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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR
REFERENCE TO COLONIAL AND OTHER DEPENDENT
COUNTRIES AND TERRITORIES

Study on
Human Rights and Massive Exoduses

Sadruddin Aga Khan
Special Rapporteur

*/ Reissued for technical reasons.

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(i)

Sir,

In accordance with paragraph 7 of Resolution 29 (XXXVII) of your Commission, I have the honour to submit herewith the Study on Massive Exoduses and Human Rights.

It is a modest attempt at dealing succinctly with a colossal and increasingly complex problem. The phenomenon of mass exodus, which is becoming a tragically permanent feature of our times, owes its existence to a variety of aspects inherent in contemporary society, each of which calls for an independent and detailed study of its own. The problem is bound to become more serious with time unless imaginative and concrete measures are urgently taken to contain, if not avert, situations of mass exodus. A prerequisite for such measures is the political will of governments, translated into reality at global level.

If the present Study serves only to increase the awareness of the problem by governments and the general public, and provides an incentive for the matter to be further analysed, it will not have been in vain. It is, however, my considered opinion that if we are to succeed in any measure to spare future generations the spectre of millions of uprooted people, more is required than reports and resolutions, however pertinent and useful they may be.

In concluding, I am reminded of what George Bernanos wrote in one of his essays,

"A thought which does not result in an action is nothing much, and an action which does not proceed from a thought is nothing at all."

Accept, Sir, the assurances of my highest consideration.



Sadruddin Aga Khan

His Excellency
Mr. Carlos Callero Rodrigues
Ambassador
Chairman, Commission on Human Rights

(ii)

Goennet einander den Platz auf fremden Boden
und teilet,
Was Ihr habet, zusammen, damit Ihr Barmherzigkeit
findet.

Aber ich taeusche mich nicht mit leichter
Hoffnung in diesen
Traurigen Tagen, die uns noch traurige Tage
versprechen:
Denn geloest sind die Bande der Welt. Wer
knuepfet sie wieder
Als allein die Not, die hoechste, die uns
bevorsteht.

Wolfgang von Goethe, Hermann und Dorothea

Grant one another room in this strange ground
and share freely
What you have, together, that you may meet
with compassion

I deceive not myself with light-hearted hopes in
such days of
Sorrow, for they but promise sorrowful days for
the future
See, the bonds of the world are loosed; what
shall bind them together,
Other than direst need, which on all sides
clearly awaits us.

Translation by George F. Timson, London.

INTRODUCTION

1. The phenomenon of mass movements of people is not new. From earliest times men have been fleeing one another's intolerance or migrating in search of land and livelihood. For the last several years, however, the number and magnitude of flows of refugees and displaced persons have been such as to cause increasing concern within the international community. By the beginning of the 1980s, numbers exceeded ten million, with the exodus from certain countries reaching haemorrhage proportions. At the same time, increasingly large migratory movements within countries and regions have begun to pose economic and social problems not hitherto experienced on quite the same scale.

2. In the last 35 years, with the emergence from colonialism of about a hundred new States, often after a considerable struggle and with an inheritance of artificial national boundaries, fragile national unity, underdeveloped economies, too few cadres and boundless logistical problems, the world has seen an unprecedented proliferation of tensions and conflicts. New ideologies misunderstood by and unacceptable to portions of the population, blatant racial discrimination, civil wars, the terror tactics of more than one dictator, foreign invasion or acute economic hardship have caused millions to decide that any life outside their own country must be more bearable than the present one.

3. The recent mass flights of people to neighbouring countries not only represent wholesale human deprivation and misery, but have come to place upon their hosts and upon the international community as a whole burdens which it is proving increasingly difficult to bear. The three solutions which until recently enabled most refugee situations to be resolved, namely voluntary repatriation, local settlement and resettlement in third countries, can no longer suggest an answer in every case. While circumstances in the home country remain substantially the same and as long as there is no dialogue between the governments most directly concerned, there is no hope of paving the way to a voluntary return. Where the refugees are numbered in hundreds of thousands - or even millions - and land and other resources are scarce, programmes of local integration are practically unthinkable. As for resettlement in third countries, the Indo-Chinese diaspora brought home to over twenty countries which had offered special quotas at the height of the crisis in South East Asia in mid-1979 the difficulty of integrating refugees from an entirely different ethnic and cultural background. Few have found it possible to renew their generous offers of places at anything like the same level - if at all.

4. Meanwhile, in some underdeveloped areas the presence of millions of uprooted people, sometimes accompanied by as many head of livestock, is playing havoc with the struggling economies of the host countries and posing a dire ecological threat which should not go unchecked. As for economic migrants, world-wide economic recession has meant that they are no longer in demand on the same scale as before. Yet millions still strive to reach more affluent countries in the hope of finding work and a better life.

5. As a result of all these factors, many governments have reached the conclusion that serious attention must be paid to analysing the forces which get people on the move, with a view particularly to considering whether means can be found to avert new large-scale refugee situations. At the same time, the need has been felt to study the phenomenon of mass exodus in the context of human rights. Hence the initiative of the United Nations Commission on Human Rights contained in its Resolution 29 (XXXVII) to appoint a Special Rapporteur.

6. This Study, which may have raised great expectations in some quarters, cannot hope to provide all the answers. Moreover, it will mean different things to different people, just as observers of the same landscape focus on different aspects of it. It is, however, written in a spirit of detachment and objectivity, presenting as factual an assessment as possible of the situation at a certain moment of time. The situation has not been exactly the same before, and will not be the same afterwards, for the picture is a changing one and a still photograph taken after an interval would not reproduce precisely the same image as an earlier one.

7. The scope of the Study and the methodology followed by the Special Rapporteur are discussed in the opening chapter. Consultations were held with governments, with specialized agencies and subsidiary organs of the United Nations system, intergovernmental and non-governmental organizations in consultative status with the United Nations Economic and Social Council. As a result of these consultations and of the considerable volume of data made available for the Study, it has been possible to arrive at certain conclusions and recommendations.

8. I wish to thank Governments, their Permanent Representatives in Geneva, the Executive Heads of Agencies, their staff, the Non-Governmental Organizations and numerous private researchers who all contributed valuable information. The special financial contribution made by the Government of Canada in support of the project is gratefully acknowledged.

9. It is abundantly clear that unless ways can be found to counteract the withholding of, or outright violations of, human rights, unless there is a more equitable sharing of the world's resources, more restraint and tolerance, the granting to everyone, regardless of race, religion, membership of a particular social group or political party, the right to belong - or alternatively to move in an orderly fashion to seek work, decent living conditions and freedom from strife - the world will continue to have to live with the problem of mass exodus. This problem, if left unchecked, will increasingly pose a threat to peace and stability around the globe.

10. Imaginative answers must come from governments through their common approach to what remains the compounded predicament of millions of individuals whose most fundamental and legitimate hope is to be able to live in peace without having to move to survive.

It is to them, the silent men, women and children, that this Study is dedicated.

CHAPTER I - CONCEPTUAL FRAMEWORK

"Human rights adhere to individuals: they are
not derived from national status."

Stephen B. Young,
Harvard Law School in
"Between Sovereigns: A Re-examination
of the Refugee's Status"

A. Scope of the Study

11. The present Study is the result of the action taken under Resolution 29 (XXXVII) dated 11 March 1981 of the United Nations Commission on Human Rights. On 9 April 1981, in accordance with operative paragraph 2 of this resolution, the Chairman of the Commission appointed "a Special Rapporteur to study the question of human rights and mass exoduses". In this connection, the Commission considered in operative paragraph 4:

"that the Special Rapporteur in carrying out his Study may seek and receive information mainly from United Nations agencies or departments concerned, and governments, as well as specialized agencies, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council;"

In operative paragraph 7 of the resolution, the Commission requested:

"the Special Rapporteur to submit his study to the Commission at its thirty-eighth session, together with conclusions and recommendations."

12. In carrying out his task, the Special Rapporteur was also mindful of Resolution 30 (XXXVI) of 11 March 1980 in which the Commission had expressed concern at indications that:

"large exoduses of persons and groups are frequently the result of violations of human rights."

The resolution also called for a report, in its operative paragraph 5, by the Secretary-General, which was submitted on 27 January 1981 (Document E/CN.4/1440).

13. In paragraph 5 of the Report, the Secretary-General stated that

"The root causes of situations involving mass exoduses, are often complex. They may relate to political or military conflicts, internal or external, to civil strife, persecution or other forms of violations of human rights, be they civil and political or economic, social and cultural rights."

He indicated various approaches adopted by him, in accordance with his responsibilities under the Charter, to address the problem of mass exoduses and expressed the view that

"... further investigation or articulation of the nexus between violations of human rights and mass exoduses are subjects which may be deserving of consideration by United Nations organs such as the Commission on Human Rights with a view to devising appropriate, complementary approaches or procedures for dealing with such situations, bearing in mind, however, the observations made in paragraph 6 above."

In paragraph 6 of the Report, the Secretary-General stated:

"There are doubtless many situations in which mass exoduses are caused by denials of human rights, and the Secretary-General does not fail to point this out in his contacts and consultations with the parties concerned. However, the Secretary-General often finds that considerable caution needs to be exercised in the public disclosure of the precise substance of his contacts with Governments concerned, including those on the nexus between mass exoduses and the full enjoyment of human rights, so as to avoid prejudicing future contacts and closing the possibility of his being of assistance in the future to the victims of such situations."

14. At its 35th session the General Assembly adopted, without a vote, Resolution 35/196 of 15 December 1980 in which it expressed deep concern at the continued incidence of large-scale exoduses and displacements of populations and at the resulting hardships and problems of the persons and states concerned. At the same time, the General Assembly had been seized with the question of "international co-operation to avert new flows of refugees". Through an initiative taken by the Federal Republic of Germany, the Special Political Committee has discussed in detail ways and means to avert or contain mass exoduses involving refugees leading to the adoption of Resolution 35/124 of 11 December 1980. The Report submitted by the Secretary-General in accordance with paragraph three of this resolution (A/36/582 and the addenda), containing observations received from governments, have many elements directly relevant to the Study of the Special Rapporteur. The subsequent resolution adopted by the General Assembly at its last session (A/36/148) established a Group of Governmental Experts whose work will have direct relevance to various aspects of the phenomenon of mass exodus.

15. In carrying out his task, the Special Rapporteur has based his findings essentially on actual situations from 1970 to 1980 in which international assistance has been needed by tens or hundreds of thousands of people who left their countries for a variety of reasons.

16. Throughout the Study, statistics of refugees and displaced persons cited are in practically every case those reported by UNHCR, which generally receives them from governments (a notable exception was UNHCR's own individual registration of Indo-Chinese refugees). Figures of population and gross national product (GNP) are taken from the World Bank's 1981 Report, and relate to the year 1979.

B. Human Rights

17. In recent decades, the use and abuse of the concept of human rights has become more widespread than ever before, partly because of frequent violations of these rights and partly due to greater awareness of them, on the part of both the individual and the State. The term "human rights" itself contains elements of ambiguity: while the "human" part is clear, the notion of "right" implies entitlement, the possibility to claim legitimately what may be denied. However, this is hardly the way governments view human rights. The situation reflects the conflict between the classic and progressive schools of international law. As efforts are made to have individuals, rather than States, as subjects of international law, an equally strong case is made by States to safeguard their sovereign prerogatives.

18. Since the individual is the ultimate beneficiary in any system of international law and practice, the need to respect human rights is all the more important. These rights, as embodied in the Universal Declaration of Human Rights of 1948, constitute a set of guidelines, a code of conduct, of how, in an ideal society, the nation-state should deal with the individual. The former may not abuse the latter. The rule of law should reign supreme and impartial courts must

enforce this even against governments. The State is called upon to respect the privacy of the individual - including his freedom of thought, religious practice and opinion. The economic and social progress of man is also guaranteed in some detail. He has the right to private property, employment, social security, education, medical attention, food, housing and even clothing. In the world of the eighties, it holds out promises which are utopian. The Declaration and its relevant articles are an ideal backdrop, a shimmering mirage which we strive to attain. If these should be rights, how many governments are in a position to ensure that their citizens can enjoy them? Are they indeed always accessible to the very men and women who hold the reins of power in the majority of independent nations today?

19. In connection with the conceptual framework of this Study, the Universal Declaration of Human Rights of 1948 has been used as a basic text against which the study of mass exodus has been carried out. It is however fully realized that the 1948 document was essentially a declaration of intent on the part of States, and had no binding effect. Although it had considerable impact as a result in terms of moral pressure, particularly coming as it did in the atmosphere at the post-war era, large portions of the Declaration have, by the very nature of things, remained unheeded by many States in practically every continent.

20. Realizing that this declaration of intent needed to be translated into more concrete terms leading to tangible action, the United Nations General Assembly tenaciously carried forward the work initiated in 1948. The two most important results were the International Covenants (i) on Economic, Social and Cultural Rights and (ii) on Civil and Political Rights, the latter having an Optional Protocol. The purpose was to

enable States to "voluntarily obligate themselves to observe new rules of international law, making individuals into subjects and not just objects of that jurisprudence". ^{1/} These Covenants were followed by the Declaration on the Elimination of All Forms of Racial Discrimination, which the General Assembly adopted unanimously in 1963, and the International Convention on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly in 1965.

21. The number of accessions to these Covenants has been increasing steadily, and mechanisms for monitoring and implementation have been devised. At its last Session, the General Assembly passed several resolutions relevant to human rights questions. In Resolution 36/58, the General Assembly, "having noted the report of the Secretary-General on the status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights" and after noting with appreciation that more Member States had acceded to the Covenants, took "due note of Economic and Social Council decision 1981/162 of 8 May 1981 concerning the review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights and looks forward to further results in this regard at the first regular session of the Council in 1982."

^{1/} Stephen B. Young, "Between Sovereigns: A Re-examination of the Refugee's Status", Harvard Law School, 1981.

22. Regional arrangements for the promotion and protection of human rights were the subject of Resolution 36/154 in which the Organization of African Unity was commended on the adoption of the African Charter of Human and People's Rights. The holding of consultations with Member States of the Asian region on arrangements for a seminar at Colombo on promotion and protection of human rights in the region was noted. In Resolution 36/169 referring to the observance in 1983 of the thirty-fifth anniversary of the Universal Declaration of Human Rights, the General Assembly appealed to Member States, the specialized agencies and all international organizations, governmental and non-governmental, concerned with the protection and promotion of human rights, to take measures to ensure that the anniversary is the occasion of special efforts to promote international understanding, co-operation and peace as well as the universal and effective respect for human rights. In Resolution 36/165, the General Assembly decided to establish, at its next session, an open-ended Working Group for the purpose of concluding the elaboration of the draft declaration on the human rights of individuals who are not citizens of the country in which they live.

23. An analysis of the Covenants, although useful, would be beyond the scope of this Study. In any case, the majority of the countries from which a mass exodus has occurred during the period of the Study has not so far acceded to those Covenants. The Special Rapporteur felt that for the purpose of establishing the nature of the relationship between human rights and mass exodus, it would be adequate to analyse article by article the 1948 Universal Declaration of Human Rights in order to establish to what extent exodus is a by-product of a violation of these rights.

24. To assert that the phenomenon of mass exodus would practically disappear if States respected - or, in the case of economic rights, had the means to respect - the rights elaborated in the Universal Declaration amounts to saying the obvious. What has to be established is the extent to which in any realistic terms, taking into account the social, political and economic realities of our times, it is possible to take action at international level for containing, if not eliminating, one of the most tragic phenomena of our times.

C. Mass Exodus

25. Terminology can cause confusion, and problems of nomenclature have contributed to the lack of understanding of the phenomenon of mass exodus. While recognizing, as Erasmus did, that "all definitions are dangerous", it is exceedingly difficult to plan adequately if the problem is not delineated. For the purpose of this Study, two main criteria have been used for a situation to qualify as mass exodus:

- (i) In quantitative terms, if the number of persons leaving is very high in relation to the country of origin or the country of asylum. It is difficult to establish a percentage vis-à-vis the national populations, since the size of the two (or more, in the case of there being more than one country of asylum) is bound to be different, just as the loss of manpower of the one or absorptive capacity of the other are bound to be at variance. In the overview of the Decade it will be seen that some of the situations selected have involved a loss of population amounting to more than a quarter of the national population. However, a flow of even one per cent or less in a country with say 40 or 50 million people could well constitute a mass influx for a receiving country.

(ii) In qualitative terms, a situation may be considered one of mass exodus despite the number of people leaving being relatively low, if they should belong to a particular minority, such as a religious or ethnic group. If events or circumstances prevailing in a given country and affecting in particular a certain minority or group leads to the departure of a high proportion of them, this could be qualified as a mass exodus.

26. As will be seen, mass exodus may be caused by factors affecting any of the various spheres of human life which the Universal Declaration of Human Rights enshrines, that is to say the personal life or the economic, political and civic aspects of human society.

27. In recent years, greater attention has come to be paid by the media and governments to events surrounding the creation of refugees. Here again, confusion in terminology is a strong contributing factor to the lack of a cohesive global attitude towards the overall problem. Many different terms such as "asylum-seeker", "illegal immigrant", "defector", "expellee", "migrant", "displaced person", "border-crosser" and so on are all used, just as victims of natural disasters are frequently called "refugees" as well. Various categories of people are thus lumped together under the same general heading.

28. The universally-accepted definition of refugee is contained in the 1951 Convention relating to the Status of Refugees, which at Article 1 states that the term "refugee" shall, for the purpose of the Convention, apply to any person who:

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

29. This Convention was extended in time and space as a result of the adoption of its Protocol in 1967.

30. Elaborated in the special atmosphere of the post-war years, the restrictive nature of the 1951 definition does not adequately respond to the variety of situations which arose so frequently in the sixties and seventies. A useful attempt was made by the Organization of African Unity (OAU) to update the concept of refugee. The 1969 OAU Convention in its Article 2 adds to the definition of the 1951 Convention (which is its Article 1) by the following:

"The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country or origin and nationality."

31. As for a definition of de facto refugees, only the Council of Europe has initiated some action, and the definition adopted is the following:

"'De facto refugees' are persons not recognized as refugees within the meaning of Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 as amended by the Protocol of 31 January 1967 relating to the Status of Refugees and who are unable or, for reasons recognized as valid, unwilling to return to the country of their nationality or, if they have no nationality, to the country of their habitual residence."

32. In the case of asylum, neither the concept nor even the term itself appears in the 1951 Convention. The General Assembly in an attempt to overcome this lacuna in the framework of international humanitarian law adopted as an initial step the "United Nations Declaration of Territorial Asylum" in its Resolution 2312 (XXII) of 14 December 1967.

33. Subsequent efforts to codify the law of asylum did not yield satisfactory results. On the contrary, when, at the initiative of the United Nations High Commissioner for Refugees, the United Nations convened a Conference of Plenipotentiaries on Territorial Asylum in Geneva in early 1977, the tendency on the part of States to safeguard their sovereign prerogatives appeared to be so marked that instead of making progress for the benefit of the individual, the debates indicated that any tangible results might actually represent a step backwards. The Conference adopted only two articles and adjourned sine die.

CHAPTER II - RELATIONSHIP BETWEEN
MASS EXODUS AND VIOLATIONS OF HUMAN RIGHTS

"A quoi sert-il de parler d'égalité entre les citoyens et de libertés fondamentales à ceux qui n'ont que la liberté de mourir de faim, ou de liberté de travail à celui qui ne trouve aucun emploi?"

Président Félix Houphouët-Boigny
of the Ivory Coast

34. A number of combined factors get people on the move. Whether political or economic in nature, exodus could be prevented or circumscribed only if conditions were to be drastically different at the point of departure. To change these conditions would however appear to be a task of such challenging magnitude as to defy the competence and capability of any individual organ of the international community. It would require a global approach towards such problems as human rights, economic and social disparities, peace and security, food and population. Politics would have to take second place and governments might have to accept a more flexible interpretation of national sovereignty. Such conditions are not about to be established. We live in an imperfect world.

35. For the purpose of this report, priority must be given to violations of human rights as an important cause of mass, as opposed to individual, exodus. As explained earlier, particular attention has been given only to the relevant articles of the Universal Declaration.

36. In all the situations taking place during the past decade, violations of the spirit, and frequently of the letter, of the Universal Declaration of Human Rights and its Preamble must be recognized. The rule of law, which is the only guarantee of just treatment of the individual, was simply non-existent in many of the countries from which exodus took place. Local conditions, a state of internal or external conflict, the authority of dictatorial or despotic régimes and resulting arbitrary rule by decree prevented individuals or groups from getting a fair hearing or seeking redress. Worse,

the law was often misused to dispossess and/or expel communities, to institutionalize racial or economic discrimination and to make it impossible for parts of the population to continue to live in their country of habitual residence. The only recourse "to rebellion against tyranny and oppression" (Preamble to Declaration of Human Rights) was to leave and seek opportunities elsewhere. The reports and/or summary records of the Commission on Human Rights, of its Sub-Commission on Prevention of Discrimination and Protection of Minorities, of the International Committee of the Red Cross (ICRC) and of Amnesty International, as well as those of other bodies dedicated to upholding human rights, amply document these statements of fact.

37. It is important to point out that the Declaration was violated also when the rule of law failed to be applied to groups who were not necessarily citizens of the country or to the stateless. "Everyone" is entitled to the rights and freedoms listed in the other articles, and no distinction is to be made among people due to their national or social origin, property, birth or other status". Further, the status of the sovereign authority of the country or territory to which a person belongs is irrelevant to an individual's claim to enjoyment of human rights.

38. Member States, in the Declaration's Preamble, have "pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms". Would exodus have reached such proportions if this noble statement of intent had been adhered to?

Article 3: Everyone has the right to life, liberty and security of person.

39. The breakdown of the political and economic structures of many countries which have suffered the effects of external or internal strife and the presence of foreign troops have often prevented the provisions of Article 3 from being applied. Indeed, a large number of exiles would have lost "life, liberty and security" had they not left their countries. These were often presented as options: life might be less threatened if liberty were forfeited. Security, on the other hand, is a right which most innocent bystanders can hardly enjoy in times of war - especially if the very life-support system of an entire population is totally disrupted or destroyed by sophisticated weapons.

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.

40. Articles 4 and 5 have been all too frequently violated during the past decade. Worse, slavery and torture have been institutionalized by certain régimes. The former is still slavery under any other name, especially if it should be based on racial considerations. The latter is practised in a long list of countries, and many refugees have given ample and well-corroborated evidence to this effect. Work on a draft Convention against Torture proceeds (cf. document E/CN.4/1512 - E/CN.4/Sub.2/495, paragraph 157), but as the Sub-Commission on Prevention of Discrimination and Protection of Minorities notes, there are two basic problems: that of the principle of universal competence provided for in the Convention, and that of setting up machinery for its application.

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 a 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.

41. The Declaration's Articles dealing with the individual before the law (6-12) have to be viewed in the context of the particular situation prevailing in many of the countries from which mass movement has been forthcoming. Sadly, most of the provisions are rather academic in times of conflict. More importantly, they appear to have been conceived for a society in which the legislature is truly independent, where "competent national tribunals" (Article 8) exist and where where "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" (Article 11(1)).

42. This is a "never-never land" for most of the victims of man's inhumanity to man. Conditions prevailing in many countries make it all the more incumbent on those whose responsibility or inclination it is to uphold human rights to spare no effort in seeking rapid change. How can we expect a reduction in the number of asylum seekers if present practices are allowed to continue?

43. Tragically, refugees who left their country because their human rights were forfeited are often subjected to equally harsh treatment in countries of asylum and even forcibly returned. As Stephen Young of Harvard Law School states: "The international law on human rights does not bear on the most important opportunity for a refugee or stateless person obtaining access to a land of refuge. Human rights law speaks to the treatment of people within a jurisdiction, not to their ease of entry. The drafters of the Universal Declaration consciously refused to adopt asylum as a universal human right when such a right had been proposed." 2/

2/ Young, op.cit.

44. To be sure, Article 12 is hardly ever observed in conditions leading to mass exodus. "Interference with the privacy, family home or correspondence" of individuals is at best unavoidable and at worst *délibérat*e. In times of conflict, political or social upheavals and/or martial law, who indeed could claim "the right to the protection of the law against such interference or attack", even though provisions of the Geneva Conventions, which the ICRC strives to uphold, seek to protect this right.

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.

45. Both paragraphs of this Article are seriously eroded, in that most totalitarian régimes reserve the right to oversee and regulate movement of their nationals both within and outside their borders. The very fact that a person has moved without obtaining the necessary permit or visa is a punishable act.

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.

46. The most relevant Article in terms of mass exodus is perhaps Article 14 in view of the illustration it provides of the dichotomy between the sovereign prerogatives of States and the rights of man as the ultimate beneficiary of any social contract. In the original draft of this Article, when it was debated in 1948, it was proposed that everyone should have "a right to seek and receive asylum". Governments found that

granting such a right which could be ultimately claimed would not only impinge on their sovereignty - whether to receive a person or not - but might also cause havoc in terms of movements between States, particularly in times of conflict. Whatever the merits of the reasoning, the formula was changed to "the right to seek and enjoy". Paragraph 2 further eroded the principle.

47. Although this Article does not in itself serve as a source of mass exodus, the concept underlying it provides the overall framework within which most of the movements of population today take place.

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.

48. Mass exodus may not have been related to systematic violation of Article 15, paragraphs 1 and 2. However, some governments have found it convenient to make it difficult for certain communities to prove their nationality so as to expel them as non-citizens or stateless persons. This has forced the international community to organize evacuation and re-settlement at very short notice and under duress.

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.

49. Revolutions and liberation wars have always changed the established order. Article 17, paragraphs 1 and 2 are not recognized in a number of countries, and the State is frequently the sole owner of property as understood in capitalistic societies.

50. Further, social and financial reforms have deprived substantial groups of their property, making it necessary for them to either accept a drastic transformation of their standard of living and lifestyle, or seek better opportunities abroad.

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.

51. The non-application of Articles 18 and 19 has surely forced many to leave their homeland, both during the past decade and previously. Religious intolerance and the curtailing of freedom of opinion and expression have changed the pattern of human settlement on many continents throughout the ages.

52. The decade with which we are concerned, however, may not have been marked by mass exodus on account of specific violations of these relevant Articles. On the whole, individuals whose education and outlook set them apart from their fellow-citizens were generally more affected than the larger sectors of the population whose main concern was their safety in times of conflict and sheer economic survival. Suffice it to say that it may have represented an additional setback to those who had already endured so much hardship. It surely contributed to an even greater sense of despondency and despair.

53. Some groups continue to be persecuted or placed in re-education camps because of their faith or opinion. Their plight is of direct concern to the Commission on Human Rights.

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 of 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.

54. Democracy is in short supply in many parts of the world, and the majority are ruled without "taking part in the government of their country directly or through freely chosen representatives". Article 20 (1) is frequently violated and "the will of the people" is too seldom "the basis of the authority of government", though it may be interpreted as such by the autocratic régimes in power to give legitimacy to their policies. "Genuine elections by universal and equal suffrage", "free voting procedures" are part of a vocabulary which seems to be understood by a very small proportion of nations.

55. All mass exodus which took place during the decade under review poured forth from regions where the prevailing situation prevented individual citizens from exercising their political rights. It should be noted, however, that this constraint is not, in itself, the essential cause for large movements of population. Indeed, some countries seem to have succeeded in compensating the absence of democracy by ensuring that their peoples have access to material well being. This, coupled with restrictions on freedom of movement, appears to have stemmed the flow of what is still limited one-way traffic from some countries.

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.

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.

56. Economic, social and cultural rights set out in Articles 22-28 can hardly be considered a legitimate yardstick in the countries where the scourge of under-development makes it difficult for many to survive or where antiquated structures, illiteracy, unemployment and the absence of a money-economy totally prevent comparison with the industrialized world's concept of standards of living.

57. In this sense the provisions of such Articles have not been violated, per se, in some States for the simple reason that a comparable situation never existed in the first place.

58. Further, what little peace and well-being was available in the traditional societies which "do not disturb the habitual rhythms of work and leisure, habitual places of residence, habitual patterns of family and personal relations" 3/ brutally disappeared when dealt the death-blow of war and/or foreign occupation.

59. In some instances, however, departures were precipitated because whole sectors of the population of particular ethnic groups were denied work or the ability to pursue their former economic activity or education. This frequently took place with the introduction of new régimes whose ideology and policies were directed against the previous social order, or who chose to nationalize and/or centralize the former education system.

3/ Ambassador Jeane Kirkpatrick, Commentary, November 1979

60. There has been conflict between the desire of certain nationalities absorbed within nation-states to retain at least part of their cultural heritage (including their own language), and the policy of the central authorities to phase out (or stamp out) the distinct linguistic and cultural patterns of a homogenous national population. Such conflict between centralization and regionalism has sometimes been violent enough to lead to an exodus of quite considerable proportions.

61. In this respect, Article 28 is a convenient "passe partout" formula: every government will surely claim that it has the best recipe to ensure "a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". Who is to judge? What is clear is that the millions of men, women and children who elected to uproot themselves had little to say in the matter. Their sacrifice may remain the best indictment of a system which other men have imposed or failed to prevent.

CHAPTER III - SYNOPSIS

"Animals that wander must adapt or die.
When man ceases to wander, he will cease to
ascend in the scale of being."

Alfred North Whitehead

62. The decade covered by the Study illustrates the multiplicity and complexity of exodus problems. People flee their native lands for a variety of reasons, and usually as a result of a combination of factors rather than a single one. Amongst these are wars and insurrections, the breakdown of law and order, oppression and anarchy, persecution and the denial of opportunities for normal social and economic development. Some may not have been singled out: they are simply alienated and feel that their country can no longer provide them with a supportive future. Others, particularly ethnic or religious minorities, are often not accepted as full members of the community and may be deliberately forced out.

63. In all these cases, the social contract has failed temporarily or permanently. Even those who escape floods or famine conditions may have to do so because neither their government nor the international community at large has been able to avert the situation or bring them succour. Where land has been appropriated, social and cultural customs suppressed and only such alternatives offered as are deemed unacceptable, disaffection may be total. Yet these measures are usually carried out in the name of modernization and progress. Herein lies much of the crux of the matter.

64. Where only a few decades ago, many societies were still largely feudal or tribalized, education very far from being universal, traditional authority could generally keep in check divisive tendencies, and to the extent that they could not, conflict was localized. In recent times, modern states attempted to eradicate the tribal system and feudalism. As

secular republics, they recognize the equal rights of their citizens, but expect the population to conform to a simplified pattern designed to give the nation cohesion, when in practice broad sections of that population are ill prepared to give up their individuality, whether this be in terms of attachment to particular customs, to a native language, to a traditional mode of education or livelihood, or to living in a particular village or area.

65. In some instances, real tensions in a society have successfully been camouflaged, at least for a short time, by the use of minorities as scapegoats to divert attention from broader issues and/or to preserve the influence of those in power. Perusal of the summary records of the Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities bears this point out.

66. In this twentieth century, firearms of every description have become much more freely available than ever before. Frequently, elements which resist change have taken to the use of force, with or without help from outside, or have opted to leave their country - or perhaps each in turn. Often those who leave are the young and educated who, seeing no opportunity in their own homeland for what has come to be called "upward mobility" unless they conform, leave hoping for a better chance outside.

67. These problems are always exacerbated when the country has already been levelled by war. The world has seen even within the decade we have studied the virtual destruction of several countries' economies. The resulting chaos with shortages

of every kind - housing, jobs, commodities, educational materials and so forth - are hardly incentives to stay, while the early departure of some of the most skilled who have comparatively easier access to information on opportunities outside their countries (notably in what we shall call the North) only serves to accentuate the difficulties of setting the economy back on its feet. If the war or post-war conditions have been responsible for forced displacements of population, the unsettling effect of having been uprooted once or even several times previously is something conditioning people for a final uprooting - out of the country.

68. The colonial partition of Africa, a continent already seriously weakened by the slave trade, without reference to the geographic, economic, social or political elements of African life, left an inheritance of largely artificial boundaries as well as a structural imbalance derived from colonial self-interest. Some national development strategies which placed emphasis on modernization (education, creation of urban jobs, horizontal and vertical growth of cities and so on) tended to neglect the rural areas. Despite what the Organization of African Unity has called "a deep sense of mutual communication within the African continent, a common consciousness which creates a degree of cohesion", both internal and interstate tensions have erupted which have led to exodus, while at the same time perceptible disparities in countries' gross national product have combined with related factors (such as soil erosion, recurrent drought conditions) to bring about a drift to the towns and/or international migration within

Africa. Indeed, in recent years, a mounting level of migration from Africa to industrial countries of other continents has been observed. It consists mainly of skilled manpower which many of the home countries can ill afford to lose. The very departure of these people may doom the home economies to loss of jobs which had depended upon the existence of those skills. This siphoning off of skills directly hindering the pace of development in Africa requires constant attention, as does the parallel phenomenon in Asia.

69. Common to many countries of the world during the decade of this Study has been a prolonged liberation struggle the response to which has been the cause of mass exodus. Particularly in southern Africa, minority régimes abrogated powers to advance their own interests at the expense of the majority, guarding their privileges with violent methods which have made many victims. Apart from exercising repressive tactics within the boundaries of the countries they rule, they have gone so far as to victimize a second time the innocent people who have fled their régimes by carrying out military attacks upon refugee camps, several of which have been those assisted by UNHCR.

70. The various "push factors", analysed in the context of violations of human rights and elaborated to a degree above, should be viewed against the backdrop of other fundamental problems which confront developing countries.

71. First among these is the rate of population growth in what we shall call the South. This may be such that the population can double in one generation, whereas it is levelling out or even falling in the North. To give a few examples, the average annual population growth in the 36 countries of the World Bank's "low income" group (countries with a per capita GNP of \$370 or under) is 2.6 per cent, that is to say three to four times that of the 18 "industrial market economies" of Western Europe, North America, Australia and New Zealand and the six "nonmarket industrial economies" of Eastern Europe. It is 26 times that of Austria, the Federal Republic of Germany or the United Kingdom, all of which have a 0.1 per cent annual growth, while the German Democratic Republic has a negative growth rate of 0.1 per cent. The consequence in the South is the entry into an already crowded work force of a youthful population whose expectations are not always going to be met.

72. Secondly, there is global food insecurity in the South and a hunger-induced rise in death rates. In some countries, one child in four dies before its fourth birthday. Malnutrition opens the way for a range of diseases, some of which will be fatal, so that life expectancy in some countries of the South is as low as 40-42, compared to 72-74 in the North. What the World Bank has called "vicious circles of poverty ... drawn tightest of all round the least developed countries" and Galbraith has termed the "equilibrium of poverty" translate into a prediction that by the year 2000, anything between 630 and 850 million people will still be living at below a satisfactory subsistence level.

73. Thirdly, there is food scarcity and soaring food prices in many less developed countries. Quite apart from other factors, the spiralling oil prices of the 1970s hit the South hard and may have made the cost of transportation prohibitive. With the need for hard currency to purchase imports even more acute, food production has sometimes come to be sacrificed in favour of export crops. Furthermore, the uprooting of peasants by economic policies adopted by élitist governments, the loss of livestock and crops through inclement weather conditions and central government methods which turn out to be disincentives to some agricultural workers to produce more food are among the elements contributing to scarcity and spiralling prices. As a result, a 50 per cent increase in per capita income in the South may take 30 years to achieve, as in the period since 1950, while in the North the growth rate may be at least twice to three times higher.

74. Fourthly, growing inflation and unemployment may be chronic in the South, where unemployment may be as high as 50 per cent nationally and be even higher in urban areas. Without investment in what has been called human development - including the raising of educational and skills levels and the improving of health and nutrition - the South finds it difficult to keep inflation down and create sufficient jobs. These problems may already have been exacerbated by the flight of skilled manpower to more developed countries.

75. A fifth element to be taken into account is the ecological deterioration which natural or man-made disasters have wrought. The process of deforestation which has gone on for centuries, overgrazing, the recent incidence across many areas of the third world of severe drought conditions which destroyed plant and wild life, and damage to the environment in times of war have led to a worsening of conditions in many countries of the South.

76. These factors may bring large sectors of the population to the threshold of economic distress, one result of which will be an exodus from rural areas to cities. Since in most cases such movements cannot be readily absorbed, unless transnational migration should occur to provide the necessary safety-valve, unrest and destabilization are to be expected. In other words, a combination of factors which add up to a lack of economic opportunity for all too many people has an almost unavoidable corollary: political disruption which triggers the uprooting of sections of the population.

77. Apart from the underlying ethnic strife alluded to earlier which may be the post-colonial heritage of the carving of nation-states from the remains of empires, throwing incompatible groups together and dividing others, the "push" factors are further complicated by other elements such as the high proportion of annual budgets devoted to equipping modern armed forces; the inadequacy of public services, including roads, railways and ports - especially after a period of internal strife or war; the loss of international markets for exports, particularly if a record of instability has made for wariness on the part of both potential customers and investors, and the loss of, or reduction in, the levels of foreign aid. The comparative youth of many nation-states only recently freed from the burden of colonialism, lacking therefore any tradition of statehood and finding it difficult to create national cohesion except along somewhat authoritarian single-party lines, also helps explain the "integrative revolution" facing many developing nations after accession to independence.

78. Thus the inability of many governments to create conditions in which the population as a whole can expect to enjoy - quite apart from civil and political rights - the economic, social and cultural rights set out in the Declaration of Human Rights and the international Covenants, may be better understood. It is in fact worth noting that the overwhelming majority of countries from which mass exodus has occurred in the 1970s have not acceded to either the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights or Optional Protocol to the latter Covenant. They may not see their way to signing until they are able to assure themselves that they have a fair chance of being able to abide by their provisions.

79. Furthermore, it is surely no coincidence that of the 36 countries in the World Bank's low-income category, two thirds have either produced or have received refugees in the course of the 1970s - 12 in each category. Nor is it any wonder that there have been such frequent calls upon the international community to help, or that numerous inter-agency missions have recommended that the question of refugee assistance should be viewed in the broader perspective of development aid.

80. Over and above the "push factors" and the context in which they can be viewed, are what have increasingly been called "pull factors" - incentives to leave the home country exerted from outside. These can be briefly summarized thus.

81. Firstly, the world is becoming smaller in that information and travel have undergone such rapid development as to defy any prediction. Transistor radios and television have penetrated the developing countries and have sparked an awareness of conditions existing in the more affluent regions of our planet. The industrialized countries are seen to be lands of milk and honey where technological progress reduces man's toil and where the standard of living ensures a life-style which is incomparably superior to one's own. Needless perhaps to say, the picture transmitted may be slightly distorted. Immigrants are sometimes taken aback by the sub-standard housing and dole queues which await them after their having nurtured a mental image of a fulfilled life amid fine buildings of the capital city and a profusion of consumer goods.

82. Secondly, when human rights are violated or political changes take place, those who become the victims are encouraged by the thought that their plight arouses sympathy abroad and that they will be given an understanding welcome. This is especially true when the ideology of the new régime is directly opposed by countries to which emigration may be sought, who may give expression to their feelings of opposition over their overseas radio networks. Where there has been previous contact with nationals of those countries, the attraction may be even stronger.

83. The democratic institutions of the North are viewed as guarantees of fair treatment - particularly by minorities. The North tends to publicize its attachment to the principles of the Universal Declaration of Human Rights and publicly condemns dictatorial régimes.

84. Sadly, those who heed this appeal are sometimes sorely disappointed when, upon arrival, they are made to feel unwelcome. This use of double standards can only be regretted.

85. Members of communities which have already settled abroad act as a powerful magnet. They send letters (and sometimes cheques) to their country of origin which may well gloss over difficulties and highlight the advantages of their new environment, in order to allay any fears that they have not "made it" in their new land. Other people then strive to reach the same place, tending to concentrate around a nucleus which has succeeded and can give a helping hand with regard to economic and social integration.

86. At times of political upheaval leading to mass exodus, immigration regulations have frequently been liberalized. The fact that a quota exists may encourage some people to leave who may have been undecided. They may, in the event, reach a country of asylum after the quota has been filled, and find themselves obliged to await their turn in camps.

87. The institutionalization of aid, beginning with the distribution of relief, can in itself be a powerful "pull factor". We shall return to this point in a moment, as to the self-perpetuation of refugee and relief agencies which may find it easier, or more in line with the mandate or their interests, to help in countries of asylum rather than in the countries of origin. It should be said in passing that some agencies have found it increasingly difficult to obtain sufficient contributions to their programmes unless they could attach the refugee "label" to them. The corollary of this may be that they "turn" people into refugees who under existing legal instruments do not qualify for the status of refugee.

88. This fact, combined with the problems so far encountered in carrying out any sort of individual eligibility determination in situations of mass influx - which has been at the basis of a gradual liberalization of refugee criteria, for example through the introduction of the "good offices" role of the United Nations High Commissioner for Refugees - has led to an unavoidable blurring of differences between refugees and migrants. One major consequence of this has been the relative ease in obtaining assistance from receiving countries' governments and from the international community at large, once the international boundary has been crossed. The increasing "operational" role of UNHCR and other agencies may have acted as an additional magnet. Thus readily available and relatively abundant aid may constitute a "pull factor".

89. A further consequence is that the right of asylum has been abused. This has created a regrettable backlash in which genuine refugees stand to suffer. Less flexibility on the part of first asylum countries may evolve from this sequence of factors, and indeed examples could be quoted. Certainly, third country resettlement is affected: many countries which willingly opened their doors at the height of a mass exodus will be more cautious every time the status of would-be asylum-seekers is in doubt, both because of limited absorptive capacity and because of the very high cost of domestic resettlement. Integrative problems add a third dimension: difficulties of integration and assimilation, most pronounced in the case of older people and those with too scanty an education to grapple with a new language, regrettable in themselves because of the individual hardship (or even trauma) involved, have the added effect of causing a hostile reaction, at any rate in those areas where there is a relatively high concentration of newcomers. The public begins to ask what right they have to be admitted to their societies, particularly if there is competition for the same economic sector. The new arrivals may be considered not a potential asset, but a liability. There may be political problems and the rise of extremism.

90. With this erosion of the principle of the law of asylum, genuine refugees may find circumstances militating against them. It would seem that it is time to update refugee, nationality and labour law, and to give fresh consideration to asylum practice. One reason for this is that most of these laws were designed by western countries for their own needs in the post-war era. As we have seen, the Organization of African Unity took a major step forward in Addis Ababa in 1969 by drawing up its own Refugee Convention which is broader in its application than the original instruments. Such reconsideration of the current body of law relating to refugee status, rights and particularly asylum questions would be in line with the principles of the New International Humanitarian Order, to which General Assembly Resolution 36/136 refers.

91. A parallel difficulty which needs to be resolved has been in determining the precise numbers of those qualifying for assistance. No mechanism exists so far to carry out impartially refugee population census.

92. It is ironic that so many people who may not be "genuine" refugees - at least in terms of existing definitions - are able to obtain asylum and assistance even to migrate. Indeed, it is frequently said that much of the third world's population would probably seek to emigrate if they were given international assistance and resettlement opportunities. The relative ease with which people can leave is undoubtedly an important factor to be taken into account in considering mass exodus. When the neighbouring country's border is relatively near, or where there is an established "escape route", the exodus may be the greater.

93. In discussing "push" and "pull" factors, we have alluded to the economic disparities between countries even of the same region and continent, to discrepancies in the provision of aid and even of humanitarian assistance from one area to another. It seems increasingly important that standards of living should not remain so low that people see no alternative but to move. Economic distress ought to be capable of resolution if there are no major political factors to prevent a solution being arrived at.

94. These considerations should be viewed against the fact that the South is now coping with many more refugees/migrants than the North. Not only are the short-term effects often serious for the receiving country in terms of sudden humanitarian need, impact on local markets of increased demand, especially for food, job competition and so forth, but large influxes can - and do - divert attention, resources, energies and time away from development projects. They may set back years of effort aimed at changing conditions in some of the less developed countries, disrupt the fragile political base for many régimes and even alter the ethnic composition of the population.

95. No wonder that mass movements have become yet another catalyst in the North-South polarization. The South feels that its refugees get less, certainly on a per capita basis, than is the case in the North. One OAU observer at UNHCR's Executive Committee once suggested that a whole village could be settled in Africa for the cost of individual care and maintenance for a handicapped case in Europe or Latin America! This is also the subject of dissatisfaction between regions of the South: Africa feels that it has been getting too little

assistance per capita in comparison to South East Asia (hence the "ICARA" meeting of April 1981 which focussed attention on refugees in Africa). The fact is that disparities in the level of assistance even as between different areas within the same region - (sometimes affecting the same refugee group which happens to have obtained asylum in more than one country) have been detected. Moreover, at least one country of origin has remarked on the dichotomy of massive international aid administered on one side of a national frontier while practically none is given on the other. Thus there are certain imbalances in current approaches. To ensure that humanitarian assistance programmes in themselves do not constitute a "pull factor", simultaneity in approach ought to be assured, and be seen to be assured.

96. These points obviously deserve elaboration.

97. As it has been established that mass exodus occurs frequently from countries labouring under severe economic constraints, foreign aid practices should be more meaningfully influenced than they appear to be at present by humanitarian considerations, and administered in terms of how they could best alleviate conditions causing mass flight. When mass movement does occur, it creates demands and pressures on the same governments for humanitarian aid or for the liberalization of immigration criteria. At the moment, there seems to be little linkage in most government administrations between those responsible for administering development aid and those responding to humanitarian needs. Yet on the basis that prevention is better than cure, if development aid were apportioned such that it would contribute to stability in countries and regions where a potential for mass exodus can be identified, this would both contribute to a lessening of human suffering and would lead to economies in the very substantial sums required for relief in countries of first asylum. It should be viewed as an investment for stability.

98. In the same vein, a reappraisal by developing countries of their needs and priorities would help to determine what could be done in terms of aid to prevent mass exodus. Elements which serve - such as corruption, bureaucracy and inefficiency - as disincentives to aid must be eliminated. Similarly, grants made available for developing countries to develop their educational infrastructure, particularly at tertiary level, would help counteract the tendency to facilitate overseas study leading in a high proportion of cases to their remaining abroad (brain drain).

99. These more general comments lead on to some more specific suggestions. They will be made under appropriate headings.

Bi-multi Approach

100. The international pattern of aid, principally that of the North to the South, has continued to be dominated by its bilateral aspect, essentially due to constraints or incentives emanating from national interests. Reasons for emphasis on bilateral aid can be (i) historic, for example relations of ex-colonial powers with ex-colonies; (ii) politico-strategic, i.e. if countries in the North, particularly the Great Powers, have special strategic or political interest in a country or a group of countries due to their membership of defence pacts or geographically strategic position; (iii) commercial, i.e. where an important trade relationship of interdependent nature in terms of import of raw materials and export of consumer good exists; (iv) geographic, i.e. where geographical contiguity creates special relations due to natural migration of labour etc.; (v) religious or cultural, i.e. affinities sanctioned by historical background which create special bonds.

101. In view of the above, multilateral aid has been essentially concentrated in areas or sectors of development where important gaps are left by bilateral aid. However, the role of the two types of aid has enjoyed little or no complementarity. In over-all planning terms, both from national and international points of views, little attention has hitherto been paid to developing an integrated approach towards the recipient countries.

102. Without going into details of development economics or patterns of international aid, it can be said that assistance provided in cases of mass exodus situations has suffered from this lack of an integrated approach. The interest of recipient countries is, naturally, to attract maximum aid, both bilateral and multilateral. The result is often simple duplication or too much or too little aid in key sectors. This is partly also due to a natural tendency of investing on a short-term basis, to get quick tangible results or to make generous gestures towards leaders of the recipient country which serve sometimes their political career more than the long-term interests of the country. Similarly there has been more emphasis on relief aid rather than on root causes or on sectors which call for medium- or long-term involvement, such as local integration. In recent years, however, in recognition of the lacunae in the existing patterns of international aid, a bi-multi approach is being increasingly adopted, particularly in cases where sizeable investment is called for. In the case of mass exodus situations, the advantages of a bi-multi approach are obvious and should be vigorously pursued.

International Labour Compensatory Facility

103. As the overview of the decade relating to international migration flows amply demonstrates, the loss of skilled labour and technical manpower to many countries in the South results in a vicious circle, weakening the development efforts of the country and, consequently, the overall economy which, eventually, leads to more people wanting to leave. One of the areas where the North/South dialogue will need to produce tangible results for the benefit of both sides is the international regulation of manpower flows. Certain aspects of the problem, mainly those relating to difficulties in the North emerging from the presence of large numbers of foreign workers or the so-called guest workers, have received increasing attention in recent years.

104. The United Nations General Assembly is also seized with the overall question and, at its last session, passed a resolution entitled "Measures to improve the situation and ensure the human rights and dignity of all migrant workers" (Resolution 36/160). The resolution takes into account the principles and standards established within the framework of the International Labour Organisation (ILO) and the United Nations Education, Scientific and Cultural Organisation (UNESCO).

105. It is obvious that one of the solutions to the problems created by the flow of labour and the brain drain would be to compensate the countries suffering the loss, in an appropriate manner and in accordance with internationally-agreed criteria. In this connection, the idea of an International Labour Compensatory Facility, which would function on similar principles and methods as do the monetary facilities in the context of the World Bank and the International Monetary Fund, and which has been introduced on the agenda of the ILO, might be worthwhile exploring further in the context of mass exodus situations relating to migratory flows.

Standardization of Criteria

106. An analysis of the types and extent of material assistance provided in mass exodus situations in various parts of the world clearly indicates the absence of uniform criteria for the assessment of what is actually needed by groups or individuals concerned. Thus, in the case of refugee-type situations, the general attitude adopted is that the uprooted and homeless masses are so deprived that whatever is donated free should be gratefully received. This has sometimes resulted not only in substantial parts of aid packages finding their way to local markets or in contributing towards "pull factors", but also in actually harming the recipients of international generosity. It is seldom recognized, for example, that malnourishment or famine cannot be eliminated simply through the "dumping" of staple food which might be part of the surplus of the donor country. Likewise, uncoordinated generosity sometimes practised by non-governmental organizations and voluntary agencies, although well-intentioned, impedes methodical planning. Cynics have sometimes qualified this situation as unhealthy competition in the humanitarian market.

107. It would be desirable to adopt standard and scientific criteria of material aid which are universally recognized and respected both by aid-giving and aid-receiving countries. Some international agencies such as UNHCR, UNICEF and WHO have developed standards in fields such as nutrition, child care, health, hygiene and sanitation. A comprehensive, integrated approach towards standardization of criteria for material assistance would go a long way, not only in overall economy but also in better and healthier services to recipients, particularly in mass exodus situations.

Integrated Multi-Disciplinary Planning Approach

108. When a massive humanitarian emergency arises, the approach adopted in provision of aid is sometimes based on ad hoc decisions which amount more to a series of reactions than actions. The planning process in cases of mass exodus situations must, right from the beginning, be solution-oriented. While providing for immediate needs, attention must be paid as to what should be done so that the situation does not perpetuate itself. Both psychologically and politically, such an attitude adopted at the beginning can have salutary long-term effects, particularly if the root causes are investigated at the same time as mass exodus begins. This means that the very first missions undertaken to respond to the challenge must have the benefit, not only of technicians covering various aid sectors, such as health, nutrition and sanitation, but also a small group of anthropologists, historians and experts on the area. Quite often, the first response from the United Nations to the request of the country at the receiving end of the mass exodus is a fact-finding cum negotiating mission consisting of international civil servants, most of whom are generalists.

109. Aid budgets are sometimes negotiated with recipient governments without adequate prior input from experts. The task of any special representative of the Secretary-General should, at the very inception of a mass exodus situation, be to assemble a multi-disciplinary group which could provide to the United Nations agencies and to governments a comprehensive plan of action. A short list of readily available experts for all potential areas of mass exodus, consisting not only of human resources within the United Nations system but more importantly, of outsiders could be drawn up. International agencies would surely stand to gain by using more short-term consultants

required for specific purposes. In this regard, and in the context of a bi-multi approach to international aid., it would be worthwhile if the potential bilateral donors were to pool their human resources with the international mission sent to assess the mass exodus. This might to some extent limit, mercifully for the receiving country, the endless stream of missions witnessed in all mass exodus situations. The resulting "integrated multi-disciplinary planning team" would help not only in eliminating duplication but also in maximizing the overall impact of international involvement including, in particular, the search for durable solutions, as well as the containment, if possible, of the exodus. Ideally, such a team, under the guidance of the Secretary-General and his special representative, should visit both the country of asylum and the country of origin at the same time.

Humanitarian Observers

110. In the introduction to his Annual Report on the Work of the Organization in 1980, the Secretary-General, in commenting on the question of security, stated:

"It has until now been generally accepted that security and peace-keeping are political matters and separate from emergency humanitarian efforts, although past experience has shown that when the two have happened to coincide the humanitarian task has been greatly facilitated by the presence of peace-keeping operations."

While this comment is essentially relevant to the political role of the Secretary-General in terms of peace-keeping, the basic concept of an appropriate United Nations presence can be extended to humanitarian emergencies as distinct from situations of armed conflict. In fact, in elaborating further on the idea of United Nations presence, the Secretary-General expressed the view:

"A relatively small United Nations presence can have a calming effect on a violent situation out of all proportion to its numbers, armaments or military capacity. I fully recognize the political and other complexities involved. Clearly the authority of the Security Council must be respected, and the principle of national sovereignty strictly observed. On this basis, I believe however, that Member States might consider the possibilities of extending in some form the Organization's very considerable experience of peace-keeping into humanitarian emergencies where conditions call urgently for an element of security."

111. It is suggested that further thought be given to the idea of introducing into the framework of international action in situations of mass exodus, the concept of a "corps of humanitarian observers".

112. It is recalled, in this connection, that already in 1971, when the mass exodus of millions of Bengalis occurred, the United Nations High Commissioner for Refugees promoted the idea of stationing small teams of humanitarian observers on both sides of the border of the then East Pakistan. The subsequent proposal by the Secretary-General in this regard was not accepted by the Government of India so that the full benefits of an international presence of this kind could be assessed. A small team of humanitarian observers was, however, placed in East Pakistan.

113. It is recognized that the role of such a corps of humanitarian observers should be entirely non-political and purely humanitarian. Consequently, any decision in this regard by the United Nations should be taken in a humanitarian context and care should be taken that it is not viewed as an effort parallel to, or in conflict with, the work of the Security Council. The benefit would be similar to that of delegates of bodies such as the International Committee of the Red Cross in situations of armed conflict. In addition to having a calming effect in the areas where they would be stationed, these observers might carry out general monitoring functions both in regard to the rhythm and nature of the exodus and the international aid provided. The corps would consist of volunteers lists of whom might be established in advance on the basis of availability of human resources essentially within the United Nations system, for short rounds of duty in the field. A prerequisite for this role would be the concurrence of the governments concerned. The corps would then spring into action in the context of the trigger mechanism suggested in this Study.

CONCLUSIONS

"One human consideration is surely to widen the choice for the potential refugee, including that of not leaving"

Thai Observer

114. To summarize very briefly the foregoing, the overview of the past decade amply demonstrates that the consequences of mass exodus situations may be measured in terms not only of human suffering but also of threats to national or regional peace and stability.

115. People leave for a variety of reasons, and usually as a combination of factors rather than a single one. The social contract has failed temporarily or permanently. Modernization and progress have made casualties of people who held certain customs and traditions too dear. In the chaos of war and post-war reconstruction, populations may have been repeatedly uprooted, and thereby conditioned for a further uprooting - from their country - when the going is hard. Colonialism left a heritage of artificial boundaries and structurally imbalanced economies. The repressive tactics of white minority régimes have made many victims. Most provisions of the Declaration of Human Rights have been violated.

116. These "push factors" must be viewed against a series of economic realities in developing countries, such as high population growth, global food insecurity and a hunger-induced rise in death rates, inflation, unemployment, the flight of skilled manpower and ecological deterioration - which taken in combination may bring large sectors of the population of the world's poorest countries to the threshold of economic distress. Deficiencies in infrastructure, the high cost of equipping modern armed forces, loss or reduction in both trade and aid and the calamitous impact of oil price rises have in the last ten years further handicapped young nations lacking any tradition of statehood. One result has frequently been the

attempt to create national cohesion along somewhat authoritarian single-party lines, a fact which helps explain what may be termed the "integrative revolution" facing many developing nations following their accession to independence. Hence the difficulty in creating conditions in which normal human rights could be enjoyed, and hence a high incidence of mass exodus in the countries classified as some of the poorest in the world.

117. The other side of the coin is a series of "pull factors" which include an increasingly free flow of information from North to South on economic opportunity, and a belief widely shared by beleaguered potential refugees/migrants that their problems will be better understood by the authorities of countries which uphold human rights. The existence of liberalized immigration regulations or refugee quotas must exert some degree of magnetism, particularly in the case of skilled manpower seeking upward mobility, as may the institutionalization of aid close to a troubled country's border.

118. As a consequence of all these factors, mass movements have become more commonplace, and the principle of the law of asylum has been eroded. It would seem to be time to update refugee, nationality and labour law, and to re-examine asylum practice. Furthermore, to ensure greater clarity in mass influx situations as to numbers of people to be assisted, a mechanism seems to be called for to carry out refugee population census in an impartial manner.

119. Since mass exodus frequently takes place from economically-disadvantaged countries, and since those governments which generally provide the means to mount humanitarian assistance programmes are very often those which are giving development aid, there appears to be a strong case for a more integrated approach to the planning of aid. Various ways in which this might be tackled are suggested in the preceding chapter. At the same time, when mass exodus does occur, it is important to see the problem in the broad perspective of the position of both "refugee-producing" and "refugee-receiving" countries. A simultaneity of approach should help in identifying the long-term solution, and with regard to the administration of humanitarian assistance, will ensure that this in itself does not constitute a "pull factor" by there being any imbalance in the overall picture. Moreover, standardization of multilateral aid criteria will help to iron out other "wrinkles" in the international community's approach to these most important questions.

120. It is suggested that the basic concept of an appropriate United Nations presence can be extended to humanitarian emergencies, as distinct from peace-keeping operations in the accepted sense.

121. It has been found in studying mass exodus that all these situations conform to a certain pattern common to which is the involvement, at an earlier or later stage, of a miscellany of concerned parties, particularly in relation to the provision of essential relief and the production of a considerable volume of informed comment after the event. Yet all the characteristics of this pattern of upheaval and exodus taken together point to certain lacunae which it will be well to attempt to fill if there is to be a lessening of human suffering and of related frictions between States. Three observations are called for here.

122. Firstly, there is an obvious lack of contact in man-made exodus situations between the authorities of the country of origin and those of the country (or countries) of asylum. It would appear that those who leave are "written off" by their government, more often than not being labelled as traitors, criminals, undesirables, subversives or, at best, misguided elements, while the receiving government is left to handle matters. To be sure, when political circumstances change and negotiated settlements can be initiated, bilateral talks are a prelude to any mass repatriation. Governments seldom get together whilst the exodus is underway, however, and indeed they may not even be enjoying normal diplomatic relations at the time which would permit them to do so.

123. As a result, the receiving countries with the help of international agencies mount relief and resettlement operations which may develop and grow in a vacuum without any relation to, or detailed knowledge of, the origins or causes of the problem or its likely resolution. Relief agencies, whether they be intergovernmental or non-governmental, continue to refrain from going far into the background to mass movements on the grounds that they have a humanitarian mandate to fulfil and cannot concern themselves with controversial matters, usually of a political nature.

124. Thus the need for meaningful dialogue with those principally responsible on how to contain the problem remains unmet. Even if the countries of origin should offer a version of the causes which trigger movement which some might qualify as slanted, their responsibility towards their own nationals needs to be upheld - particularly if there is a danger of economic and social disruption in the receiving country and the undermining of peaceful relations between States which share a common border.

125. Secondly, because funds for humanitarian emergencies are finite, one has to think in both "lateral" and "vertical" terms about the co-ordination of humanitarian assistance. By "lateral" is meant the range of emergencies for which assistance is supplied, extending through man-made disasters to economic difficulties in individual countries. By "vertical" we refer to the co-ordination of humanitarian assistance through the successive phases of relief, rehabilitation, reconstruction and longer-term development. Just as the international community had reached a perception of the need for approaches to development co-operation to be integrated, so, increasingly, it is recognized that contributions must be used in the most cost-effective way possible.

126. Already it has been seen that in the not infrequent cases where the origins of an exodus are compounded by famine, the apportioning of aid and timely distribution within the country of origin may contribute to circumscribing the flow. At the same time, the presence of international relief officials may help to create a measure of hope and confidence. An improvement in the psychological climate is indeed a key factor in stemming the departure of groups who tend to influence each other until the movement snowballs beyond control. Conversely, in some situations the availability of international assistance very close to the border but exclusively within the receiving country may help precipitate the flow. It seems to be time to take a broader view and fill the existing lacunae.

127. Thirdly, appropriate organs of the United Nations called upon to deal with causes and, by inference, with prevention tend to be compartmentalized and ponderous, or may be hamstrung by political constraints. At the same time, agencies,

subsidiary organs, intergovernmental and non-governmental bodies assisting displaced populations which are victims of man-made or natural disasters have little or no contact with those bodies whose responsibility it is to address the causes. In this, as in other domains, effective co-ordination remains a chronic problem despite the existence of studies and committees dealing with streamlining and restructuring.

128. As the overview of exodus situations of the past decade demonstrates, large-scale humanitarian emergencies have consistently been met by ad hoc measures and the designation of "focal points" or "lead agencies", as well as the appointment of a co-ordinator or special representative of the Secretary-General whose responsibility did not specifically extend to a liaison function, in the case of mass exodus, between the "refugee-producing" country ("cause") and the "refugee-receiving" countries and/or corresponding humanitarian operations ("effect").

129. The international community is increasingly concerned with causes behind mass exodus and measures to avert new flows of refugees. The General Assembly, at its last session, dealt inter alia with this question in Resolution 36/148. This resolution calls for the Group of Experts to take into account the Study submitted by the Special Rapporteur. It is hoped that the two undertakings will be complementary, bearing in mind the distinct history and terms of reference of each initiative. In a wider context, attention should be drawn also to the General Assembly Resolution 36/136 on the proposal for the promotion of a New International Humanitarian Order.

130. These conclusions lead on to discussion of what might be feasible in terms of prognosis and prescription, prevention and cure.

131. In order to give birth to an "early-warning system", it would be necessary to gather, on an ongoing basis, impartial information from proven sources such as governments, the United Nations presence in the countries concerned (whether the UNDP Resident Representative, Specialized Agencies, UNIC or other) and further informed parties in order to gain an understanding of the background and all the facets of a situation, including the ethnic, economic, political and social aspects. Of necessity, there would be visits to the field. After assessing all available data, an appreciation to include a number of possible scenarios for the future development of the situation would be given to the Secretary-General of the United Nations and to the competent intergovernmental organs.

132. A "trigger mechanism" would be provided by the Secretary-General deciding, after due study of the material and using his executive authority, what action would be required on the part of the United Nations. The Secretary-General might call for further study of the situation, including discussion with the government or governments most closely concerned and/or with the appropriate regional body (Arab League, Council of Europe, Organization of African Unity, Organization of American States) to try to determine how regional containment of the problem could be achieved, to save it becoming internationalized (that is to say requiring involvement of large-scale United Nations operations).

133. In the next stage, the executive entrusted with the task would bring the situation to the attention of those who deal with causes (as distinct from effects) to try to encourage, as appropriate, preventive action before the start of a mass movement. In the case of a political question, he would propose to the Secretary-General that the latter take the initiative appearing most indicated, whether it be consulting interested States or drawing the attention of the Security Council, in a suitable manner, to the problem. In the case of human rights issues, the responsible officer would relay the situation to the Commission on Human Rights which could make an investigation and ensure follow up.

134. It is suggested that after this, there should be liaison on an informal basis with the humanitarian agencies for purposes of consultation. They would thus be alerted and enabled to act swiftly if an exodus did indeed occur, which could be the case even if action were being taken at the source to remove or dissipate the cause(s) of such exodus.

135. The executive entrusted with responsibility in the situation would keep abreast of the relevant work of the General Assembly, the Security Council, the Commission on Human Rights or other competent body tackling "causes", as the case might be, while at the same time ensuring that humanitarian needs were being covered. He would be responsible for seeing that the question were kept under review by the relevant bodies. Simultaneously, he would be in a position to advise on the best way to apportion aid as between areas affected by the crisis in order to reduce to the maximum extent possible the stress/-distress involved. Where necessary, an agency or agencies not so far working on the problem whose expertise were seen to be needed would be invited to participate.

136. Follow-up work could include monitoring of developments in order to report them to the Secretary-General and informal reporting to governments on the progress of the international effort. In the longer term, work could be carried out on seeking to promote regional reflexes to crisis situations, for example through encouraging the creation and/or development of regional human rights mechanisms, in co-operation with the Commission on Human Rights, and through promoting an active interest in the New International Humanitarian Order.

137. Measures to be undertaken should be speedy. Their success would be largely dependent on an informed appreciation of each complex situation and its respective origins, based on ongoing research and analysis. Only an impartial monitoring of situations could lead to a more balanced assessment of circumstances lying at the root of potential exodus and contribute thereby to a more adapted response from humanitarian agencies.

138. Few events go unnoticed in the world today, and the media has been remarkably effective in bringing violations of human rights to the attention of the public. Yet these and other "push factors" are rarely cause for sufficiently active concern until refugees are on the move. Those who could not leave may pay an even higher price for the apparent indifference of their fellow men.

139. Such an approach as has been outlined is no panacea. It may not always circumscribe exodus but could lead in certain cases to containing or diminishing movement.

140. The fact that an undertaking is difficult does not mean that it should not be attempted, Governments will inevitably expect that something should be done on this account if there is to be any confidence that the necessary level of humanitarian response to need and distress will be attained.

(i)

RECOMMENDATIONS

It is recommended that consideration be given to the following:

- (1) An updating of refugee, nationality and labour law and fresh consideration of asylum practice in the context of the promotion of a New International Humanitarian Order;
- (2) A reappraisal of developing countries' economic needs in relation to possible causes of exodus;
- (3) Standardization of international aid criteria;
- (4) Simultaneity in approach to the country of origin and country of asylum to gain a comprehensive view of the overall situation and thus be able to plan better;
- (5) A "bi-multi" aid approach: multilateral aid should take into account bilateral aid, to prevent duplication and ensure an integrated approach;
- (6) The introduction of an effective census mechanism to work independently of relief agencies in order to determine in an impartial and professional way the numbers of border-crossers requiring assistance in mass influx situations;

(ii)

- (7) The introduction of an early-warning system based on impartial information gathering and data collection concerning potential mass exodus situations, leading to expeditious reporting to the Secretary-General of the United Nations and competent intergovernmental organs for the purpose of timely action, if required;
- (8) The appointment of a Special Representative for Humanitarian Questions whose task, defined briefly in the preceding section, would basically be (a) to forewarn; (b) to monitor; (c) to de-politicize humanitarian situations; (d) to carry out those functions which humanitarian agencies cannot assume because of institutional/mandatory constraints; (e) to serve as an intermediary of goodwill between the concerned parties;
- (9) The identification from among groups experienced in humanitarian questions of men and women willing and able to be called upon to form a corps of "humanitarian observers" which, in case of need, could monitor situations and contribute through their presence to a de-escalation of tensions. A prerequisite for this role would be the concurrence of the governments concerned. The corps would facilitate the work of the Special Representative for Humanitarian Questions.