convention, previously analyzed in some detail.[208] In particular, mirroring the provisions of the 1936 and 1938 treaties, "[t]he Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."[209]

By virtue of this obligation, a refugee is legally entitled to an opportunity to devise his or her own resettlement solution before being required to accept the government's option. In particular, the refugee may insist upon a delay in his or her removal to enable him or her to pursue alternative resettlement options. Faced with such a request, the host government must suspend pursuit of its own plan for a "reasonable period," meaning "the period necessary to obtain a visa by a refugee who makes all reasonable efforts to obtain such a visa, possibly with the help of UNHCR or voluntary organizations."[210] As Robinson and Grahl-Madsen affirm, the definition of a "reasonable period" must further take into account all "existing circumstances," including the time required to process a resettlement application "for a person without a nationality and possessing given qualifications (skills, age, etc.)."[211]

In addition, the host state must ensure that the refugee has access to "all the necessary facilities to obtain admission into another country."[212] Thus, the refugee must "not be [so] restricted in his movement as not to [be able] to see foreign consulates, the representatives of UNHCR, or voluntary agencies."[213] While not ruling out the possibility of keeping the refugee in provisional

[206] See chapter 3.1.3 above, at pp. 175–183.
[207] See chapter 5.1 above and J. Hathaway, "Refugee Law is Not Immigration Law," (2002) *Proceedings of the Canadian Council on International Law* 134, edited version reprinted in US Committee for Refugees, *World Refugee Survey 2002* (2002), at 38.
[208] See chapter 4.2.4 above. [209] Refugee Convention, at Art. 31(2).
[210] P. Weis, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis* (posthumously pub'd., 1995) (Weis, *Travaux*), at 304.
[211] N. Robinson, *Convention relating to the Status of Refugees: Its History, Contents and Interpretation* (1953) (Robinson, *History*), at 155; A. Grahl-Madsen, *Commentary on the Refugee Convention 1951* (1963, pub'd. 1997) (Grahl-Madsen, *Commentary*), at 184.
[212] Refugee Convention, at Art. 31(2). [213] Weis, *Travaux*, at 304.

detention,[214] this obligation "will as a rule exclude confinement in a camp or prison or in remote places, and require the state to permit the refugee to travel and to communicate with the outside world and such bodies as are likely to assist him in obtaining admission into a country."[215]

There are therefore two fundamental challenges in the operation of a lawful mandatory resettlement system. First, the requirements of Art. 31(2) may detract from the efficient operation of such a system: unless those to be removed are not detained or otherwise restricted in their movements while under the receiving state's authority, they must be afforded the means and opportunity to pursue their preferred resettlement options. Second, the window of opportunity for such efforts is in any event quite short. It ends once lawful presence (not lawful stay) is established,[216] at which point the strict limitations on expulsion set by Art. 32 apply so as to make enforced resettlement unviable in most cases.[217]

Perhaps because of the legal difficulties inherent in mandatory resettlement, most resettlement is in practice effected with the consent of the refugee concerned. So long as resettlement is freely agreed to, there is no breach of the Refugee Convention. To the contrary, in line with Art. 12 of the Civil and Political Covenant, analyzed above,[218] any person – including a refugee – has the right to decide to leave any country, including a state of asylum.

Apart from the special steps required by Art. 31(2) when a refugee's freedom of movement has been curtailed, the country from which resettlement is contemplated is not ordinarily obliged to take affirmative steps to assist him or her to secure a resettlement offer.[219] Moreover, in line with the commitment of the drafters to safeguarding the sovereign right of states to decide which refugees should be permanently admitted to their territories,[220]

[214] Grahl-Madsen, *Commentary*, at 184. [215] Robinson, *History*, at 155.

[216] Lawful presence (as contrasted with lawful stay) is a status that is usually quickly acquired. Lawful presence includes authorized temporary presence; presence while undergoing refugee status assessment, including the exhaustion of appeals and reviews; and presence in a state party to the Convention which has opted either not to establish a procedure to verify refugee status, or to suspend the operation of such a procedure: see chapter 3.1.3 above.

[217] A refugee entitled to the benefit of Art. 32 may not be removed from a state party "save on grounds of national security or public order" and subject to a variety of due process guarantees: see chapter 5.1 above. Moreover, once Art. 32 is applicable, para. 3 of the article imposes the same sort of duty of delay on expulsion to allow the refugee to arrange his or her preferred alternative that is foreseen by Art. 31(2).

[218] See chapter 7.2 above, at pp. 954–958.

[219] In the case of refugee seamen, however, governments do agree to "give sympathetic consideration to ... the issue of travel documents to them or their temporary admission to [their] territory particularly with a view to facilitating their establishment in another country": Refugee Convention, at Art. 11.

[220] See chapter 4.1 above, at pp. 300–301.

no state is obliged to make an offer of resettlement to any refugee. The actual mechanics of the resettlement process are largely unregulated by the Refugee Convention.

The Refugee Convention nonetheless requires the facilitation of resettlement to a very limited degree. Under Art. 30, a refugee taking up an offer of resettlement enjoys certain privileges with respect to the export of assets to the resettlement state. The approach first advocated by Belgium would have entitled refugees being resettled to "take with them any funds which belong to them and which they might require for the purpose of settlement."[221] As proposed, this right was subject only to compliance with any "formalities prescribed ... with regard to the export and import of currencies."[222] The Belgian initiative sought to counter two related concerns. In some cases refugees were unable to convert their assets into hard currencies that would be honored in their resettlement state.[223] Even more seriously, some countries where the refugees' funds were held simply refused or significantly limited their export.[224] If subject to restrictions of this kind, it was clear that refugees seeking to make a new home would be effectively deprived of the benefit of their own resources.[225]

None of the drafters took serious issue with the basic premise of the Belgian initiative. As the American representative to the Conference of Plenipotentiaries observed, "[i]t was surely only fair that a refugee should be able to take out of the country of asylum whatever assets he had brought into it, as well as any money that he might have earned."[226] Moreover, while some were opposed to granting refugees treatment more favorable than that

[221] "Belgium: Proposed New Article," UN Doc. E/AC.32/L.24, Feb. 2, 1950.

[222] Ibid.

[223] "Australia was often used by refugees as a place of temporary residence before they re-settled elsewhere. Such refugees brought in money in various currencies. The Australian Government could not interpret [the proposed article] as overruling national laws and regulations in respect of hard currencies": Statement of Mr. Shaw of Australia, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 10.

[224] "Extremely rigid currency control had been introduced in the United Kingdom not only to consolidate the country's economy, but in the interests of all countries. A person leaving the United Kingdom to settle in another country could transfer funds belonging to him up to a specified amount": Statement of Sir Leslie Brass of the United Kingdom, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 7.

[225] In a 1991 UNHCR survey of state practice, a number of governments indicated that they still impose general restrictions on the export of foreign currency and other items of value. No government, however, imposed restrictions specifically on asset transfer by refugees: UNHCR, "Information Note on Implementation of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," UN Doc. EC/SCP/66, July 22, 1991 (UNHCR, "Implementation"), at para. 95.

[226] Statement of Mr. Warren of the United States, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 10.

accorded other would-be migrants,[227] most drafters felt that the special predicament of refugees justified a more generous approach to the issue of asset transfer.[228]

There was, though, real concern that if the Convention were fully to "lift in the case of a refugee the restrictions imposed ... on the transfer of assets,"[229] the impact on the still-fragile, postwar economies of state parties could be severe. As the French representative argued,

> [T]he Belgian proposal might permit a somewhat artificially stimulated export of capital. Exchange control regulations were based on very serious considerations, which could hardly be set aside for the humanitarian reasons advanced by the Belgian representative ... Furthermore, application of the provisions recommended by the Belgian delegation might set very powerful financial interests in motion and make Governments liable to thaw without previous notice holdings which they had reasonably regarded as frozen.[230]

To meet these concerns, the Belgian proposal was reframed to require refugees wishing to export capital from the state of first asylum to comply not simply with export "formalities," but more generally with the "laws and regulations" of the host country.[231] It was nonetheless noted immediately

[227] The Canadian representative to the Ad Hoc Committee complained of the restrictions on capital transfers from the United Kingdom, which impeded immigration from that country. He was worried that "[a]daption of the Belgian proposal might give the impression that the Committee had wished to obtain more favourable treatment for refugees than accorded to nationals of the States signatory to the Convention": Statement of Mr. Chance of Canada, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 8. Turkey agreed, noting that "the humanitarian considerations which the Belgian representative would like to see applied in favour of the refugees might well be applied to the nationals of a State who wished to settle on the territory of another State. If that were so, it was difficult to grant refugees a privilege which was refused to nationals": Statement of Mr. Kural of Turkey, ibid. at 9.

[228] At the Conference of Plenipotentiaries, the Egyptian representative inquired "whether the purpose of the Convention was to ensure that refugees should be given more favourable treatment than that enjoyed by aliens": Statement of Mr. Mostafa of Egypt, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 10. The President of the Conference then "emphasized that the Ad Hoc Committee had wished to ensure that the conditions imposed on refugees should be less stringent than those imposed on nationals and other aliens": Statement of the President, Mr. Larsen of Denmark, ibid. See also Statement of Mr. Zutter of Switzerland, ibid. at 6.

[229] This was precisely the goal advanced by the Belgian proponent: Statement of Mr. Herment of Belgium, ibid. at 5.

[230] Statement of Mr. Devinat of France, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 9.

[231] The American representative explicitly acknowledged that the article "had been somewhat weakened ... [so as to] induce some members to withdraw their reservations": Statement of Mr. Henkin of the United States, UN Doc. E/AC.32/SR.25, Feb. 10, 1950, at 10.

prior to the adoption of this change that "[i]t was to be hoped, however, that Contracting States would make appropriate changes in their laws and regulations so as to accord protection to refugees in the matter of the transfer of assets."[232] The positions taken at the Conference of Plenipotentiaries were to similar effect. The President of the Conference affirmed that states had a "duty to help a refugee to resettle permanently."[233] It would not be enough to apply existing currency control and related rules fairly to refugees; the rationale for Art. 30, framed in "mandatory terms in the interest of refugees,"[234] was rather to make clear that general rules must be applied to refugees with generous use of discretion.[235]

Despite the real value to refugees of these points of consensus, Robinson likely overstates the force of Art. 30. In his view, the right of state parties to invoke their laws and regulations "do[es] not free a Contracting State from its obligation to permit the transfer of assets ... even if it generally prohibits transfers in favor of other aliens or nationals, since the obligation is of a categorical nature":

> These words were inserted to regulate the manner of the transfer. In other words, the words ["in conformity with its laws and regulations"] require a refugee to obtain a license if such a document is required; they may in certain cases militate against total transfer at once if amounts of such magnitude cannot generally be exported in one lump sum; the transfer in certain currency may be subject to restrictions or can be made only through the intermediary of a certain agency or a payment union, if this is a general rule, etc. *A state, however, cannot refuse to permit the transfer if all such formalities are complied with*, on the grounds of lack of exchange or that other aliens or their own nationals do not enjoy the right of transfer [emphasis added].[236]

But this interpretation seems insufficiently attentive to the reasons for amending Art. 30 to include the "laws and regulations" proviso. In particular, there was real concern expressed that it would be going too far to require refugees only to comply with export "formalities," since this could be taken to suggest that no substantive limits of any kind could be set on the export of assets by a refugee.[237] Grahl-Madsen impliedly acknowledges as much, suggesting that the

[232] Ibid.

[233] Statement of the President, Mr. Larsen of Denmark, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 7.

[234] Statement of Mr. Hoare of the United Kingdom, ibid. at 6.

[235] Statement of Mr. Hoare of the United Kingdom, ibid. at 6.

[236] Robinson, *History*, at 149–150.

[237] "[T]he Belgian proposal seemed to imply that a refugee need only apply, in accordance with the formalities prescribed by law, for authorization to export funds belonging to him, for the Government concerned to be obliged to give him such authorization": Statement of Sir Leslie Brass of the United Kingdom, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 7.

proviso allows state parties "to prescribe a reasonable transformation of the assets to be taken out of the country."[238] Weis is still more explicit:

> The words "in conformity with its laws and regulations" do[] not mean that the application of these laws and regulations, particularly currency regulations, may frustrate the mandatory obligation. They have to be applied in such a way as to make the transfer possible, but there may be limitations such as ... that the transfer shall take place in instalments or not in hard currency.[239]

Thus, host governments are not legally prevented from applying substantive, rather than simply formal, requirements on the export of a refugee's assets. But because it would frustrate the essential rationale of Art. 30 simply to apply all general rules with their full intensity,[240] state parties are legally bound to interpret and apply their general rules in a way that facilitates the transfer of assets for resettling refugees.[241]

Despite the relatively weak nature of the basic obligation in Art. 30(1), the scope of state obligations was expanded over the course of deliberations in at least two respects. First, on the basis of an American proposal, the right of export was broadened from simply a right to export "funds" to include the right to export all forms of "assets."[242] Second, it was made clear that the duty of the host state to permit the transfer of assets applies not simply to whatever assets actually accompanied the refugee upon arrival there, but to any assets brought into that state by the refugee at any time.[243] As the President of the

[238] Grahl-Madsen, *Commentary*, at 165. [239] Weis, *Travaux*, at 277.

[240] "He appealed to the Committee to retain at least the idea upon which the Belgian proposal had been based and to seek the formula which would be of the greatest possible humanitarian value to the refugees and most acceptable to Governments": Statement of Mr. Cuvelier of Belgium, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 9.

[241] "The purpose of paragraph 1 [is] to ensure that a refugee who entered a country with the intention and possibility of ultimately settling elsewhere should not be deprived of the material assets he had been able to bring with him, since such assets might be of considerable help to him in settling overseas": Statement of Mr. Chance of Canada, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 6. See Weis, *Travaux*, at 277: "[Art. 30(1)] contains a mandatory obligation ... [Domestic rules] have to be applied in such a way as to make the transfer possible, but there may be limitations such as ... that the transfer shall take place in instalments or not in hard currency'; and Grahl-Madsen, *Commentary*, at 165: "Even [though] it was agreed to soften the original phraseology, it was clearly not the intention of the drafters to weaken the provision so much that it would make transfer of the assets concerned wholly subject to the discretion of the authorities."

[242] "[T]he article proposed by the Belgian delegation covered only currency belonging to the refugee, whereas they might have other forms of property. The wording of the article should, therefore, be amended": Statement of Mr. Henkin of the United States, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 10.

[243] UNHCR convinced delegates to the Conference of Plenipotentiaries that the French language text – which spoke of a right to "transférer les avoirs qu'ils ont fait entrer sur leur territoire" – was preferable to the English language version, which then spoke of "assets

Conference of Plenipotentiaries put it, "the intention of the Ad Hoc Committee had been to allow the refugee to take out of the country of asylum the money and assets that he owned. It would not be fair to interpret the position in terms only of such assets as a refugee might have in his pocket."[244]

The drafters also broadened the scope of the article in ways that resulted in the addition of paragraph 2. France persuaded the Ad Hoc Committee that the Convention should promote the right of refugees to transfer not only assets held in the country from which resettlement is being effected (the subject of para. 1), but also assets held in any state party:[245]

> [I]f the Committee wished to recommend that the High Contracting Parties should grant facilities for the export of capital belonging to refugees, the recommendation should cover not only cases in which the refugee passed through the country where his property was before travelling to the country in which he settled, but also those in which a High Contracting Party withheld property belonging to a foreigner who, whatever the country in which he was, had acquired refugee status and had made an application in accordance with a procedure to be determined.[246]

Similarly, the view was expressed that the article should address the right of refugees to export not only assets brought into the first asylum state, but also assets acquired there.[247]

There was, however, no serious interest in imposing a specific, binding obligation to require states to permit the transfer of either assets acquired in the present state of residence,[248] or those located in other

which he has brought with him": Statement of Mr. van Heuven Goedhart of UNHCR, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 7. Grahl-Madsen thus concludes that "[p]aragraph 1 applies to any and all assets which the refugee concerned has brought into the territory of a Contracting State, regardless of whether he brought the assets with him when he came to apply for asylum, or if he brought the assets into the country concerned before or after that time": Grahl-Madsen, *Commentary*, at 166.

244 Statement of the President, Mr. Larsen of Denmark, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 7–8.

245 "[T]here was no apparent reason why refugees who had been able to go to the country in which they possessed property before settling in the country of final residence should be accorded treatment differing from that of refugees who had gone to a country other than that in which their property was": Statement of Mr. Devinat of France, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 9.

246 Ibid. at 10.

247 "[D]uring his period of residence in the country of asylum a refugee might earn money. Should he not be allowed to transfer his earnings?": Statement of the President, Mr. Larsen of Denmark, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 8.

248 "[G]overnments would be reluctant to permit a refugee to export a larger sum than he had brought in for fear of injuring the general economy of the country and of encouraging the illegal export of capital": Statement of Mr. Kural of Turkey, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 8. In response, Belgium proposed that "the Committee might

countries.[249] Despite Colombian opposition to adoption of a mere duty of process on the grounds of "the futility of wishes, no doubt full of goodwill but not mandatory in character,"[250] the drafters took precisely this approach. They agreed that the binding duty of the state from which the refugee intends to resettle (stated in para. 1) would be supplemented by a second paragraph addressed to all states, requiring them to "give sympathetic consideration" to a resettling refugee's application to transfer all forms of assets "wherever they may be."[251]

request Governments to show the greatest possible latitude in certain exceptional cases, in order to prevent refusals based upon the strict letter of existing laws": Statement of Mr. Cuvelier of Belgium, ibid. at 10.

[249] In the Ad Hoc Committee it was agreed "that the article should be divided into two paragraphs, the first laying down the principle that the refugee could take with him any property he had brought with him, and the second incorporating *the recommendation* to the High Contracting Parties [emphasis added]": Statement of Mr. Cuvelier of Belgium, ibid. at 11. Grahl-Madsen disputes this view, suggesting that "[i]t is noteworthy that paragraph 1 does not specify that the refugee concerned must himself be staying in the country where the assets are. The Contracting States have *the same obligations* towards refugees who have never set foot on their territory, but merely brought funds into it, as [they have] towards refugees who have stayed for a shorter or longer period in the country [emphasis added]": Grahl-Madsen, *Commentary*, at 166. This interpretation is, however, inconsistent with the drafting history that resulted in the addition of para. 2 to Art. 30. It also renders the purpose of para. 2 unclear. As Weis observes, "[p]aragraph 2 applies to all other assets, that is, those the refugee has acquired in the country of residence *or those which he possesses in the territory of other Contracting States* [emphasis added]": Weis, *Travaux*, at 277. Indeed, Grahl-Madsen himself concedes that his interpretation renders "the words 'wherever they may be' in paragraph 2 ... more or less redundant", as para. 2 would apply only to "assets [in the refugee's state of residence] ... acquired by labour, inheritance, or in any other lawful way": Grahl-Madsen, *Commentary*, at 167.

[250] Statement of Mr. Giraldo-Jaramillo of Colombia, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 5.

[251] Refugee Convention, at Art. 30(2). The President of the Conference of Plenipotentiaries provided a helpful example of how Art. 30(2) should be applied in practice. "[T]he attitude of countries towards the export of funds by resident nationals or aliens inevitably depended on their currency position; for instance, States which suffered from a dollar shortage could not allow the export of dollars. Thus, a refugee who owned property in Denmark would not be able, on emigrating, to change the Danish currency he got from the sale of that property into dollars, but in the Danish Government's view it would be unfair to deprive a refugee of dollars which he had brought into Denmark and wished to take with him on emigrating, even if he had in the meantime sold those dollars in accordance with the Danish currency regulations. That, indeed, had been the attitude taken by the Ad Hoc Committee, and it was for that reason, and in order to cover such cases, that paragraph 2 had been included in article [30]": Statement of the President, Mr. Larsen of Denmark, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 8–9. Despite the provisions of Art. 30(2), only one government indicated that it renders assistance to refugees in order to facilitate the transfer of their property upon departure from the country: UNHCR, "Implementation," at para. 95.

Two important qualifications should be noted with regard to Art. 30 as a whole. First, the provision does not purport to establish any general right of refugees to export their assets.[252] The duty in paragraph 1 applies only to transfers "to another country where they have been admitted for the purposes of resettlement."[253] Similarly, the obligation of sympathetic consideration in the second paragraph governs only such assets as "are necessary for their resettlement in another country to which they have been admitted."

Second, Art. 30 can under no circumstance be relied upon to justify granting refugees rights inferior to those of other non-citizens.[254] At the Conference of Plenipotentiaries, the representative of Colombia proposed an alternative formulation under which refugees would simply have the same rights to export assets as enjoyed by aliens generally.[255] In doing so, he expressed his concern that any "privileged" treatment for refugees could in fact be used as a pretext to restrict their options.[256] His amendment was withdrawn, however, based on the understanding that "refugees could in no case be treated less favourably than aliens, since that was expressly forbidden by article [7(1)] of the Convention."[257]

In sum, and in line with the remarks of the President of the Conference of Plenipotentiaries, two different kinds of obligation under Art. 30 can be identified.[258] First, whatever assets a refugee has brought into the state where he or she presently lives – whether the refugee arrived with those assets, or had them transferred to that state before or after entering as a refugee – should in principle be completely available for export by the refugee to his or her resettlement country. While the host state may apply its currency control

[252] See Robinson, *History*, at 149: "It imposes an obligation upon the Contracting States to permit the transfer of assets of refugees, provided these assets have been brought in by the refugee and the transfer is made to another country where he has been admitted for resettlement. Thus no obligation exists in cases where the refugee leaves the country of his residence for a temporary stay abroad"; and Grahl-Madsen, *Commentary*, at 166: "The Contracting States are not obliged to permit transfers of assets to any country of the refugee's choice, but merely to a country where the refugee concerned has been admitted for the purpose of resettlement."

[253] "[T]he Committee seemed to be in agreement that refugees who were so to speak in transit through a country could export the possessions they had brought with them to the country of final resettlement": Statement of Mr. Henkin of the United States, UN Doc. E/AC.32/SR.24, Feb. 3, 1950, at 10.

[254] See Grahl-Madsen, *Commentary*, at 164: "Article 30 must be read in conjunction with Article 7(1). Should the regime established for refugees by virtue of Article 30 in any set of circumstances not correspond to the same treatment as is accorded to aliens generally, [the refugee] may invoke the provisions set forth in Article 7(1)."

[255] UN Doc. A/CONF.2/54.

[256] Statements of Mr. Giraldo-Jaramillo of Colombia, UN Doc. A/CONF.2/SR.13, July 10, 1951, at 5–6, 9.

[257] Statement of Mr. Herment of Belgium, ibid. at 11.

[258] See Statement of the President, Mr. Larsen of Denmark, ibid. at 7–8.

and comparable regulations, it is bound to interpret those rules generously in the spirit of advancing the presumed entitlement of a refugee to "take out of the country of asylum whatever assets he had brought into it."[259] As Grahl-Madsen succinctly concludes, "[t]he underlying idea is that a State shall be neither richer nor poorer as a result of the fact that a refugee has spent a transitory period in the country until he found a possibility for resettlement in another country."[260]

Second, whatever assets a refugee acquired in the original host state (e.g. by savings from employment, investment, etc.), as well as assets held in other state parties, should also, in principle, be made available for export to the resettlement state. But the obligation of state parties in regard to the export of such assets is simply one of process – namely, sympathetic consideration. In contrast to the duty of result with regard to assets brought into the country of current residence, the Convention does not require governments to operate from a presumption that their ordinary rules should be applied less rigorously in the case of refugees undertaking resettlement.[261] In no case, however, may a refugee be treated less well than aliens generally with regard to the ability to export his or her assets.

In both political and practical terms, the importance of resettlement as a solution for refugees declined dramatically during the 1980s and 1990s.[262] As recently as the late 1970s resettlement was still highly valued by the international community: it was endorsed by the UNHCR Executive Committee as the logical alternative solution when local integration of refugees was not possible,[263] and was in fact the solution for about 5 percent of the world's

[259] Statement of Mr. Warren of the United States, ibid. at 10.

[260] Grahl-Madsen, *Commentary*, at 166.

[261] In at least one resolution, the UNHCR Executive Committee seems to have failed to make this distinction. In the context of its leading statement of the duties which follow in the event of a mass influx of refugees, the Executive Committee opined that "asylum-seekers who have been temporarily admitted pending arrangements for a durable solution should be treated in accordance with the following minimum basic human standards ... (o) they should be permitted to transfer assets which they have brought *into a territory* to the country where the durable solution is obtained [emphasis added]": UNHCR Executive Committee Conclusion No. 22, "Protection of Asylum-Seekers in Situations of Large-Scale Influx" (1981), at para. II(B)(2)(o), available at www.unhcr.ch (accessed Nov. 20, 2004).

[262] J. Fredriksson, "Reinvigorating Resettlement: Changing Realities Demand Changed Approach," (2002) 13 *Forced Migration Review* 28 (Fredriksson, "Reinvigorating Resettlement").

[263] The Executive Committee "appealed to States ... [t]o offer resettlement opportunities to those who had been unable to obtain permanent residence in the State of first asylum": UNHCR Executive Committee Conclusion No. 2, "Functioning of the Sub-Committee and General Conclusion on International Protection" (1976), at para. (h)(ii), available at www.unhcr.ch (accessed Nov. 20, 2004).

5 million refugees in the peak year of 1979.[264] But with the conclusion of the Comprehensive Plan of Action for Indochinese Refugees,[265] UNHCR embraced a hierarchy of solutions during the late 1980s and 1990s. Resettlement was then relegated to a purely auxiliary role, to be pursued "only as a last resort, when neither voluntary repatriation nor local integration is possible."[266] Specifically, resettlement came to be understood as an appropriate solution mainly for "individual refugees with special protection needs, including women at risk, minors, adolescents, elderly refugees, and survivors of torture":[267]

> Resettlement under UNHCR auspices is geared primarily to the *special needs* of refugees under the Office's mandate whose life, liberty, safety, health or fundamental human rights are at risk in the country where they sought refuge. It is also considered a durable solution for refugees who, although not in need of immediate protection, have *compelling reasons* to be removed from their country of refuge. The decision to resettle a refugee is normally made *only in the absence of other options* such as voluntary

[264] Fredriksson, "Reinvigorating Resettlement," at 29.

[265] See generally J. Hathaway, "Labeling the 'Boat People': The Failure of the Human Rights Mandate of the Comprehensive Plan of Action for Indochinese Refugees," (1993) 15(4) *Human Rights Quarterly* 686.

[266] UNHCR Executive Committee Conclusion No. 67, "Resettlement as an Instrument of Protection" (1991), at para. (g), available at www.unhcr.ch (accessed Nov. 20, 2004). Some UNHCR materials and commentators have more recently sought to distance themselves from the language of resettlement as a solution of "last resort," though in substance that is in fact what it remains. See e.g. A. Edwards, "Resettlement: A Valuable Tool in Protecting Refugee, Internationally Displaced and Trafficked Women and Girls," (2001) 11 *Forced Migration Review* 31, at 32: "By offering resettlement as a solution, one has *ipso facto* ruled out voluntary repatriation or local integration as solutions in an individual case. This is not to say that resettlement should be used as a solution of 'last resort.' Resettlement should be considered when 'it is the best, or perhaps *only*, solution' in an individual case (emphasis in original)."

[267] UNHCR Executive Committee Conclusion No. 85, "Conclusion on International Protection" (1998), at para. (jj), available at www.unhcr.ch (accessed Nov. 20, 2004). See also UNHCR Executive Committee Conclusions Nos. 47, "Refugee Children" (1987); 54, "Refugee Women" (1988); 55, "General Conclusion on International Protection" (1989); 67, "Resettlement as an Instrument of International Protection" (1991); 68, "General Conclusion on International Protection" (1992); 71, "General Conclusion on International Protection" (1993); and 81, "General Conclusion on International Protection" (1997), all available at www.unhcr.ch (accessed Nov. 20, 2004), which recognize this more limited role for resettlement. Thus, for example, "[r]esettlement of Central American refugees has not constituted a durable solution on par with ... repatriation, but has been reserved for particular cases involving persons who, for protection or family reunification reasons, need to be resettled elsewhere": H. Gros Espiell et al., "Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees, and Displaced Persons in Central America," (1990) 2(1) *International Journal of Refugee Law* 83, at 108.

> repatriation and local integration. It *becomes a priority* when there is no other way to guarantee the legal or physical security of the person concerned.
>
> Resettlement may be necessary to ensure the security of refugees who are threatened with *refoulement* to their country of origin or those whose physical safety is seriously threatened in the country where they have sought sanctuary [emphasis added].[268]

There is little doubt that the residual role now officially attributed to resettlement is at least in part a practical accommodation to the absence of a binding duty of states to resettle refugees, coupled with a disinclination by most states to in fact make resettlement opportunities available on any significant scale.[269] But, as John Fredriksson has observed, the growing determination of states to manage the movement of refugees, and in particular to harmonize refugee protection with more general migration goals, may present a golden opportunity to reinvent resettlement as a viable option for many of the world's refugees:

> The time is ripe to discard the notion that there is a hierarchy of durable solutions, i.e. dubbing some as "preferred" and others as "undesirable." Developing a clear policy on the intrinsic link between resettlement and the need for durable solutions will result in operational guidelines and criteria for this type of resettlement activity, which are now virtually absent from the UNHCR *Resettlement Handbook*. A reinvigorated debate about the role of resettlement for durable solutions purposes is also timely in many states. The challenge laid out in early 2001 by then British Home [Secretary] Jack Straw to substantially increase resettlement capacity in Europe needs to be taken up by policy makers.[270]

As much has recently been recognized by state parties meeting on the fiftieth anniversary of the Refugee Convention. These governments committed themselves "to examine how more flexible resettlement criteria could be applied with regard to refugees recognized on a *prima facie* basis in mass influx situations"; "to enhance protection through an expansion of the number of countries engaged in resettlement, as well as through more strategic use of resettlement"; and "to streamline requirements for the processing of applications for resettlement, with a stronger focus on

[268] UNHCR, "Refugee Resettlement: An International Handbook to Guide Reception and Integration" (2002) (UNHCR, "Resettlement Handbook"), at 2.

[269] "No country is legally obliged to resettle refugees. Only a small number of States do so on a regular basis; allocating budgets, devising programmes and providing annual resettlement targets. Some countries regularly accept refugees for resettlement, sometimes in relatively large numbers, but do not set annual targets. Accepting refugees for resettlement is a mark of true generosity on the part of Governments": ibid.

[270] Fredriksson, "Reinvigorating Resettlement," at 29.

protection needs."[271] UNHCR has responded with a series of discussions and initiatives designed to "enhance[ ] ... resettlement as a tool of protection for individual refugees, as well as a durable solution for larger numbers of refugees and as a global responsibility-sharing mechanism."[272] It is to be hoped that a renewed debate about the viability of a strong commitment to resettlement will afford the opportunity to return to the fundamental question of whether this solution – clearly envisaged by the Refugee Convention, and in no sense treated by it as inferior to other options – may prove a vital means of ensuring the human dignity of refugees themselves.[273] In Fredriksson's words,

> [As] the "solution" pendulum swung from resettlement to repatriation ... policy documents began to refer to repatriation as the "happiest" of durable solutions while resettlement was the "least desirable." The question remains: in whose eyes was it the "happiest" solution – refugees, individual states, or the international community, including UNHCR?[274]

7.4 Naturalization

In the usual formulation of solutions to refugeehood, reference is made to the possibility of "local integration."[275] Local integration means in essence that a refugee is granted some form of durable legal status that allows him or her to remain in the country of first asylum on an indefinite basis, and fully to

[271] "Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees," UN Doc. HCR/MMSP/2001/09, Dec. 13, 2001, incorporated in UNHCR Executive Committee, "Agenda for Protection," at Part III, Goal 3, Point 6; and Goal 5, Points 5 and 6.

[272] UNHCR, "Progress Report on Resettlement," UN Doc. EC/54/SC/CRP.10, June 7, 2004, at para. 1.

[273] See generally G. Noll and J. van Selm, "Rediscovering Resettlement," (2003) 3 *Migration Policy Institute Insight* 1.

[274] Fredriksson, "Reinvigorating Resettlement," at 29.

[275] See generally UNHCR Executive Committee Conclusions Nos. 29, "General Conclusion on International Protection" (1983); 50, "General Conclusion on International Protection" (1988); 58, "Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection" (1989); 79, "General Conclusion on International Protection" (1996); 81, "General Conclusion on International Protection" (1997); 85, "Conclusion on International Protection" (1998); and 87, "General Conclusion on International Protection" (1999), all available at www.unhcr.ch (accessed Nov. 20, 2004). In the Agenda for Protection, state parties called upon the Executive Committee "to set out framework considerations for implementing the *solution of local integration*, in the form of a Conclusion sensitive to the specificities of refugee needs, international and national legal standards, as well as the socioeconomic realities of hosting communities [emphasis added]": UNHCR Executive Committee, "Agenda for Protection," at Part III, Goal 5, Point 4.

participate in the social, economic, and cultural life of the host community.[276]

So conceived, local integration is not really distinguishable from the primary solution envisaged by the Refugee Convention, namely simple respect for refugee rights.[277] That is, the rights which are said to be the hallmarks of the solution of local integration are essentially the same rights which actually accrue by virtue of refugee status itself.[278] Even the economic and social aspects of local integration[279] add little substantive content to the rights already guaranteed by the Convention. As previously set out, the refugee rights regime prohibits the isolation of refugees from their host

[276] "Local integration in the refugee context is the end product of a multifaceted and on-going process, of which self-reliance is but one part. Integration requires a preparedness on the part of the refugees to adapt to the host society, without having to forego their own cultural identity": UNHCR, "Local Integration," UN Doc. EC/GC/02/6, Apr. 25, 2002 (UNHCR, "Local Integration"), at para. 5. Harrell-Bond helpfully emphasizes that integration is a process that happens not only to refugees, but also to their host communities. While acknowledging it to be an over-simplification, she therefore proposes a working definition of integration as "a situation in which host and refugee communities are able to co-exist, sharing the same resources – with no greater mutual conflict than that which exists within the host community": B. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (1986), at 7.

[277] See chapter 7.0 above, at pp. 913–914. It has been observed that "official discourse on 'integration' ... lacks clarity": E. Michel, "Leadership and Social Organization: The Integration of Guatemalan Refugees in Campeche, Mexico," (2002) 15(4) *Journal of Refugee Studies* 359 (Michel, "Guatemalan Refugees").

[278] "First, [local integration] is a legal process, whereby refugees are granted a progressively wider range of rights and entitlements by the host State that are broadly commensurate with those enjoyed by its citizens. These include freedom of movement, access to education and the labour market, access to public relief and assistance, including health facilities, the possibility of acquiring and disposing of property, and the capacity to travel with valid travel and identity documents. Realization of family unity is another important aspect of local integration. Over time the process should lead to permanent residence rights and in some cases the acquisition, in due course, of citizenship in the country of asylum": UNHCR, "Local Integration," at para. 6. As the analysis in chapters 4–6 above has shown, all of these rights apart from access to permanent residence or citizenship and to family unity are entitlements which follow from refugee status itself, rather than being part of a solution to refugee status.

[279] "Second, local integration is clearly an economic process. Refugees become progressively less reliant on State aid or humanitarian assistance, attaining a growing degree of self-reliance and becoming able to pursue sustainable livelihoods, thus contributing to the economic life of the host country. Third, local integration is a social and cultural process of acclimatization by the refugees and accommodation by the local communities, that enables refugees to live amongst or alongside the host population, without discrimination or exploitation, and contribute actively to the social life of their country of asylum. It is ... an interactive process involving both refugees and nationals of the host State, as well as its institutions. The result should be a society that is both diverse and open, where people can form a community, regardless of differences": UNHCR, "Local Integration," at paras. 7–8.

communities[280] and requires that they be granted a broad array of social, economic, and civil rights[281] on par with those enjoyed by others in the host state community.[282] Moreover, the duties of *non-refoulement*[283] and non-expulsion[284] effectively require the first host country to continue to host and to honor the rights of refugees on an indefinite basis, absent a protection alternative.[285] Contemporary formulations of local integration may add some value to the Convention by emphasizing the dynamic process necessary to transform these rights into a social reality.[286] But as a matter of law, even this activist dimension of local integration may reasonably be thought to be implicit in the duty to implement treaty obligations in good faith.

> **Refugee Convention, Art. 1(C)(3)**
> **This Convention shall cease to apply to any person falling under the terms of section A if:**
> . . .
> **(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality.**

> **Refugee Convention, Art. 34 Naturalization**
> **The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.**

Because local integration is not really an *alternative* solution to simple respect for refugee rights,[287] the focus here is instead on the possibility of moving beyond refugee status towards the acquisition of citizenship in the

[280] See in particular chapters 4.2.4 and 5.2 above. [281] See generally chapters 4–6 above.

[282] See chapter 3.1 above. One difference between "local integration" and respect for refugee rights may be that refugees are to enjoy all relevant rights on par with citizens of the host country, rather than on the basis of the Refugee Convention's contingent rights structure. The UNHCR, however, requires only that rights associated with local integration be "broadly commensurate" with those enjoyed by citizens: UNHCR, "Local Integration," at para. 6.

[283] See chapter 4.1 above. [284] See chapter 5.1 above.

[285] That is, the duty of protection continues absent one of the three alternative solutions previously discussed in this chapter – repatriation consequent to a fundamental change of circumstances in the home country, voluntary reestablishment there, or resettlement to a third state.

[286] "From the host society, [local integration] requires communities that are welcoming and responsive to refugees, and public institutions that are able to meet the needs of a diverse population. As a process leading to a durable solution for refugees in the country of asylum, local integration has three inter-related and quite specific dimensions [legal, economic, and socio-cultural]": UNHCR, "Local Integration," at para. 5.

[287] At best, "local integration" may refer to the recognition of rights equivalency for refugees, that is, the granting to them not simply of respect for rights at the contingent standard set

asylum country. In contrast to simple local integration, enfranchisement through citizenship is legally sufficient to bring refugee status to an end.[288] Becoming a citizen bespeaks a qualitatively distinct level of acceptance of the refugee by the host state. Once a citizen, not only is the refugee guaranteed the right to remain and to enjoy basic rights as required by the Refugee Convention and general norms of international human rights law, but he or she is entitled also to take part as an equal in the political life of the country.[289] By granting the refugee the right to participate in the public life of the state, naturalization eliminates the most profound gap in the rights otherwise available to refugees, since full political rights are not guaranteed to refugees under the Refugee Convention, nor to non-citizens under general principles of international human rights law.

For example, while associational freedoms do accrue to refugees,[290] the drafters of the Refugee Convention upheld the right of states to prohibit refugees from assuming even politicized roles within trade unions.[291] And despite the comparative breadth of associational freedoms guaranteed to non-nationals under general norms of international human rights law,[292] core political rights remain very much the province of citizens:

> The fact that Art. 25 [of the Civil and Political Covenant] is the only provision in the Covenant that does not guarantee a universal human right but rather a *citizen's right* clearly shows that the States Parties may deny *aliens* the right to vote [and to "take part in the conduct of public affairs" and to have "access ... to public service"]. The restriction to the "citizen" ("citoyen," "ciudadano") stems from the concept of the modern nation-State, namely, that only those individuals who are

by the Refugee Convention: see chapter 3.2 above. While not understating the value of enhanced protection of this kind, the ability of refugees to assert most generally applicable international human rights already results in a comparable duty of rights equivalency in regard to many entitlements: see generally chapter 2.5.5, at pp. 127–128, and generally chapters 4–6 above.

[288] "This Convention shall cease to apply to any person ... if ... [h]e has acquired a new nationality, and enjoys the protection of the country of his new nationality": Refugee Convention, at Art. 1(C)(3).

[289] Enfranchisement can be achieved, in principle, other than by the granting of citizenship. "The right to participate in public life ... is not restricted to citizens; a state may choose to extend its application to others who live within its territory": Jayawickrama, *Judicial Application*, at 793–794. But as the French representative to the Ad Hoc Committee insisted, "[t]he purpose of the recommendation in article [34] was to bring about the naturalization of the largest possible number of refugees": Statement of Mr. Juvigny of France, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 25.

[290] Freedom of association is guaranteed under Art. 15 of the Refugee Convention: see chapter 6.7 above.

[291] See chapter 6.7 above, at pp. 885–887.

[292] Freedoms of opinion, expression, association, and assembly are guaranteed to non-citizens under international human rights law: see chapter 6.7 above, at pp. 891–903.

attached to "their" State by the special bond of citizenship may exercise political rights.[293]

Access to citizenship through naturalization[294] is addressed by Art. 34 of the Refugee Convention, a provision without precedent in international refugee law.[295] It is predicated on a recognition that a refugee required to remain outside his or her home country should at some point benefit from "a series of privileges, including political rights."[296] Art. 34 is not, however, framed as a strong obligation:[297] it neither requires that state parties ultimately grant their citizenship to refugees, nor that refugees accept any such offer made to them.[298] To the contrary, the Secretary-General was emphatic that it would be inappropriate to circumscribe the prerogative of governments to decide to whom, and under what circumstances, an offer of citizenship would be made:

[293] Nowak, *ICCPR Commentary*, at 445. See UN Human Rights Committee, "General Comment No. 25: Participation in public affairs and the right to vote" (1996), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 167, para. 3: "In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of 'every citizen.'"

[294] The drafters did not debate the meaning of naturalization, it having been asserted simply that "[t]he word 'naturalization' was well known and bore a distinct meaning": Statement of Mr. Robinson of Israel, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 26.

[295] Grahl-Madsen, *Commentary*, at 244.

[296] United Nations, "Memorandum by the Secretary-General to the Ad Hoc Committee on Statelessness and Related Problems," UN Doc. E/AC.32/2, Jan. 3, 1950 (Secretary-General, "Memorandum"), at 50.

[297] In Weis' perspective, "Article 34 is in the form of a recommendation. It contains, nevertheless, the obligation to facilitate the assimilation and naturalization of refugees as far as possible": Weis, *Travaux*, at 352. See also Robinson, *History*, at 166–167: "Art. 34 consists of two parts. One is a recommendation to or a general moral obligation on States to facilitate as far as possible the naturalization and assimilation of the refugees residing in their countries. The other is a more specific obligation to expedite proceedings whenever an application for naturalization can be or has been made and to reduce the costs involved."

[298] This is not to say, however, that persons legally entitled to acquire citizenship in their country of long-term residence may complain if they are denied privileges extended to those who are citizens. In a decision regarding whether a legally resident non-citizen could avail himself of the right to enter "his own country" under Art. 12(4) of the Civil and Political Covenant, the UN Human Rights Committee observed that "[c]ountries like Canada, which enable immigrants to become nationals after a reasonable period of residence, have a right to expect that such immigrants will in due course acquire all the rights and assume all the obligations that nationality entails. Individuals who do not take advantage of this opportunity and thus escape the obligations nationality imposes can be deemed to have opted to remain aliens in Canada. They have every right to do so, but must also bear the consequences": *Stewart v. Canada*, UNHRC Comm. No. 538/1993, UN Doc. CCPR/C/58/D/538/1993, decided Nov. 1, 1996, at para. 12.8.

> The decision of the State granting naturalization is ... absolute. It cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory.[299]

Similarly, the proposal for what became Art. 34 canvassed the possibility that a long-staying refugee who declined an offer of citizenship made by the host country might thereby forfeit refugee status.[300] Despite the argument that such an approach was warranted to combat the aberrational nature of de facto statelessness,[301] no state party advocated mandatory enfranchisement during the drafting of the Convention. This suggests the persuasiveness of the contrary view, predicated on the recognition that even long-time refugees "may remain fundamentally attached to [their] country of origin and cherish the hope of returning ... Nationality should not be imposed on a refugee in violence to his inmost feelings."[302] Indeed, as the Israeli representative insisted, enfranchisement "if it were not voluntary, ... would be an attack on the spiritual independence of the refugee."[303]

In the result, the drafters committed themselves simply to promote naturalization as an option that should in principle be made available to refugees,[304] stipulating that states "shall as far as possible ... facilitate the assimilation and naturalization of refugees." As the language of Art. 34

[299] Secretary-General, "Memorandum," at 50.

[300] "[T]he idea has been suggested that after a fairly long lapse of time (e.g. fifteen years) the authorities of the country in which the refugee ... had settled might propose to him that he should apply for naturalization. If he failed to do so within a year, or did not give valid reasons for such failure, the Contracting Party would be entitled to consider itself as released from the obligations of the Convention": ibid.

[301] "If, indeed, it is recognized that an individual has the right to a nationality, as a counterpart it should be the duty of the stateless person to accept the nationality of the country in which he has long been established – the only nationality to which he can aspire – if it is offered him": ibid.

[302] Ibid. at 51.

[303] Statement of Mr. Robinson of Israel, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 26. See also Secretary-General, "Memorandum," at 51: "Compulsory naturalization would be particularly inappropriate in the case of persons who had been prominent politically and represent a cause or a party." As Joly observes, contemporary refugees may not seek citizenship in the asylum state, even when it is available to them. "Despite the advantages to be gained, many, if not most, refugees are reluctant to become citizens of the host country, or do so only after a long time has elapsed in exile. Several factors shape this attitude, of which the most important is loyalty to the homeland which they were forced to leave": D. Joly, *Refugees: Asylum in Europe*? (1992), at 64.

[304] A stronger argument is made by Frelick, based upon the physical structure of the Refugee Convention. "By placing the call for naturalization directly after the *non-refoulement* guarantee (Articles 33 and 34), the Convention's drafters indicated what they saw as *non-refoulement*'s corollary principle – that while not returning a refugee is a mandatory minimum, it is not sufficient as a solution to the refugee's plight; that, indeed, a solution entails permanent protection, and that such protection is best achieved through naturalization (for refugees not able or willing to return)": B. Frelick, "Secure and Durable

makes clear, the duty is largely one of principle rather than formally binding.[305]

The bifurcated objective – assimilation and naturalization – was the subject of some discussion. Objection was initially taken to use of the term "assimilation" on the grounds of its "rather unpleasant connotation closely related to the notion of force."[306] The French representative, whose country had submitted the draft language from which the drafters chose to work,[307] explained the importance of retaining the reference to assimilation:

> The term "assimilation" had, of course, a special connotation in sociology and might perhaps carry with it certain unpleasant associations. Nevertheless, in the sense it was used in the context, it was an apt description of a certain stage in the development of the life of the refugee. The Convention was intended to provide refugees with a means of existence and at the same time to accord more favourable treatment than that granted generally to aliens to those refugees desirous of settling in a country for a certain length of time. Its final aim was to permit the assimilation of refugees into a national community by means of naturalization proceedings. He accordingly considered that the term "assimilation" clearly corresponded to the condition that the refugee should fulfil in order to qualify for

Asylum: Article 34 of the Refugee Convention," in US Committee for Refugees, *World Refugee Survey 2001* 42 (2001) (Frelick, "Article 34"), at 42. While Frelick's argument is plausible, the *travaux* record neither a preference for naturalization over other alternative solutions (repatriation, reestablishment, or resettlement), nor any discussion suggesting that the physical placement of Art. 34 after the *non-refoulement* obligation was meant to signal its corollary nature.

[305] A comparable duty of principled consideration is set by Art. 11 of the Refugee Convention, which requires the flag state of the vessel on which a refugee seaman is serving to "give sympathetic consideration" to the "establishment on its territory" of such refugee seamen. As Grahl-Madsen summarizes the Art. 11 obligation, "the State cannot refuse such measures out of hand or as a matter of principle; moreover ... the State has obliged itself to weigh carefully the interest of the refugee in the measure under consideration against other legitimate interests which the State has to consider, and that it shall regard the situation of the refugee with sympathy and understanding. In other words, the State has undertaken to let itself be guided by considerations of humanity, as far as other important interests do not stand in the way": Grahl-Madsen, *Commentary*, at 52.

[306] Statement of Mr. Robinson of Israel, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 26. A similar concern is noted in Michel, "Guatemalan Refugees," at 367: "Article 34 of the 1951 Refugee Convention uses the concept of assimilation to explain integration ... Nevertheless, more recent discussions about local integration mentioned that the reference to assimilation is inadequate because 'the international community has always rejected the notion that refugees should be expected to abandon their own culture and way of life.'"

[307] The decision was taken to work from the French draft, "Proposal for a Draft Convention," UN Doc. E/AC.32/L.3, Jan. 17, 1950 (France, "Draft Convention"), rather than from that submitted by the Secretary-General: UN Doc. E/AC.32/SR.22, Feb. 2, 1950, at 3.

> naturalization ... [I]t was an apt description of the intermediate stage between the establishment of the refugee on a particular territory and his naturalization.[308]

That is, if the naturalization objective were to be effectively pursued, it was necessary first to convince states that refugees could be "absorbed within the national community."[309] As the Canadian representative remarked, "a country might not be prepared to grant naturalization if the refugee were not assimilated."[310]

So conceived, assimilation is not about compelling refugees to change their ways,[311] but rather a means of giving refugees a fair chance to persuade states of their suitability for citizenship.[312] This is very much in line with Grahl-Madsen's perspective:

> What is meant ... is in fact the laying of foundations, or stepping stones, so that the refugee may familiarize himself with the language, customs and way of life of the nation among whom he lives, so that he – without any feeling of coercion – may be more readily integrated in the economic, social and cultural life of his country of refuge.[313]

As regards the facilitation of naturalization itself, Art. 34 commits state parties to show flexibility in relation to "the administrative formalities taking place between the submission of the application and the decision."[314] Thus,

[308] Statement of Mr. Juvigny of France, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 27–28.

[309] Statement of Mr. Perez Perozo of Venezuela, ibid. at 27.

[310] Statement of Mr. Winter of Canada, ibid. at 28. See also Statement of Mr. Cha of China, ibid. For example, "[i]n 1996, Immigration Minister Lucienne Robillard decreed that Somali and Afghani refugees must wait for five years after coming to Canada before they can be considered for permanent status. They need time, she said, 'to demonstrate respect for the laws of Canada and for us to detect those who may be guilty of crimes against humanity or acts of terrorism'": B. Taylor, "The school where pupils look forward to Mondays," *Toronto Star*, Mar. 7, 1999.

[311] UNHCR appears uncomfortable with this historical understanding, which clearly rejects efforts to force refugees to adopt the ways of their host community. "While both Article 34 of the 1951 Convention and UNHCR's Statute make reference to 'assimilation,' the international community has always rejected the notion that refugees should be expected to abandon their own culture and way of life, so as to become indistinguishable from nationals of the host community. In this respect, 'local integration' is the more appropriate term and should be used when referring to this durable solution": UNHCR, "Local Integration," at n. 3.

[312] While still of the view that the terms "adaptation" or "adjustment" better captured this notion, the Israeli representative ultimately "agreed with the concept": Statement of Mr. Robinson of Israel, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 28.

[313] Grahl-Madsen, *Commentary*, at 247. See also Robinson, *History*, at 167, who writes that assimilation "is used not in the usual meaning of loss of the specific identity of the persons involved but in the sense of integration into the economic, social and cultural life of the country."

[314] Statement of Mr. Ordonneau of France, UN Doc. E/AC.32/SR.22, Feb. 2, 1950, at 3.

Art. 34 does not require state parties to engage in the "mass naturalization" of refugees.[315] Nor even are governments expected to waive or reduce substantive requirements for the acquisition of citizenship, such as minimum periods of residence in the state.[316] On the other hand, state parties are expected to make a good faith effort to help refugees meet the usual requirements for acquisition of the host state's citizenship.[317] This duty to facilitate assimilation and naturalization is of a general character,[318] meaning that state parties are encouraged to dispense with as many formalities in their naturalization process as possible so that refugees are positioned to acquire citizenship with

[315] Statement of Mr. Malfatti of Italy, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 29.

[316] The Canadian representative, for example, defended his country's policy of requiring five years' residence of any person seeking Canadian citizenship: Statement of the Chairman, Mr. Chance of Canada, UN Doc. E/AC.32/SR.22, Feb. 2, 1950, at 3. Similarly, Switzerland noted that "Swiss Federal legislation did not provide for any different treatment for refugees in the matter of naturalization. They were treated in the same way as other aliens who were required to have resided lawfully in Switzerland for six years during the twelve years preceding their application before they could submit a valid application for naturalization": Statement of Mr. Schurch of Switzerland, UN Doc. E/AC.32/SR.39, Aug. 21, 1950, at 29. While Art. 10 of the Convention is today only of hortatory value, debates on its adoption suggest that in the view of the drafters, the calculation of a period of residence is not a matter simply of ascertaining how long a refugee has resided outside his or her own country, but rather how much time the refugee has spent in the particular state party. The calculation of a period of residence should, however, be carried out with due regard to the particular disabilities faced by refugees, including a period of enforced presence in the state party, or the time during which continuous residence was interrupted by forces beyond the refugee's control. See chapter 3.2.3 above, at p. 208.

[317] A similar duty was recognized outside the context of the Refugee Convention by the Supreme Court of India, which ordered a state government to desist from efforts to prevent Chakma refugees from securing Indian citizenship on the basis of the usual legal requirements. "[B]y refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India. If a person satisfies the requirements of Section 5 of the *Citizenship Act*, he/she can be registered as a citizen of India": *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 83 AIR 1234 (India SC, Jan. 9, 1996).

[318] "The second sentence of Article 34 mentions but two of several modes of facilitating naturalization. The words 'in particular' make it clear that the scope of the Article is by no means limited to the two kinds of measures mentioned in the second sentence, but also that the drafters considered those measures as being of very great importance": Grahl-Madsen, *Commentary*, at 250. Thus, Weis suggests that a state implementing Art. 34 might reasonably waive requirements to produce evidence that the refugee's former nationality would be lost upon naturalization: Weis, *Travaux*, at 352. Grahl-Madsen advocates a somewhat more aggressive reading, opining that state parties should consider the adoption of provisions providing for "refugee children born in the country [to] acquire its nationality at birth, and [authorizing] refugee youngsters [to] opt for the nationality of the country of refuge upon reaching a certain age": Grahl-Madsen, *Commentary*, at 248.

the absolute minimum of difficulty. Two specific forms of expected facilitation are codified in Art. 34.

First, states are to "expedite" the processing of applications for naturalization received from refugees. Art. 34 is "an appeal to [state parties] to accelerate their procedure."[319] The present Hungarian law, under which refugees need only be continuously resident for three (rather than the usual eight) years in order to be eligible for citizenship, is therefore an excellent example of committed implementation of this standard.[320] More generally, European nationality law does set a decidedly minimalist ten-year deadline to allow lawfully resident persons (including, but not limited to, refugees) to access naturalization procedures.[321]

Second, states are expected to "reduce as far as possible the charges and costs of such proceedings." This general language was adopted in contrast to that of the Secretary-General's draft, which advocated the reduction of costs and charges only in relation to "destitute refugees."[322] As the Turkish representative made clear, the broader language was desirable because "it extended the reduction of costs to all refugees, instead of limiting it to those who were destitute."[323] In line with this commitment, Canada determined in

[319] Statement of Mr. Cuvelier of Belgium, UN Doc. E/AC.32/SR.22, Feb. 2, 1950, at 3. While the British representative initially opposed this duty on the grounds that it would "entail giving priority to the applications of refugees over those of other foreigners," he was persuaded to drop his objections to this clause: Statement of Sir Leslie Brass of the United Kingdom, UN Doc. E/AC.32/SR.22, Feb. 2, 1950, at 3. Blay and Tsamenyi are therefore justified in their conclusion that Art. 34 "effectively requires the States to give the refugees more favorable treatment than the States would normally give to other aliens": S. Blay and M. Tsamenyi, "Reservations and Declarations under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," (1990) 2(4) *International Journal of Refugee Law* 527, at 542.

[320] See M.-E. Fullerton, "Hungary, Refugees, and the Law of Return," (1996) 8(4) *International Journal of Refugee Law* 499, at 516–517. Less dramatically, but similarly of benefit to refugees, are the policies of Germany and Sweden, which reduce their usual residence periods to acquire permanent residence by two years in the case of refugees: "Factsheet Denmark: Refugees and Other Foreigners in Denmark, Seen in International Perspective," at Fig. 6, available at www.um.dk (accessed Sept. 1, 2003). On the other hand, a provision in Dutch law which allowed refugees to apply for Netherlands citizenship one year earlier than other non-citizens – hence very much in line with this aspect of Art. 34 – was abolished as of Apr. 1, 2003: personal communication with Prof. Kees Groenendijk, University of Nijmegen, Dec. 5, 2003.

[321] Under the 1997 European Convention on Nationality, each state party "shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application": European Convention on Nationality, 166 ETS, done Nov. 6, 1997, entered into force Jan. 3, 2000, at Art. 6(3).

[322] Secretary-General, "Memorandum," at 50.

[323] Statement of Mr. Kural of Turkey, UN Doc. E/AC.32/SR.22, Feb. 2, 1950, at 2.

February 2000 that it would exempt refugees seeking permanent resident status (a required step before eligibility for citizenship) from the need to pay a "right-of-landing fee." Coupled with the usual processing fees, a family of four had been required to pay more than C$3,000, leading to concern that recognized refugees would be deterred from pursuing a more durable status.[324] In eliminating the right-of-landing fee, the Minister of Citizenship and Immigration declared that "[r]efugees have already faced enormous difficulties and stresses ... By eliminating this fee we help them to get on with their lives and to integrate successfully into Canadian society."[325] But in general, UNHCR has observed that "[i]n certain countries it is governmental policy to charge heavily for ... naturalization applications."[326] In less developed countries, UNHCR has at times had to make its own funds available to meet naturalization costs, as was the case for the 30,000 Rwandan refugees naturalized by Tanzania in 1980.[327]

Despite these two clear expectations, it remains that Art. 34 sets a duty only to "facilitate" assimilation and naturalization, not an obligation of result.[328] The version of Art. 34 ultimately adopted is moreover framed at a very low level,[329] combining the weakest language of obligation found in the drafts proposed by each of the Secretary-General and France. The French proposal under which states would "undertake" to facilitate assimilation and

[324] L. Sarick, "Increase in fees for immigrants called new 'Chinese head tax,'" *Globe and Mail* (Toronto), Mar. 1, 1995, at A-34. A refugee outreach worker observed that "[r]efugees know that they won't be deported, but an important part of their becoming comfortable in Canada is the fact of being granted permanent residence": L. Sarick, "New tax on refugees a hardship, critics say," *Globe and Mail* (Toronto), Mar. 25, 1995, at A-12, quoting Anab Osman of the Association of Somali Service Agencies.

[325] Citizenship and Immigration Canada, "Landing Fee Eliminated for Refugees," Feb. 28, 2000, quoting Minister of Citizenship and Immigration Elinor Caplan.

[326] UNHCR, "Implementation," at para. 19.

[327] UNHCR paid Shs. 500,000 to the Tanzanian government on the condition that it "shall submit to the UNHCR not later than 31st December 1980 a nominal roll of Rwandese refugees having acquired Tanzanian citizenship": A. Chol, "The Legal Dimensions of the Refugee Problem in Africa," (1992) 14 *Migration* 5 (Chol, "Refugee Problem in Africa"), at 23.

[328] More generally, "neither the [Civil and Political] Covenant nor international law in general spells out specific criteria for the granting of citizenship through naturalization": *Borzov v. Estonia*, UNHRC Comm. No. 1136/2002, UN Doc. CCPR/C/81/D/1136/2002, decided Aug. 25, 2004, at para. 7.4.

[329] While conceding the minimalist legal duty imposed by Art. 34, Bill Frelick argues that an emphasis on legal requirements "is overly narrow, focusing on the little that [the Convention] requires of contracting states and dismissing the suasive power of its non-binding language. It is quite unremarkable that the Convention does not attempt to compel states to facilitate the assimilation and naturalization of refugees, clearly an act within the sovereign's discretion. But the Convention's promotion of assimilation and naturalization is clearly its preferred solution for refugees unable or unwilling to return": Frelick, "Article 34," at 45.

naturalization was rejected in favor of the Secretary-General's less legally charged (though still mandatory) verb, "shall." In addition, the drafters declined to adopt the Secretary-General's proposal for a duty to facilitate assimilation and naturalization "to the fullest possible extent," deciding instead to adopt the somewhat weaker French formulation, referring to facilitation "as far as possible."[330] Given this minimalist obligation, it really cannot be said that even steps which diminish opportunities for refugees to obtain citizenship are clearly unlawful. For example, recent amendments to the Danish Aliens Act which effectively increased the waiting period for refugees and other aliens to acquire citizenship from six to nine years,[331] while clearly not supportive of the underlying aspirations of Art. 34, were nonetheless not so retrogressive as to amount to a refusal to facilitate the assimilation and naturalization of refugees.[332] In view of its very soft sense of obligation, it is perhaps not surprising that Art. 34 has propelled so few governments to make naturalization more readily accessible to refugees.[333]

It would, however, be a mistake to view Art. 34 as completely without force. As Grahl-Madsen has observed,

> It goes without saying that a State must judge for itself whether it is "possible" for it to naturalize a particular individual or any number of refugees. On the other hand, the decision must be taken in good faith. If, for

[330] Compare Secretary-General, "Memorandum," at 50, and France, "Draft Convention," at 10. While the French draft was in most respects the model from which the Ad Hoc Committee worked, a Working Group specifically recommended the use of "shall" rather than "undertake" in Art. 34: "Decisions of the Working Group Taken on 9 February 1950," UN Doc. E/AC.32/L.32, Feb. 9, 1950, at 13.

[331] Specifically, under amendments that came into force on July 1, 2002, the waiting period to acquire permanent residence was increased from three to seven years. After acquiring permanent resident status, a further two-year period of good behavior is required before citizenship may be granted: Danish Refugee Council, "The New Danish Policy in the Field of Asylum and Immigration," Feb. 11, 2002. These requirements apply to all non-citizens, not just to refugees.

[332] The UN Committee on the Elimination of Discrimination against Women has, however, expressed its concern that the extended period before permanent residence may be obtained may effectively entrap non-citizen women in abusive relationships: "Report of the Committee on the Elimination of Discrimination against Women," UN Doc. A/57/38, Part II (Oct. 8, 2002), at para. 347.

[333] For example, "[a]lthough only a few African states have introduced reservations to Article 34, the naturalization of refugees has to date not been widely practiced on the African continent. In many instances, the period of residence is very long, and it is sometimes difficult for refugees to establish the date at which they first took up residence in a particular country": Chol, "Refugee Problem in Africa," at 22. In the European Union, the effective residence requirement to acquire citizenship ranges from a low of three years in Belgium, to a maximum of ten years in Austria, Italy, Luxembourg, Portugal, and Spain: "Factsheet Denmark: Refugees and Other Foreigners in Denmark, Seen in International Perspective," at Fig. 8, available at www.um.dk (accessed Sept. 1, 2003).

> example, a Contracting State outright fails to allow any refugee to be assimilated or naturalized, and is not able to show any other reason than unwillingness, the other Contracting States may have a ground for complaint.[334]

This seems a very sensible formulation. Despite the minimalist nature of the duties it sets, Art. 34 is breached where a state party simply does not allow refugees to secure its citizenship, and refuses to provide a cogent explanation for that inaccessibility.[335] Because a state "*shall* facilitate *as far as possible* the assimilation and naturalization of refugees [emphasis added],"[336] it is incumbent upon state parties, at the very least, to provide a good faith justification for the formal or de facto[337] exclusion of refugees from naturalization.

Thus, a law such as that in force in Zambia, under which refugees are excluded from applying for citizenship even if able to satisfy the criteria applicable to other non-citizens, is presumptively in breach of the Refugee Convention.[338] A successful challenge might also be made to the decision of Australia to deny naturalization to any refugee who has passed through another state en route to Australia, since it is difficult to discern any logical basis for assuming that all such persons are inherently unsuitable for enfranchisement.[339] Art. 34 has real legal force in at least extreme cases such as these where refugees are effectively barred without sound reasons from accessing the usual process to acquire citizenship.[340]

[334] Grahl-Madsen, *Commentary*, at 246–247.

[335] The fact that several states – Botswana, Chile, Honduras, Latvia, Malawi, Malta, Mozambique, Papua New Guinea, and Swaziland – have entered reservations to Art. 34 affirms that it is not perceived by states as completely without legal force. Indeed, the reservations of Botswana, Latvia, Papua New Guinea, and Swaziland expressly provide that a reservation is being entered because those states are not in a position to "accept obligations" with regard to assimilation and naturalization: see text of reservations and declarations of state parties, available at www.unhcr.ch (accessed Nov. 20, 2004).

[336] See Grahl-Madsen, *Commentary*, at 246: "The word 'shall' makes it clear that Article 34 imposes a duty on the Contracting States, not only a recommendation."

[337] For example, Belize is reported to have "an unwritten official policy that refugee residence cannot lead to naturalization": J.-F. Durieux, "Capturing the Central American Refugee Phenomenon: Refugee Law-Making in Mexico and Belize," (1992) 4(3) *International Journal of Refugee Law* 301, at n. 11.

[338] Extraordinarily, the Zambian government was forced to withdraw even a bill that would have allowed refugees to apply for citizenship after *thirty years*' residence in that country (in contrast to the ten-year requirement applied to other non-citizens). One member of parliament was reported to have referred to the proposed legislation as "national suicide": "Zambia debating citizenship for refugees," *Independent Online*, Feb. 9, 2001; "State withdraws refugees bill," *Times of Zambia*, Dec. 19, 2002.

[339] P. Barkham, "Australians toughen up refugee laws," *Guardian*, Sept. 22, 2001, at 17.

[340] Indeed, the UN Human Rights Committee has implied that states may be under a duty to enable persons lawfully resident in their territory ultimately to become citizens. In a decision regarding whether a legally resident non-citizen could avail himself of the right

In other than such egregious situations, Art. 34 is intended to promote, rather than to compel, access to naturalization.[341] Refugee status does not give rise to an entitlement to access citizenship, even after the passage of a long period of time. But the Refugee Convention does commit governments to assisting refugees to access whatever opportunities for naturalization may exist under the host state's general laws. As Frelick concludes, Art. 34 "is not limited to directing contracting states not to do bad, but positively directs them to do good: its underlying premise is about providing asylum, sharing the burdens among states, and seeking just and durable solutions."[342] The facilitation of naturalization is moreover a policy that has been shown to promote harmony within the host state as well:

> The danger of [host] countries not taking positive steps to promote the full social inclusion of people whom they accept as refugees is that this can lead to a withdrawal of their emotional commitment to, and social engagement with, the [host] country. Refugees who perceive themselves to be excluded ... may continue to reside there, but turn inwards and identify themselves in terms of their ethnic minority status ... [T]his leads to the racialization and ethnicization of social relations, which in turn leads to further experience of social exclusion for the group concerned. The downward spiral of a vicious circle becomes established. Logical outcomes are that the ethnic group adopts an oppositional stance vis-à-vis the mainstream, and that ghettos develop.[343]

to enter "his own country" under Art. 12(4) of the Civil and Political Covenant, it was observed that "[t]he question in the present case is whether a person who enters a given State under that State's immigration laws, and subject to the conditions of those laws, can regard that State as his own country when he has not acquired its nationality and continues to retain the nationality of his country of origin. The answer could possibly be positive were the country of immigration to place unreasonable impediments on the acquiring of nationality by new immigrants": *Stewart v. Canada*, UNHRC Comm. No. 538/1993, UN Doc. CCPR/C/58/D/538/1993, decided Nov. 1, 1996, at para. 12.5. See also *Canepa v. Canada*, UNHRC Comm. No. 558/1993, UN Doc. CCPR/C/59/D/558/1993, decided Apr. 3, 1997, at para. 11.3; and *Madafferi v. Australia*, UNHRC Comm. No. 1011/2001, UN Doc. CCPR/C/81/D/1011/2001, decided July 26, 2004, at para. 9.6.

[341] At the Conference of Plenipotentiaries, the British representative observed immediately prior to the vote to adopt Art. 34 that it "should be considered as a recommendation rather than as a binding legal obligation, particularly in view of the use of the words 'as far as possible' and 'make every effort'": Statement of Mr. Hoare of the United Kingdom, UN Doc. A/CONF.2/SR.16, July 11, 1951, at 18.

[342] Frelick, "Article 34," at 54.

[343] D. Barnes, "Resettled Refugees' Attachment to Their Original and Subsequent Homelands: Long-Term Vietnamese Refugees in Australia," (2001) 14(4) *Journal of Refugee Studies* 394, at 409–410, drawing on the analysis of S. Castles and A. Davidson, *Citizenship and Migration: Globalization and the Politics of Belonging* (2000).

Epilogue

Challenges to the viability of refugee rights

Despite its length, this book is no more than a first step in the development of a clear appreciation of how best to ensure the human rights of refugees under international law. The effort here to elaborate and illustrate application of the basic normative structure of the refugee rights regime rests on a thus-far unacknowledged assumption: namely, that governments which choose to become parties to the Refugee Convention intend rights defined therein to be treated as enforceable in fact, and more generally that their consent to be bound by the Convention is a signal that they are committed to managing involuntary migration on the basis of a rights-oriented framework. Each of these assumptions is sometimes questioned.

As a matter of strict law, there can be little doubt that the terms of Arts. 16 and 25 of the Refugee Convention, particularly when read in tandem with Art. 14 of the Civil and Political Covenant,[1] require state parties to implement the rights guaranteed under the Convention in good faith.[2] It is equally clear that when governments fail in practice to live up to this responsibility, they are often compelled to come into compliance with international law as the result of domestic legal remedies pursued before national courts or tribunals.[3] But as judicial oversight is neither always available nor reliably effective, there is the real risk that refugee rights not voluntarily implemented by states

[1] See chapter 4.10 above, at pp. 644–656.

[2] See chapter 1.3.3 above, at p. 62.

[3] See generally chapter 4.10 above, at pp. 644–656. The legal systems of many countries, particularly those that are based on civil law, provide for the direct incorporation of international law into domestic law, including any treaty obligation assumed in accordance with the national constitution. See generally I. Brownlie, *Principles of Public International Law* (2003), at 47–48; M. Shaw, *International Law* (2003), at 151–160. While most legal systems derived from British common law insist on the domestic transformation of international law as a condition for domestic enforceability, any ambiguity in national law is normally to be construed so as to avoid a conflict with international law. This is so because there is an assumption that "Parliament does not intend to act in breach of international law, including therein specific treaty obligations": *Salomon v. Commissioner of Customs and Excise*, [1967] 2 QB 116 (Eng. CA, Oct. 26, 1966), per Lord Diplock at 143. See generally Shaw, ibid. at 135–143; and Brownlie, ibid. at 45–46.

will be denied in practice. Because the Refugee Convention incorporates no clear oversight mechanism of the kind routinely established to promote compliance by governments with other international human rights treaties,[4] the real value of its rights regime may be seen as seriously compromised.

The second and more general concern is that whatever the intentions of the drafters, the nature, scope, and geopolitical setting of refugee protection today simply differ too fundamentally from the reality of 1951 for the Convention's rights regime to be taken seriously as the baseline of the international response to involuntary migration. With developed states increasingly able and determined to deter would-be refugees from ever arriving at their territory,[5] and with roughly 80 percent of the refugee population today located in states of the less developed world,[6] doubts are expressed about the soundness of a Convention that both assumes access to protection, and fails to address how states should reconcile refugee protection responsibilities to their own, often difficult, domestic circumstances.

While it is beyond the scope of this book to analyze these broader concerns in the detail they deserve, this Epilogue seeks at least to acknowledge the most critical political and economic challenges which impede full respect for even freely assumed obligations towards refugees. There are answers to each of these concerns, though clearly not answers provided by law alone.

The challenge of enforceability

Enforcement of Refugee Convention rights has earlier been addressed in significant detail.[7] In brief, the drafters of the 1951 Refugee Convention declined to give the international supervisory agency, now UNHCR, a general right to facilitate the enforcement of refugee rights in state parties. UNHCR was instead entrusted with a general duty "of supervising the application of the provisions of this Convention."[8] To the extent that a state party is willing, UNHCR may, of course, provide direct assistance to refugees to enforce their rights in the asylum country.[9] But under the decentralized implementation

[4] See generally P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* (2000).

[5] See chapter 4.1.3 above. [6] See Introduction above, at p. 3.

[7] See chapter 4.10 above.

[8] Convention relating to the Status of Refugees, 189 UNTS 2545, done July 28, 1951, entered into force Apr. 22, 1954 (Refugee Convention), at Art. 35. This authority links neatly to UNHCR's statutory duty to "provide for the protection of refugees by . . . [p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto": Statute of the Office of the United Nations High Commissioner for Refugees, UNGA Res. 428(V), adopted Dec. 14, 1950 (UNHCR Statute), at Art. 8(b).

[9] See chapter 4.10 above, at pp. 634–636.

structure envisaged by the Convention, it is governments themselves which ultimately remain responsible to ensure that refugees are treated as the Convention requires.

In practice, and despite the externally imposed limits on its authority, there is no doubt that UNHCR plays an absolutely vital role in promoting respect for refugee rights around the world. Most generally, the agency's many standard-setting exercises referenced throughout this book have been literally indispensable to the implementation of Convention duties. UNCHR is regularly involved in the promotion of refugee rights on the ground as well. Invoking the duty of states to cooperate with the agency in its duty to oversee application of the Convention, and specifically to report legislative and practical steps taken to ensure refugee rights to it,[10] UNHCR has persuaded most governments to allow it to have a physical presence in their jurisdiction, to meet with and to counsel refugees, and ordinarily to be assured of access to officials with the authority to respond to concerns regarding the treatment of refugees.[11] Particularly in countries with limited resources or infrastructure to oversee the welfare of refugees, UNHCR may even be authorized to exercise what amounts to a more direct surrogate protector role analogous to that played by the League of Nations during the Minorities Treaties era.[12]

But it remains that the vital role played by UNHCR does not amount to a transparent system to ensure accountability by states for duties undertaken pursuant to the Convention. While UNHCR protection officers in the field provide confidential compliance reports to headquarters staff, states are not required to submit to public, or even collegial, scrutiny of their records. In the result, there is no forum within which to require governments to engage in the kind of dialogue of justification that is standard practice under nearly every other human rights instrument.[13] Nor has there been any effort by UNHCR to devise a formal mechanism to facilitate the presentation by refugees themselves of allegations of failure to respect Convention rights,[14] despite the precedent of other United Nations bodies which have relied on

[10] Refugee Convention, at Art. 35(1).

[11] See generally W. Kälin, "Supervising the 1951 Convention relating to the Status of Refugees: Article 35 and Beyond," in E. Feller et al. eds., *Refugee Protection in International Law* 613 (2003), at 623–624.

[12] See chapter 2.2 above.

[13] See e.g. L. Sohn, "Human Rights: Their Implementation and Supervision by the United Nations," in T. Meron ed., *Human Rights in International Law: Legal and Policy Issues* 369 (1984), at 373–379.

[14] In contrast, even the League of Nations Minorities Treaties enabled the intended beneficiaries to petition the League Council. While no formal standing was granted to the minorities themselves, the enforcement of interstate obligations relied in large part on the information generated from individual petitions. See chapter 2.2 above, at pp. 82–83.

lesser legal authority to establish individual petition systems.[15] The generality of UNHCR's Art. 35 authority notwithstanding, supervision of refugee rights by the agency remains very much a matter of standard-setting and private representations to states.[16]

This may, in fact, be precisely the approach intended by those who drafted the Refugee Convention and UNHCR's own Statute. The more direct enforcement role was in principle attributed to the community of state parties. Any state party may legitimately take up concerns regarding non-compliance directly with any other state party, and may in most cases require the non-compliant state to answer to the International Court of Justice.[17] In practice, there have been some formal protests, including those in response to the notorious push-back policy of states faced with the arrival of Vietnamese boat people in the late 1970s. More commonly, though, indifference or fear of bilateral disadvantage means that few direct efforts are made to correct even egregious breaches of Convention rights. In particular, no application has ever been made to the International Court of Justice as contemplated by Art. 38 of the Refugee Convention.[18]

The question then logically arises: why is it that the Refugee Convention, virtually alone among major human rights treaties, still has no free-standing mechanism to promote interstate accountability under the auspices of an independent expert supervisory body charged with the review of periodic reports from states and the consideration of individuated communications from those aggrieved?[19]

[15] The major petition systems established by Resolutions 728F (1959), 1235 (1967) and 1503 (1970), which have enabled the Commission on Human Rights to take account of individuated petitions, are grounded in no more than the general pledge of states in the Charter to promote respect for and observance of human rights: see H. Steiner and P. Alston, *International Human Rights in Context* (2000) (Steiner and Alston, *Rights in Context*), at 374–420.

[16] National implementing legislation is to be routinely supplied to the UNHCR and United Nations Secretary-General: Refugee Convention, at Arts. 35 and 36. More detailed information regarding the law and practice of constituent units of non-unitary states must also be provided to the United Nations upon the request of any other contracting state: Refugee Convention, at Art. 41(c).

[17] Refugee Convention, at Art. 38.

[18] The lack of interest among states in taking judicial action against another country based on the latter state's failure to respect human rights is borne out as well in the reluctance of governments to make use of interstate complaint procedures under major human rights treaties. See e.g. S. Leckie, "The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?," (1988) *10 Human Rights Quarterly* 249.

[19] See J. Crawford, "The UN Human Rights Treaty System: A System in Crisis?," in P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* 1 (2000), at 1–2, noting that the universal approach to human rights treaty implementation is predicated on the establishment of a specialist supervisory body not of a judicial or quasi-judicial character, with regular reporting obligations leading to a dialogue between states and the

The failure to establish an independent supervisory mechanism for the Refugee Convention may be no more than an historical anomaly. The Refugee Convention was the second major human rights treaty adopted by the United Nations, having been preceded only by the Genocide Convention. It is noteworthy that the Genocide Convention, like the Refugee Convention, is not externally supervised. In part, then, the absence of an independent supervisory mechanism for the Refugee Convention is simply a reflection of the historical reality of the late 1940s and early 1950s, when the entire idea of interstate supervision of human rights was new, potentially threatening, and not truly accepted by states. Yet with the adoption of the Human Rights Covenants and more specialized treaties beginning in the mid-1960s, the establishment of independent mechanisms for interstate oversight of the human rights treaties has become routine. Whatever its accuracy, the historical explanation is thus surely insufficient to immunize the Refugee Convention from the contemporary general practice of meaningful independent supervision.

An alternative explanation for the continuing failure to establish an interstate supervisory mechanism for the Refugee Convention is that the UNHCR's agency-based oversight function provides all that is required by way of supervision. Refugee law is the only branch of international human rights law that can claim an exclusive international organization assigned to oversee its implementation. At best, other UN human rights treaties can rely on the generic authority of a seriously under-resourced UN High Commissioner for Human Rights to support the efforts of treaty supervisory bodies.[20] Because refugee law has its own institutional guardian in the person of the High Commissioner for Refugees, it might be thought that any additional mechanism for oversight would be superfluous.

Yet despite all of UNHCR's critical contributions to oversight of the Refugee Convention, there are at least three fundamental reasons why vesting UNHCR with sole responsibility to oversee the treaty is unwise. First, UNHCR has been fundamentally transformed during the 1990s from an agency whose job was essentially to serve as trustee or guardian of refugee rights as implemented by states to an agency that is now primarily focused on direct service delivery.[21] Simply put, UNHCR is no longer at arm's length

supervisory body. In addition, individual complaints are receivable under the terms of four major UN human rights treaties: see Steiner and Alston, *Rights in Context*, at 738–739.

[20] See generally M. Schmidt, "Servicing and Financing Human Rights Supervisory Bodies," in P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* 481 (2000).

[21] This transition is described in J. Hathaway, "New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection," (1995) 8(3) *Journal of Refugee Studies* 288; G. Goodwin-Gill,"Refugee Identity and Protection's Fading Prospects," in F. Nicholson and P. Twomey eds., *Refugee Rights and Realities: Evolving International Concepts and Regimes* 220 (1999); and M. Barutciski, "A Critical View on UNHCR's Mandate Dilemmas," (2002) 14(2/3) *International Journal of Refugee Law* 365.

from the implementation of refugee protection. In most big refugee crises around the world today, UNHCR is – in law or in fact – the means by which refugee protection is delivered on the ground. In seeking to exercise its traditional supervisory authority, UNHCR therefore faces a serious ethical dilemma, since it is often in the position of being responsible effectively to supervise itself.

Second, the failure to establish the usual form of interstate supervisory mechanism for the Refugee Convention encourages states to avoid the meaningful accountability between and among themselves that is at the root of the entire international human rights project. Because states presently take little, if any, direct responsibility for ensuring that their fellow states live up to international refugee law obligations, the dynamic of persuading, cajoling, and indeed shaming partner states – so critical to the success of the international human rights project in general – is largely absent in refugee law. It is just too easy to leave the task to UNHCR. Yet UNHCR is not really in a position to apply meaningful forms of pressure on states.[22] It is, after all, an entity with a tiny core budget and which is effectively dependent on the annual voluntary contributions of a very small number of powerful governments, virtually none of which has been predisposed to empower UNHCR to act autonomously in advancing a strong regime of international refugee protection. While these states have been generous in providing funds for refugee relief and for humanitarian assistance, they have too often either avoided or, on occasion, evaded UNHCR's insistence on the importance of protection principles. Because UNHCR is, and will remain, politically and fiscally constrained by design, it cannot reasonably be expected to provide the sort of strong voice in favor of unflinching attention to refugee protection that is now required.

Finally, and perhaps ironically, a third reason to establish an arms-length expert supervisory mechanism for the Refugee Convention is to facilitate UNHCR's basic work of protecting refugees. As a matter of practical reality, the agency's on-the-ground efforts to protect refugees frequently require compromise and even expediency in the interest of saving lives. In some truly egregious situations, UNHCR's pursuit of "least bad options" for refugees may leave the agency with little realistic choice but to turn a blind eye to breaches of the very norms it is charged with overseeing – clearly a difficult and often debilitating dilemma. As such, the welfare of refugees might be better served by the combination of a more flexible and operationally oriented international agency combined with an expert, arms-length supervisory body responsible to critique practice based on rules set by international law. This is not to say that UNHCR's statutory authority to *supervise*

[22] See generally G. Loescher, *The UNHCR and World Politics: A Perilous Path* (2001).

the application of the Convention should be reconsidered; there is, in particular, real value in its standard-setting and related legal work. But experience under other human rights treaties makes clear that there is a profound logic to the establishment of a complementary mechanism capable of engaging governments and refugees in a direct and transparent process of bringing rights to bear in real cases.

Despite the failure to establish a supervisory mechanism for the Refugee Convention itself, the central role of domestic remedies in enforcing refugee rights is nonetheless even now reinforced in critical ways by indirect supervision at the international level. Of particular value is the growing awareness of the value of invoking Convention-based refugee rights in briefs to global and regional bodies established to receive periodic compliance reports under other human rights treaties, in the hope of generating authoritative holdings to guide state practice.[23] In view of the significant points of overlap in the normative structures of these general human rights treaties and the Refugee Convention, supervisory bodies may reasonably draw on refugee-specific rights to inform their approach to the interpretation of general norms in the specific circumstances encountered by refugees. For example, it would be entirely appropriate for the Committee on Economic, Social and Cultural Rights to inquire of a state party to both the Economic Covenant and the Refugee Convention why it has not taken account of the Refugee Convention's duty to grant refugees the same access to elementary education as afforded nationals in implementing the Economic Covenant's right to education. Similarly, the Human Rights Committee might be expected to refer to the Refugee Convention's requirement that detention ordinarily be limited to the time prior to regularization of status in supervising a state's obligation under the Civil and Political Covenant to ensure liberty and security of the person.

Even more immediate opportunities to enforce refugee rights exist by virtue of the individuated complaints procedures established under regional human rights regimes, and also increasingly available under the auspices of United Nations human rights treaties. The communications mechanisms under each of the International Covenant on Civil and Political Rights, the

[23] The preparedness of the Committee on the Elimination of Racial Discrimination to take up refugee-related concerns is particularly evident: see e.g. UN Committee on the Elimination of Racial Discrimination, "General Recommendation No. XXII: Refugees and displaced persons" (1996), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 214. See also UN Human Rights Committee, "General Comment No. 15: The position of aliens under the Covenant" (1986), UN Doc. HRI/GEN/1/Rev.7, May 12, 2004, at 140. With regard to the potential value of activism in the context of periodic reporting procedures, see A. Clapham, "UN Human Rights Reporting Procedures: An NGO Perspective," in P. Alston and J. Crawford eds., *The Future of UN Human Rights Treaty Monitoring* 175 (2000).

Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture, and the Convention on the Elimination of All Forms of Discrimination Against Women are open to refugees and other persons under the jurisdiction of a state party on terms of equality with nationals,[24] therefore affording a meaningful forum for the vindication of particularized grievances. While the subject matter of complaints to these bodies must involve a right set by the relevant treaty, refugee-specific rights may nonetheless be invoked to assist the adjudicative body to interpret generic rights in a way that takes special account of the unique predicament of refugees. Thus, even before there is agreement to establish an independent supervisory body for the Refugee Convention, there are still real opportunities to bring refugee rights to bear in international settings.

The challenge of political will

Even assuming that states ultimately agree to bring the Refugee Convention into line with the general expectation of independent oversight, a more fundamental challenge remains. As the empirical evidence presented in this book tragically attests, the reality today is that a significant number of governments in all parts of the world are withdrawing in practice from meeting the legal duty to provide refugees with the protection they require.[25] While states continue to proclaim a willingness to assist refugees as a matter of political discretion or humanitarian goodwill, many appear committed to a pattern of defensive strategies designed to avoid international legal responsibility toward involuntary migrants. Some see this shift away from a legal paradigm of refugee protection as a source of enhanced operational flexibility in the face of changed political circumstances. For refugees themselves, however, the increasingly marginal relevance of international refugee law has in practice signaled a shift to inferior or illusory protection. It has also

[24] "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from *individuals subject to its jurisdiction* who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant [emphasis added]": Optional Protocol to the International Covenant on Civil and Political Rights, UNGA Res. 2200A(XXI), Dec. 16, 1966, entered into force Mar. 23, 1976, at Art. 1. See also International Convention on the Elimination of All Forms of Racial Discrimination, UNGA Res. 2106A(XX), adopted Dec. 21, 1965, entered into force Jan. 4, 1969, at Art. 14; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA Res. 39/46, adopted Dec. 10, 1984, entered into force June 26, 1987, at Art. 22; and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, UNGA Res. 54/4, adopted Oct. 6, 1999, entered into force Dec. 22, 2000.

[25] The analysis here is based on J. Hathaway and A. Neve, "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection," (1997) 10 *Harvard Human Rights Journal* 115.

imposed intolerable costs on many of the poorest countries, and has involved states in practices antithetical to their basic political values.

In the face of resistance of this kind, it must be recognized that no international oversight body (or international agency) will ever be positioned actually to *require* governments to implement rights perceived by states as fundamentally at odds with their fundamental interests. The real challenge is therefore to design a structure for the implementation of Convention rights which states will embrace, or at least see as reconcilable to their own priorities. Only with the benefit of an implementation mechanism of this kind will governments be persuaded normally to abide by even clear Convention duties; and only when compliance is the norm will it be realistic to expect any supervisory mechanism to be capable of responding dependably and effectively to instances of non-compliance.

To be clear, it is suggested here that the goal should be to reconceive the *mechanisms* by which international refugee law, including the refugee rights regime, are implemented – *not* to undertake a renegotiation of the Refugee Convention itself. Those who favor the latter course seem largely to misunderstand the nature and function of the Convention-based protection regime. The goal of refugee law, like that of public international law in general, is not to deprive states of either authority or operational flexibility. It is instead to enable governments to work more effectively to resolve problems of a transnational character, thereby positioning them better to manage complexity, contain conflict, promote decency, and avoid catastrophe.[26] Indeed, international refugee law was established precisely because it was seen to afford states a politically and socially acceptable way to maximize border control in the face of socially inevitable involuntary migration[27] – an objective which is, if anything, even more pressing today than it was in earlier times. Refugee law has fallen out of favor with many states not because there is any real belief either that governments can best respond to involuntary migration independently, or that the human dignity of refugees should be infringed in the interests of operational efficiency. Rather, there seems to be an overriding sentiment that there is a lack of balance in the mechanisms of the refugee regime which results in little account being taken of the legitimate interests of the states to which refugees flee.

First, some governments increasingly believe that a clear commitment to refugee protection may be tantamount to the abdication of their migration control responsibilities. They see refugee protection as little more than an uncontrolled "back door" immigration route which contradicts official efforts to tailor admissions on the basis of economic or other criteria, and

[26] R. Falk, *Revitalizing International Law* (1993), at 91–93.

[27] These points are developed in J. Hathaway, "A Reconsideration of the Underlying Premise of Refugee Law," (1990) 31(1) *Harvard International Law Journal* 129.

which is increasingly at odds with critical national security and related priorities. Second, neither the actual duty to admit refugees nor the real costs associated with their arrival are fairly apportioned among states. There is a keen awareness that the countries in which refugees arrive – overwhelmingly poor, and often struggling with their own economic or political survival – presently bear sole legal responsibility for what often amounts to indefinite protection. In short, the legal duty to protect refugees is understood to be neither in the national interest of most states, nor a fairly apportioned collective responsibility. It is therefore resisted.

There are ways to address both of these concerns. As a starting point, there needs to be a clear recognition that refugee protection responsibilities can be implemented without denying states the right to set their own immigration priorities. The refugee regime is not an immigration system; it rather establishes a situation-specific human rights remedy. When the violence or other human rights abuse that induced refugee flight comes to an end, so too does refugee status.[28] Equally important, even this right to protection is explicitly denied to serious criminals who pose a danger to the host community, and to persons who threaten national security.[29]

Nor is the duty of protection logically assigned on the basis of accidents of geography or the relative ability of states to control their borders. To the contrary, governments have regularly endorsed the importance of international solidarity and burden-sharing to an effective regime of refugee protection. While collectivized efforts to date have been ad hoc and usually insufficient, they provide an experiential basis for constructing an alternative to the present system of unilateral and undifferentiated state obligations.[30] It is particularly important to recognize that different states have differing capabilities to contribute to a collectivized process of refugee protection. Some states will be best suited to provide physical protection for the duration of risk. Other states will be motivated to assist by providing dependable guarantees of financial resources and residual resettlement opportunities. Still other governments will collaborate by funding protection or receiving refugees in particular contexts, on a case-by-case basis. Under a thoughtful system of common but differentiated responsibility, the net resources available for refugee protection could be maximized by calling on states to contribute in ways that correspond to their relative capacities and strengths.

In short, none of the legitimate concerns voiced by governments amounts to a good reason to question the underlying soundness of responding to

[28] See chapter 7.1 above, at pp. 919–928. [29] See chapter 4.1.4 above, at pp. 345–352.
[30] The body of social science research in support of a renewed approach to implementation of the Refugee Convention is presented in J. Hathaway ed., *Reconceiving International Refugee Law* (1997).

involuntary migration in line with the rights-based commitments set by the Refugee Convention and other core norms of international law.

Today, more than ever before, governments are engaged in a variety of serious discussions regarding reform of the refugee law system.[31] Perhaps spurred on by the formal commitment made on the fiftieth anniversary of the Refugee Convention, there is clear interest in exploring both the operational flexibility which refugee law affords,[32] and the value of systems to share both the responsibilities and burdens inherent in refugee protection.[33] It is not at all clear, however, that these initiatives are predicated on the central importance of finding practical ways by which to respond to involuntary migration from within a rights-based framework. Poorer states are glad that there is, at last, some realization by governments in the developed world that ad hoc charity must be replaced by firm guarantees to share responsibilities and burdens. Governments of wealthier and more powerful countries are pleased that UNHCR and other states are now prepared to acquiesce in demands that their refugee protection responsibilities not be construed to impose ongoing obligations towards all who arrive at their territory. But potentially lost in the discussions as they have evolved to date is the central importance of reforming the mechanisms of refugee law not simply to avert perceived hardships for states, but also in ways that really improve the lot of refugees themselves. It is not enough to find sources of operational flexibility, nor even to devise mechanisms by which to share responsibilities and burdens. If the net result of these reforms is only to lighten the load of governments, or to signal the renewed relevance of international agencies to meeting the priorities of states, then an extraordinary opportunity to advance the human dignity of refugees themselves will have been lost.

[31] The various fora in which refugee protection reforms are presently under discussion are summarized in J. Hathaway, "Review Essay: N. Nathwani, Rethinking Refugee Law," (2004) 98(3) *American Journal of International Law* 616.

[32] The governments of state parties to the Refugee Convention agreed "to consider ways that may be required to strengthen the 1951 Convention and/or 1967 Protocol": "Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees," UN Doc. HCR/MMSP/2001/09, Dec. 13, 2001, incorporated in Executive Committee of the High Commissioner's Program, "Agenda for Protection," UN Doc. EC/52/SC/CRP.9/Rev.1, June 26, 2002, at Part II, Operative Paragraphs, para. 9.

[33] State parties to the Convention notably "[c]ommit[ted] [them]selves to providing, within the framework of international solidarity and burden-sharing, better refugee protection through comprehensive strategies, notably regionally and internationally, in order to build capacity, in particular in developing countries and countries with economies in transition, especially those which are hosting large-scale influxes or protracted refugee situations, and to strengthening response mechanisms, so as to ensure that refugees have access to safer and better conditions of stay and timely solutions to their problems": ibid. at para. 12.

The real challenge is to ensure that the reform process is actually driven by a determination fully and dependably to implement the agreed human rights of refugees, even as it simultaneously advances the interests of governments. There is no necessary inconsistency between these goals; to the contrary, they are actually mutually reinforcing priorities. The Convention's refugee rights regime elaborated here establishes a framework that can easily lay the groundwork for solutions to the current crisis of confidence in the value of refugee law.

APPENDIX I
CONVENTION RELATING TO THE STATUS OF REFUGEES (1951)

Preamble

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

Chapter I General provisions

Article 1 Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) 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.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951";

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4 Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5 Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6 The term "in the same circumstances"

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7 Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9 Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II Juridical status

Article 12 Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13 Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15 Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16 Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III Gainful employment

Article 17 Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;
(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;
(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV Welfare

Article 20 Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23 Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

    (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
    (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V Administrative measures

Article 25 Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange

that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26 Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28 Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29 Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31 Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32 Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33 Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34 Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI Executory and transitory provisions

Article 35 Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) the condition of refugees,
(b) the implementation of this Convention, and
(c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36 Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37 Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII Final clauses

Article 38 Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39 Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40 Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories

for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41 Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;
(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42 Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36–46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43 Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44 Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45 Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46 Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

(a) Of declarations and notifications in accordance with section B of article 1;
(b) Of signatures, ratifications and accessions in accordance with article 39;
(c) Of declarations and notifications in accordance with article 40;

(d) Of reservations and withdrawals in accordance with article 42;
(e) Of the date on which this Convention will come into force in accordance with article 43;
(f) Of denunciations and notifications in accordance with article 44;
(g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments,

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

APPENDIX 2
PROTOCOL RELATING TO THE STATUS OF REFUGEES (1967)

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . . " and the words "as a result of such events", in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

Article II Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any

other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

(a) The condition of refugees;
(b) The implementation of the present Protocol;
(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within

the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII Reservations and declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

APPENDIX 3
UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

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

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX 4
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Part I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Part II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the

present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognize them to a lesser extent.

Part III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour.

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his

liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to

such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Part IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized

competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order or all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principle legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations

resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;
(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the

matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant.

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.