Dialogue with reference a study of the social application of refugee law concerning repatriation in safety and dignity

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April 1995
This paper concerns a study *Social applications of refugee law: repatriation in safety and dignity* (referred to below as *The Study*), prepared by Susan Quick, Mark Chingono and Rosemary Preston for the project, *Toward the reformulation of international refugee law* (IRLP). IRLP is coordinated by the Refugee Law Research Unit (RLRU) and Centre for Refugee Studies (CRS) at York University, Ontario.

The paper is written in such a way as to familiarise the reader with *The Study* and the commentary (dated 13th March 1995 and referred to below as *The Commentary*) on it received from Jim Hathaway, Director of RLRU and coordinator of IRLP. The paper goes on to indicate ways in which the debate might be continued with reference to new insights from *The Study* of relevance to IRLP.

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**The Study**

*Social applications of refugee law: repatriation in safety and dignity*

1. **INTRODUCTION**

The authors of *The Study* are social scientists without expertise in law. They have knowledge and experience of many aspects of war-related migration in several countries. They have not previously researched the process of repatriation.

To guide their work, the authors undertook four tasks suggested as the terms of reference for their study and found in the IRLP Confidential background materials (RLRU/CRS, 1994)

- define what constitutes return in safety and dignity
- appraise the feasibility of defining and applying criteria for terminating temporary protection.
- discuss the feasibility of creating a supra-national authority competent to apply criteria which will terminate interim protection and to ensure return in safety with dignity.
- assess the case for maintaining formal procedures which will oblige agencies responsible to address the needs of individuals and sub-groups, in addition to the needs of the returning group as a whole.

Lack of knowledge of the fields of law and their application in respect of repatriation was a major constraint in undertaking *The Study*. A second constraint was lack of information about suggestions being made by colleagues preparing companion studies, in respect of issues on which the authors had to adopt a position on which to base their arguments in respect of return in safety and dignity. These two constraints combined to lengthen *The Study* document and explain its continuing draft status. Once it is possible to respond to the positions taken by colleagues, some curtailment may be possible.

*The Study* presents a brief review of the literature and a series of case studies (17), summaries of which are attached to this paper as APPENDIX A. From richer and poorer...
countries, the case studies provide the basis for the positions adopted by the authors as their argument develops. The authors project the implications of the application of reforms, such as those outlined by IRLP, with reference to trends in practice that are already at variance with current refugee law relating to repatriation, from which it is assumed that demand for the reformulation of law derives. They take the position that political, rather than humanitarian, interests will dominate every stage of any reformulation process.

2. **CRITERIA OF RETURN IN SAFETY AND DIGNITY**
The second section of *The Study* describes what constitutes return in safety and dignity and what the mechanics of such a return would be.

To position themselves the authors review international legal and other instruments concerned with repatriation and the related concept of voluntariness. They refer to Tripartite Commissions (with members drawn from the governments of host and sending states and the relevant UN organisation) as the mechanism by which voluntary repatriation might normally be achieved.

With reference to change in the global political economy, explanations are provided for: (a) the emergence of voluntary repatriation as the preferred durable solution of people recognised as refugees or who find themselves in refugee-like situations; (b) the growing practice of conferring diverse forms of temporary residential status on people admitted to states in which they request asylum; (c) trends to prevent the departure of such people from the country to which they belong or to deny them entry to the country in which they would wish to request asylum (CS V, CS XVII).

The intentions underlying (a), (b) and (c) are to reduce the number of refugees with entitlements specified by the Geneva Convention of 1951 and Protocol of 1967. At best, the language of temporary residence equalises the treatment of all those applying for residence in states other than their own. In this way they are granted entitlements according to the activity they will pursue during residence, without reference to their reasons for leaving the territory to which they belong. Such a procedure does not require the denaturalisation and depoliticisation that is a prerequisite of refugee status. At worst, temporary residential status discriminates against would-be seekers of international asylum in favour of those admitted as students or for specified work. For increasingly brief periods, their permits may disallow employment, mobility or registration for any course of study. Prospects of renewal on expiry will be minimum. Residence after expiry or other infringements can lead to the ascription of the status of illegal immigrant followed by deportation (CS IV), regardless of events in the country of origin. In such contexts, the IRLP desire to ensure at least minimal protection is laudable. Setting its parameters is beset with difficulty.

To understand the IRLP thinking, *The Study* attempts to distinguish between the currently used term, repatriation, and return, its proposed replacement. To repatriate, transitively or

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1. The Commentary is concerned that *The Study* does not make clear the point that entitlement to voluntary repatriation relates only to Convention refugees, as long as they retain their refugee status. The authors would suggest that there are instances of involuntary international migration where repatriations are arranged in accordance with the Geneva Convention and Protocol, although those affected have not been accorded refugee status.

2. The Commentary confirms that states of asylum may withdraw entitlement to refugee status, conferring alternative residential or illegal immigrant status, such as those indicated. This point is illustrated in CS III.
intransitively, implies the restoration of people to the country to which they belong and the resumption of normal relationships between themselves and the government of that country. If, as is sometimes argued, voluntariness is inherent to the repatriation of people who are refugees, voluntary repatriation is tautologous.

Return is a broader term which, transitively or intransitively, encompasses repatriation. Held by some to be neutral, it refers to the process of going or rendering back (something or someone) to a place. It does not have the political or legal connotations of repatriation.

The right to return has recently entered refugee terminology:

*Within the International human rights framework, the basic tenet underlying voluntary repatriation is the right to return to one's own country.*

(Draft Protection Guidelines on Voluntary Repatriation, UNHCR, 1992:20)

This indicates a major conceptual shift. The solution has come to be expressed

*not in terms of the right to choose freely whether or not to return, the traditional formula, but also in the form of the human right to return in safety and dignity, a right to be asserted and implemented.*


To understand the implications of this position, definitions of safety and dignity are required. The Study takes safety, as the principle of asylum, to refer to physical security and entitlement to universal human rights, including protection from forced return.

IRLP (Tab 7, 4:12) suggests that dignity is to be measured in terms of the quality of life on return. With reference to Vincent (1986, 14 and 17), the authors take dignity to indicate the right of individuals to achieve human potential in ways that are determined by themselves, free from coercion.

3. THE ASSESSMENT OF SAFETY AND DIGNITY

The determination of conditions for terminating temporary protection will vary with the interests of those empowered to decide on the safety and dignity of returns proposed in different situations.

The authors envisage an international supervisory authority (ISA), such as that proposed by IRLP, to be analogous to UNHCR. They are unable to conceive that such an organisation will have the capacity to act independently of the interests of either sending or receiving states in any situation of involuntary international migration, or of the states controlling global politics or its own funding. Case studies exemplify the potential for: such an authority to decree as safe a place of return which those to be returned perceive as unsafe (CS I and CS II); such an authority to conspire with the host state to declare a return to be safe and, in the face of refugee or asylum-seeker unwillingness to agree that this is so, coerce voluntary return by the reduction of rations and withdrawal of other services (CS VI); refugee-seekers to perceive a safe return to be possible which is deemed unsafe by the ISA, governments.

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4. *The Commentary points out that, at present, it is with the state of asylum to decide the safety of the place of return and whether or not to require return to take place. Refugee refusal to comply may have consequences such as those indicated above (p. 3, para. 4).*
and members of the international assistance regime (CS VII); both refugees and the
government of country of origin to agree on the safety of a planned return, which neither the
host government nor international assistance regime will endorse (CS VII).

An alternative approach is suggested to the ISA indicated by IRLP. Referring to Crisp
(1984), consideration might be given to the creation of legally constituted, local voluntary
organisations with a remit to negotiate the conditions of return in safety and dignity in
respect of local refugee-seeking groups. Full members would include representatives of all
relevant parties including the refugee community. A recent approximation to this in practice
would be that of Guatemalans arranging for their return from Mexico, 1992 (CS XVI).

Whatever the structures capable of determining the conditions of return in safety and dignity,
mechanisms would have to be devised to gather information acceptable to prospective
returners about the situation in the place of return. Media reports are unreliable. Information
about conditions prevailing in one part of a country, may not represent the situation
elsewhere. For similar reasons, information obtained from reconnaissance visits by selected
members of the returning group may not be relevant to the community as a whole or to sub-
groups or other individuals within it. Even when there is a consensus among those
contemplating return, other stakeholders may challenge its appropriateness (CS VII).

While there are strong indications that the safety of return is greater when people travel and
arrive in groups, it is also clear that neither international nor refugee organisations can,
without coercion, control the decision of move or not. People will remove themselves from
ISA protection (CS VI), threaten and commit suicide or starve to death (CS VI, CS I and
CS XVII), if in their eyes there is no better option. With sufficient incentive, the need to
plant at a particular time would be an example, they will move, even before their own
organisations have time to make arrangements for logistical support (CS VII). With such a
range of possible avoidance strategies available, the debate about responsibility for defining
the safety of return becomes academic.

It is equally unlikely that any organisation would be able to guarantee the safety of exiles,
either during return or after. The political problems surrounding any organised return will be
augmented by those incurred, for example, with demobilisation, arms control and the
demilitarisation of warring societies, all of which militate against such surety, as does war
detritus in the form of land mines and other unexploded devices, on the journey or after
arrival. An important role and useful role for any ISA would be to assist in any of these
processes and to facilitate arrangements for clearing of mines.

Appraising the conditions which would assure a return in dignity would also be complex.
Exiles may experience a quality of life significantly at variance with the one they knew
before. For some, conditions will have differed little from previously, for others they will be
either better or worse. For all, it may be difficult to foresee their lives on return. The
situation which caused them to leave may have been resolved, but new factors may have
come into play which render unlikely a dignified return.

The logic of the definition of dignity implies that people who experience a relative drop in
their quality of life cannot be said to be returning in dignity. For a return to be dignified,
people should expect to be able to continue their lives to the same standard as they had before departure or in exile, whichever is the higher. Strategies to facilitate a dignified life after return should be envisaged before the start of the move. They may include arrangements to assist reception and resettlement after arrival and diverse forms of aid to post-conflict reconstruction. Among these may be the provision of inputs to production, opportunities for employment, training and rehabilitation, in ways which foster the integration of returner and stayer groups and other war-divided groups.

As defined in The Study, the safety of return may be determined by members of any interested group and may exclude those considering return. Any objective assessment of safety will be subject to external factors over which the assessors (who may include those who are to return) have no control. Dignity is dependent on people's own assessment of the situation and their own choice of whether to move or not. It is not affected by external factors, except insofar as these affect the decision taken. A return in dignity will be based, among other things, on the returners' own assessment of the safety of the move, regardless of whether this conforms to the norms required of an objective assessment. In this way, return in dignity, encompassing returner appraisals of safety, is the more important of the two criteria. It is the best possible means to physical and psychological rehabilitation and a major factor in long-term stability and security. It is the one ethical criterion for terminating protection.

The Study doubts the possibility of defining either generally applicable conditions of safety or dignity or locally applicable conditions unless defined with the full involvement and agreement of those whose return is being negotiated. It questions the capacity of any organisation to intervene disinterestedly or autonomously at supra-national levels. These factors, combined with the difficulty of effecting non-coercive control of population movement and with histories of refuge from war (which may last for decades), make untenable the case for specifying preset, generally applicable periods of temporary protection. As the ultimate solution, those terrified at the thought of mandatory return will forfeit their lives to avoid it.

4. CAN ASSESSMENTS OF SAFETY AND DIGNITY BE MADE ON A GROUP BASIS?

Taking the position that refugee communities are not homogeneous, but differentiated in multiple and complex ways, The Study dismisses the acceptability of arrangements being made for all members of a prospective returnee group. It makes a strong case for appraising the prospects of a safe and dignified return for population sub-groups. This is not a practice that is common under present law. This position is supported, sometimes in considerable detail, by exemplifying ways in which the appraisal of safe and dignified return will differ in respect of women, children, and old people, the mentally sick and physically handicapped, former combatants, prisoners, detainees and victims of torture (CS IX to CS XV).

Even such sub-group appraisal may be problematic. The uniqueness of each person's experience pervades the literature on the various sub-groups, particularly when people belong to more than sub-group. A child may be disabled, a woman an ex-combatant, and so on. The identification of prospective returners by sub-groups is useful in order to establish
broad categories of need and programmes to meet them, but individual experiences and
reaction are unique. Broad criteria and programmes to assure safety may be established, but
there must also be in place formal mechanisms to address individuated concerns.

The same point is made in respect of group assessment based on membership of different
social or political groups. Refugee status is awarded on the basis of well-founded fear of
persecution in country of origin for reason of race, religion, nationality, membership of
particular social group or political opinion. This implies that once persecution of a particular
race, religion, nationality, etc. has ceased then it is safe for persons belonging to that group
to return. However, just as people belong to more than one group according to gender, age,
class, so they also belong to more than one group according to race, religion, nationality,
social group and political opinion. Whereas, for example, the majority of people of a certain
race may follow the same religion and share the same political opinion, there will always be
exceptions. No blanket assessment of safety of return should ever be made on the basis of a
single aspect of a person’s identity (CS VI, CS IX).

While individuated assessment is a principle underlying existing law, IRLP suggests that

if the ISA has determined that circumstances warrant a return in safety and dignity and a refugee has
failed to convince the ISA that her return is unviable, then she must return home. If she fails to do so, then
the ISA and the host state will share the responsibility to return her.

This counters an earlier UNHCR position on dangers of this approach.

The designation of specific countries as “safe” is both controversial and often highly politicised. If the
concept is used as part of an asylum determination procedure, it creates a presumption of ineligibility
which the applicant must refute. As long as the opportunity for a rebuttal exists, this presents no great
departure from normal practices. Most screening processes incorporate information on the general
conditions of an asylum seeker’s home country as necessary background for assessing the individual’s
claim. The dangers of the safe country concept arise if it is used to exclude national groups from
consideration for asylum. The political and human rights situation in many countries are difficult to
assess with precision, can change very rapidly and may vary from one social or ethnic group to another.
The combination of an imperfect classification of safe countries and a rigid refusal to consider asylum
cases originating from them could expose individuals to refoulement and subsequently to great personal
danger.

(UNHCR, 1993:45-46)

The Study concludes that, to conform to the fundamental principles of human rights, safety
and dignity may only be applied on a group basis if: this does not violate the rights of
individuals; if mechanisms are in place to actively protect those rights; and if the onus is on
states and international organisations (including and especially the ISA) to ensure that these
mechanisms are used.

5. WIDER IMPLICATIONS OF THE IRLP PROPOSALS

The Study argues that any reformulation of law will require that multiple secondary issues
are considered before it can be applied.

In relation to refugee status there are questions of whether: temporality of status will, on
expiry, lead to lack of protection from forced return; those accorded refugee status before

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the application of new law will continue to enjoy that status in accordance with earlier law; in the context of newly defined temporary protection, action would have to be planned to prevent the 'disappearance' of those fearful or otherwise reluctant to return; the position of those returning independently of internationally negotiated moves would change.

Questions would have to be anticipated about the social impact of the obligation to exercise the right of return. Examples would include ways in which to prevent it: impacting negatively on the local economies of host countries dependent on refugee labour or of countries of origin unable to absorb additional labour; leading to copy-cat action being taken against refugees of the same nationality with temporary rights of residence in other countries; causing unrest and negative reaction among established, non-refugee, immigrant minority groups.

Finally, secondary legal issues would have to be investigated. Among others, these would include: implications for the conventions and statutes relating to refugee affairs; implications at the level of general law on the application of law in respect, for example, of the loss of refugee status; implications for sovereignty of the creation of a supra-national organisation with the authority to intervene in the affairs of individuals and groups within states; implications for the laws which govern the exercise of rights, entitlements and obligations.

6. CONCLUSIONS
Given that practice is increasingly at variance with existing law, The Study agrees that there is a case to investigate the continued relevance of refugee law in respect of repatriation. It is particularly concerned at the strategies being employed to avoid the ascription of refugee status and so to avoid the obligation to ensure that repatriation is either voluntary, safe or dignified.

Given the political interests of all parties immediately involved in any refugee situation (the refugees and other refugee-seekers themselves, the governments of host and sending countries and the international assistance regime) or more remotely located (global powers, ISA funders), The Study is concerned that effective mechanisms be developed to ensure the implementability of any reformulation intended to protect refugee or other refugee-seeker interests. As they stand, the IRLP proposals, do not as yet identify ways in which this might be achieved. On the contrary, the IRLP proposals, however tentative, appear to suggest measures close to those which in the past have been ineffective. Supra-national organisational authority and burden-sharing are cases in point. Further, with the requirement to exercise the right of return, IRLP is suggesting legislation that will legitimate the increasingly restrictive practice currently being used.

Leaving these issues to one side, The Study has developed a clear understanding of the meaning of return, as opposed to repatriation, and conditions under which the safety or dignity of any return might be defined. The Study suggests that uniqueness and volatility of every situation makes it inappropriate to seek to identify non-local, universally applicable conditions of safety. Embracing definitions of safety that may have been objectively determined, dignity can never be objectively defined. The Study claims that dignity, subjectively determined by those considering return, is the more important of the two
conditions. As such, without coercion, it would be the one determining criterion for ending temporary protection.

The fact that non-coercive restraint of population movement is not possible and the likelihood of the need for asylum lasting of decades mean that preset, universally applicable or locally agreed short periods of temporary protection will be irrelevant. Finally, for similar reasons The Study also is doubtful about the feasibility of devising any mechanism that will be able to ensure a return that is either safe or dignified.

Since the explanation for departure is often the lack of affinity between ethnic and class groups with citizenship entitlements in the same state and since the choice of destination is frequently determined by refugee-seeker beliefs that this is where such affinities exist, The Study doubts the case for encouraging return to countries of origin on these grounds. Given the heterogeneity of refugee-seeking groups, The Study suggests that account must be taken of ways in which the perceptions of dignified return will vary between sub-groups of population, as well as with individual, ethnic, religious, political or other histories.

Under such circumstances, explanations are sought in other arenas for trends in practice to curtail the rights and entitlements of refugees and replace them with inferior alternatives. Continuing global recession and the restructuring of labour markets have reduced state capacity to maintain internal stability as increasingly large sections of their populations are either without the means to subsist or with very reduced and precarious means to subsist. In such circumstances, any increase in the numbers of people in these categories, as would-be refugees and asylum seekers, exacerbates what are politically fragile situations. At present, rich post-industrial societies see little prospect for change and, fearful for their own stability, are keen to legitimate their reluctance to accept or retain refugees. At one level of interpretation, the IRLP proposals are symptomatic of this desire. At some to-be-hoped-for time in the future, the situation will change and as the structures of opportunity improve there will once again be a greater willingness, globally, to receive migrant groups under whatever guise. This means that, in such contexts, there has to be caution before introducing change in law. Not only will it take years to introduce, by which time the situation may have changed again, it will take yet more years to undo.

The Commentary

The Commentary has four sections. These concern: conceptual and technical issues, specific comments and proposals for restructuring The Study.

Conceptual points raised include those referring to the fact that: as there is as yet no proposal for the reformulation of refugee law, the IRLP documentation aims to stimulate thinking which may become the basis of a future reformulation (see footnote 1 above); as voluntary repatriation is not a legal standard, it is only applicable to people who formally enjoy status as refugees, who as such are protected from refoulement (see footnote 2 above).
Technical concerns indicated are the length of *The Study* (90 as opposed to 50 pages) and the references made by *The Study* to IRLP documentation said to be confidential.

Some 58 items include approximately 66 comments relating to specific points of *The Study*. Of these: 18 are related to substantive issues, for example, of law or safety and dignity; 5 refer to presentation; 8 suggest that the matter be left to other writers; 17 concern points made earlier in relation to conceptual or technical issues; 26 indicate preferences as to how the argument should or should not be presented.

The proposals for restructuring have two intentions: to reduce the length of *The Study* and orient it more towards identifying ways of assuring the viability of the models proposed in the IRLP *Confidential background materials*, away from an appraisal of the viability of the models as they are presented.

**The Response**

There are several ways in which to make a response to what is a very comprehensive critique of *The Study*. They include broad brushstroke replies relating to the concerns raised in each of the four sections of *The Commentary* and reactions to each of its detailed points. It is also appropriate to respond analytically, so as to address the final point raised in the proposals for restructuring *The Study*. This should be done in a way that makes legitimate the critique of the IRLP proposals and increases the rigour of continued IRLP activity.

De facto this paper is a response to *The Commentary* in that it provides an abbreviated form of *The Study*. In this, it loses the wealth of carefully referenced material which is the basis of the argument developed in the original (these references are listed in APPENDIX B), but it completes the tasks indicated by IRLP, keeps faith with the concerns of the authors and takes account of some of the conceptual and technical issues raised in *The Commentary*.

To integrate *The Study*’s critique of the IRLP proposals with continuing activity to reformulate law in respect of temporary protection and return in safety and dignity, there has to be some understanding of the nature and place of law in society and of the different world views and missions of legal and social scientists.

Using broad stereotypes, law has been described

*as a desired situation projected into the future. The law maker seeks to capture desired social or economic conditions, and the practice supposed to lead towards them, in normative terms, and leaves the rest to law enforcement or, expressed more generally, to the implementation of policy.*

(von Benda-Beckmann, 1993, 116)

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3 These comments, although they have a long history and are generally applicable, are located in an anthropological analysis of the multiple, more and less formal, legal frameworks which influence the many actors involved in the application of Indonesian *adat* law.
[legal scientists] are bound by legal rules which prescribe that they base their decisions upon 'the' correct law, they are required to make a choice of one correct law and to identify its source(s), that is, the interaction settings in which this true law is generated and maintained. Such an approach is incompatible with a socio-legal approach aimed at discovering the existence and social significance of legal rules 'in many contexts'.

(von Benda-Beckmann, 1993, 128)

That there is a clear methodological and interpretive distinction between the two approaches is not in doubt. The task has to be to challenge the idea of their incompatibility and find ways which will allow the one to serve the other as comprehensively and mutually beneficially as is possible.

Any move to reformulate law is firstly a product of some social awareness of the ineffectiveness of existing law, at least on the part of those proposing the change. Whatever the motive of those seeking to reformulate law, their mission is likely to be more effective if they project analytically (e.g. politically, economically, socially and strategically) the outcomes of the changes they propose, possibly along a continuum that runs between what would be the most and least desirable outcomes. By understanding the factors determining such (positive and negative) outcomes, it may be possible to account for them when drafting formal proposals to amend law or create new law, in ways which will enhance its effectiveness.

In the present case, further research may be needed to assess the viability of continued IRLP proposals for a preset period of temporary protection for people who are involuntarily and internationally displaced. This would need to counter the evidence presented in The Study to the effect that: every situation is unique; massed population movement is, without force, difficult to control; suicide is a viable individual strategy to avoid forced moves. In the present case, it would be appropriate to appraise the merits of the arguments concerning return in safety and dignity to consider ways in which these might be more clearly integrated within any formal reformulation procedures. A similar process might be applied in respect of group, sub-group or individually defined statuses.

The invitation to social scientists to participate in a project to reformulate law, such as IRLP, is welcome, particularly when legal scientists have a strategy to allow the appraisal of the implications of social science observations at even the pre-planning stages of their work. Without this, legal scientists risk legitimating the notional incompatibility between the legal and social science enterprise which this response is seeking to overcome.

References

Quick, S; Chingono, M; Preston, R. (1995) Social applications of refugee law repatriation in safety and dignity, paper prepared for IRLP, International Centre for Education in Development, Coventry, University of Warwick.

RLRUCRS (1994) Toward the reformulation of international refugee law: Confidential background materials, Toronto, York University.
CASE STUDIES

The Study derives from a series of case studies which are included as APPENDIX A to this paper. Most have been written by the authors or colleagues who have intimate knowledge of repatriation experiences in different parts of the world. The studies do not represent the totality of the (largely grey) literature available on repatriation, nor every possible perspective on the applicability of existing or projected refugee law. They do afford an understanding of policy and practice in relation to repatriation from the time before the present law was formulated and under the present legal regime. They include examples of experiences where, to all intents and purposes, both legislation and practice have changed, so that they appear to be already in accordance with the proposed reformulation. Efforts have been made to provide examples of repatriation experiences in both richer and poorer parts of the world and between the two. Accounts are included of movements which are held to have been entirely voluntary and those perceived to have been coerced. Finally some of the studies refer to the need to allow for special consideration to be given to individuals or sub-groups within any movement that is being negotiated at group levels.

Europe

European experience of repatriation refugees and prisoners after the end of World War II led to the formulation of present refugee law and its ratification in the Geneva Convention of 1947 and its 1967 protocols. Demand for the reformulation is being spearheaded by Western Europe and North America as economic recession and unprecedented unemployment stirs popular hostility against migrant groups.

Case Study I

Ukraines in Europe 1945-1948

Rosemary Preston


Ukraines at the end of World War II were instrumental in creating what has become the international refugee regime. The study makes it clear that refugees, even at this early stage, were effective participants in what was the initial formulation of refugee law, including those components of it relating to repatriation. Referring to the ill-treatment and deaths of hundreds of thousands of Ukraines who were returned to the Soviet Union, the study emphasises the rationality underlying refugee reluctance to repatriate from Britain, France and Germany at the end of the war. An account is given of the strategies, among them death, adopted by refugees to avoid what they saw to be forced repatriation to Ukraine territory, which had been placed under the control of the Soviet Union. It is a tale of a nationality ascribed rights of residence on territory controlled at different times by several states. It is a study which makes transparent the prioritisation of global politics over the needs of the refugees themselves. Predating present laws and protocols, the Ukraine experience shows how the principles of existing law may be swept aside to the extent of facilitating repatriation to certain imprisonment, hard labour and death.

Case Study II

Tripartite politics and Swiss modifications to refugee law 1991-1994

Chris McDowell

The second case study is a contemporary example of policy and strategy modification almost wholly consonant with the intention proposed in the reformulation. At a time of economic recession and enormous surpluses of labour, governments have for years been trying to reduce the number of migrants who enter seeking work, asylum or other terms of residence. They have been modifying asylum practice, to avoid conferring refugee status on those who apply, granting alternative, less advantageous forms of temporary leave to remain. At the end of their designated sojourn such temporary residents are liable to deportation as illegal immigrants, if their period of temporary residence is not extended. In a tripartite relationship the Swiss and Sri Lankan governments, with UNHCR acquiescence declared certain areas of Sri Lanka free of conflict. The declaration has served to allow what could be described as the return in safety and dignity of Tamil
asylum seekers, on expiry of their temporary leave to remain in Switzerland. The study raises issues about the competency of international organisations to describe a place as safe for return. Incidentally, it demonstrates how the reformulation of Swiss policy served to prevent asylum seekers entering the country. In respect of those who did enter, the study shows that there has been a significant drop in the proportion of asylum seekers who are granted refugee status, as opposed to alternative less secure temporary residence. At the level of international relations, the study shows how states which are EU members have been unable to introduce legislation such as that described above. It suggests that Switzerland as a non-member has been encouraged to show the effectiveness of the strategy to facilitate an eventual legislative change in Brussels.

Case Study III
Day to day insecurities for refugees in Switzerland, 1991-1994
Chris McDowell
The second Swiss study again refers to Tamils. It illustrates the ways in which local antipathy, supported by the local and national bureaucracy may force refugees to leave the state in which they have been granted asylum and, in order to reenter, to assume illegally a new identity. If discovered such people will stand accused of having abused their status as refugees. They will be relieved of refugee status, declared illegal immigrants and deported, regardless of the safety of their country of origin.

Case Study IV
Criminalisation and deportation from Switzerland, 1991-1994
Chris McDowell
The third case is similar. A very vulnerable young Tamil woman is sexually abused by Tamil and other immigrant men and spends a period working in prostitution. Declared persona non grata by the Swiss government, her entitlements as a refugee are removed and she is deported to Sri Lanka. There is no news of her fate.

Case Study V
Preventative detention in the UK (1995)
The Guardian, 18th January 1995
The study is a newspaper report of attempts to legislate to prevent the detention by the Government of England of would-be asylum-seekers to Britain, pending appraisal of their claims. The court found in favour of the Government and continued detention prior to the granting of entry visas, until such a time as the legitimacy of applicants claims be established.

Africa
At the time of writing most of the world's refugees and asylum-seekers are to be found in Africa. The mythology of traditional African hospitality is commonly cited to explain the willingness of local people to receive large numbers of uninvited refugee-seekers into their communities or onto their land. Similar mythology is used to describe what may be construed as welcoming attitudes on the part of the governments of these receiving countries. The case studies as presented make it clear that little can be done to stop the massed movement of people over unfenced borders, either escaping persecution or returning from a period of exile. The studies remind us that in every case the same collection of primary and secondary actors will be involved in decisions about aid and policy for long-term settlement solutions for refugee-seeking groups. They confirm the need to take a long-term view of individual cases before assuming the safety of all in cases of organised mass voluntary return. Above all the African case studies make it clear that the discourse of exclusion and marginalisation and action to realise it in the contexts of war-related migration in different parts of Africa are no different from that being used in Europe, North America or Australia. What differs is the scale of demand for asylum confronting these countries and their limited capacity to mobilise resources to contain it. The case studies for Africa cluster into two groups: those referring to repatriations in the Horn of Africa and those referring to experiences after independence in Southern Africa.
The Horn of Africa

Case Study VI
The return of Ethiopians from Djibouti, 1980-1990
Susan Quick

Case study V in many ways mirrors the Ukraine experience in Western Europe fifty years earlier at the end of WW II. It demonstrates the ability of refugee-seeking groups to refuse to return or to delay return, if the conditions of safety and dignity cannot in their eyes be met. It refers to the enormous cost and difficulty of delivery to remote areas in conflict, of transport, food and other support, that is required before large numbers of people can be moved. It points to the inability of the international aid regime to resource this investment.

In addition, the study describes the authorised withdrawal of rations and other services to refugees as a strategy to encourage voluntary return. It shows how suicide becomes the preferred option to otherwise unavoidable return. The fickleness of super-power support is emphasised so that the allocation of benefits to one group can shift in favour of another, hitherto helped by opposing states. Above all, the study makes the point that most of those who return do so at their own initiative and make their own arrangements. They outnumber many times those who take part in returns organised as a result of successive tripartite agreements.

Case Study VII
Tigrayans returning from Sudan to Ethiopia in the mid-1980s
Susan Quick

The study tells of refugee insistence on return in the face of opposition from the governments of countries of origin and asylum and from the international refugee regime. The study emphasises the importance of understanding the history of exodus in the first place, in this case Sudanese need for labour in its resettlement schemes. It stresses the inability of the states and international organisations involved to prevent movement, in this case return. It presents the logic for this move in terms of Tigrayan capacity for long-term planning of strategy which will ensure their own survival in their own territory, regardless of the dangers to be run and its implementation. The study illustrates the way in which those with responsibility for determining humanitarian aid will, in spite of failed efforts to prevent the move, follow those moving so as to be able to fulfil their organisational mission.

Case Study VIII
Return to Eritrea from Sudan, 1989-1994
Mahnun Gameladin Ashami

In a refugees initiated and administered return triggered by partial liberation in Eritrea and declining conditions of life in Sudan, there was minimal external assistance within Sudan and none within Eritrea beyond the little that the government of Eritrea could provide. In particular UNHCRs mandate at all stages was ambiguous and its contribution minimal. Eritrean efforts to attract international finance to assist social and economic reconstruction, included strategy to facilitate the integration of more than 80,000 returned exiles. Minimal aid was given in response to this request.

Case Study IX
An Ethiopian in Canada, 1987-1994
Susan Quick

The study recounts the contradictory ways in which returning may be linked to supposedly political positions. It is an example of the ways in which intra-familial division may make it inappropriate for an exile to return, even many years after the end of conflict. The study introduces the idea of integration into the host society, however marginally, as the rationale for continued exile and the preferred desirable solution.
Case Study X
A Sudanese woman and her family in exile in Britain 1985-1991
Susan Quick

In many ways similar to Amare's story (Case Study IX) it is concerned more with religion than ethnicity. In spite of social and economic alienation within the UK, life there is preferable to trying to survive as a Christian in a fundamentalist Islamic state.

Southern Africa

In 1980 independence from Britain saw the creation of the independent state of Zimbabwe. Over 50,000 refugees returned to vote for the government of their choice to lead the new state. Ten years later, Namibia became independent from South Africa and 45,000 refugees returned, again to organise elections and vote democratically for their new government. The case studies refer to what are widely proclaimed as the world's most successful examples of mass voluntary return from exile after the successful end of decades of civil strife to be rid of colonial oppression. The studies show how within mass local, national and international euphoria safety cannot be guaranteed as losers in the war vent frustration against those decreed the victors. They also make clear the ways in which for certain individuals caught in the return even long-term prospects of dignified existence after arrival are uncertain.

Case Study XI
Post Lancaster House: return to Zimbabwe, 1980-1983
Mark Chingono

The case study is of a young ZIPRA fighter and the difficulties he and friends encountered with what was internationally proclaimed a successful mass return. Within any group of returning exiles it can be foreseen that certain categories will have experiences which lack either safety or dignity. There is an acute need to assist the integration back into civil society of boys who joined militias at very early ages, for whom existence has been guided by the need to fight to survive.

Case Study XII
UN administration of return and flare-ups in Namibia 1990
Rosemary Preston

Case study XII is similar to that of case study XI. It illustrates how even in optimal circumstances old tensions can become suddenly out of control and lead to sudden conflict and strife.

Case Study XIII and XIV
Ex-detainees in Namibia (1990-1993)
Rosemary Preston

At an individual level case studies XII and XIII discuss the implications for repatriation in the case of those detained by the party they had supported and the multiple levels at which their return lacked any certainty of security or dignity.

Case study XV
Namibian women: on exile and after (1992)
Rosemary Preston

In exile, Namibian women assumed diverse roles. Some played significant parts in the fight alongside men, others received high levels of training. They developed expectations of greater equality for women at the end of the war. On return, many were unable to integrate into the families they had left. Their contribution as fighters is diminished and on the labour market they play significantly inferior roles to men. For some, failure to integrate has brought depression and suicide.

Latin America

The US supported coup that led to the downfall of the Allende government in Chile generated, in 1973, the exodus of a generation of young intellectuals. Gradually over the last ten years many have returned and
made a life for themselves at home, others have returned but departed again finding no niche for themselves in present society. In Central America the civil wars in El Salvador, Nicaragua and Guatemala have caused mass exodus to neighbouring states.

Case Study XVI
Refugees negotiating return: Guatemalans in Mexico 1992
Susan Quick
Case Study XV is of the return of Guatemalan refugees from Mexico. It illustrates the capacity of refugees themselves to negotiate directly the terms and conditions of organised return, so that it occurs with safety and offers prospects of dignified existence in Guatemala.

South Pacific
The purpose of including a South Pacific case study is to confirm that parameters in the application of refugee law observed in other parts of the world occur in small island states for the same reasons as they occur in large continental territories of both the rich and poor world. The abuse of the East Timor people by the state of Indonesia is an international cause célèbre. Less well-known is the ethnic religious conflict that has been waged against the Melanesian West Papuan people in Indonesia's easternmost province of Irian Jaya.

Case Study XVII
Papua New Guinea in the mid 1980s
Rosemary Preston
Since Indonesian independence from Holland in 1960, Christian Melanesian West Papuans have been seeking asylum in PNG. Often this has been with local people from the same cultural groups, living on what used to be communal land before the creation of the international border. Government response has varied over time. It has included deporting asylum-seekers as illegal immigrants (sometimes to execution) and ignoring them. After the deaths 100 people from starvation in border camps, pressure from the international media, forced the government to recognise them as refugees. Government reluctance to assist the refugees is explained by its fear of the military might of Indonesia and its awareness too of Australia's vulnerability to its powerful neighbour.
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