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Robyn Lui

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Article abstract

Within the context of the changing dynamics of displacement and the increasing complexity of humanitarian issues, UNHCR distinguishes the “reactive, exile-oriented and refugee specific” activities during its early years with the “proactive, home-land oriented and holistic” activities of recent times. The task of this paper is to be explicit about the conditions under which explanations of refugee issues, particularly the concepts of international protection and durable solution are being transformed. The article also examines UNHCR’s humanitarian agenda as a response to the global refugee crisis.

WORLD ORDER AND UNHCR'S "COMPREHENSIVE" APPROACH TO REFUGEES

By Robyn Lui[*]

Avec l'évolution dans la dynamique des déplacements de populations et la complexité des questions humanitaires, le HCR fait une distinction entre ses activités originelles orientées sur l'exil des réfugiés et ses activités récentes de nature « compréhensive » qui implique une présence dans le pays d'origine. Cet article examine la manière dont les problèmes de réfugiés sont abordés et la transformation dans les concepts de protection internationale et de solution durable. L'article examine également l'approche humanitaire du HCR en tant que réponse à la crise mondiale des réfugiés.

Within the context of the changing dynamics of displacement and the increasing complexity of humanitarian issues, UNHCR distinguishes the "reactive, exile-oriented and refugee specific" activities during its early years with the "proactive, home-land oriented and holistic" activities of recent times. The task of this paper is to be explicit about the conditions under which explanations of refugee issues, particularly the concepts of international protection and durable solution are being transformed. The article also examines UNHCR's humanitarian agenda as a response to the global refugee crisis.

[*] Australian National University, Canberra, Australia. The author would like to thank Michael Barutciski and Bruce Buchan for their helpful comments.

> [L]et us be on guard against the dangerous old conceptual fiction that posited a "pure, will-less, painless, timeless knowing subject"; let us guard against the snares of such contradictory concepts as "pure reason", "absolute spirituality", "knowledge in itself": ... these always demand of the eye an absurdity and a nonsense.... There is *only* a perspective seeing, *only* a perspective "knowing"; and the *more* affects we allow to speak about one thing, the *more* eyes, different eyes, we can use to observe one thing, the more complete will our "concept" of this thing, our "objectivity", be.[1]

Birthdays and anniversaries are times when past deeds and future aspirations become subjects of reflection. In this 50th anniversary of the Geneva Refugee Convention, the organization's The State of the World's Refugees 2000 report does just that[2]. The edition traces the evolution of the organization and its response to major instances of refugee movement and population displacement. According to the report, despite the changing dynamics of displacement and the increasing complexity of humanitarian issues, UNHCR has been faithful to its core mandate to provide international protection and durable solutions for refugees[3]. But it distinguishes the "reactive, exile-oriented and refugee specific" activities during its early years with the "proactive, home-land oriented and holistic" activities of recent times[4]. The latter phase involves the expansion of UNHCR's humanitarian activities and beneficiaries, and in the organization's view, represents a progressive shift in its approach to population displacement. The new direction demonstrates the organization's willingness "to engage in activities aimed at preventing human rights abuse and situations which give rise to the displacement in the first place"[5].

The focus on root causes rather than symptoms sound reasonable. The endeavor to advance human rights and human security as categorical values is admirable. Yet, as a number of critiques suggest, the implications of UNHCR's comprehensive humanitarian agenda are far more ambiguous than the organization concedes. Barutciski and Warner have questioned the prudence of including Internally Displaced Persons (IDPs) into the refugee protection regime and conflating international human rights law with refugee law[6]. Goodwin-Gill and Loescher have misgivings about the shift from legal protection to more generalized forms of

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1 F. Nietzsche, *On the Genealogy of Morals and Ecco Homo*, translated by W. Kaufman (New York: Vintage, 1989) at 12.

2 United Nations High Commissioner for Refugees, *The State of the World's Refugees 2000. Fifty Years of Humanitarian Action* Oxford: Oxford University Press (2000).

3 *Ibid*., at 2-3.

4 *Ibid*., at 4.

5 *Ibid.*, at 4.

6 M. Barutciski, "Tensions between the refugee concept and the IDP debate" (1998) 3 Forced Migration Review 11, and D. Warner, "Refugees, UNHCR, and Human Rights: Current Dilemmas of Conflicting Mandate" (1998) 17(6) Refuge 12.

humanitarian assistance[7]. Chimni and Hathaway have challenged the justifications for sanctioning repatriation as a durable solution[8].

These writings have drawn attention to some of the consequences of UNHCR's current policy and I agree with much of the propositions presented. But these analyses have been less attentive to the *Weltanschauung* that informs the policy. I am not suggesting that they do not acknowledge the international context in which UNHCR operates. They do, but only implicitly. The task of this paper, then, is to be explicit about the conditions under which explanations of refugee issues, particularly the concepts of international protection and durable solution are being transformed. In order to understand the character of UNHCR's comprehensive refugee policy, it is necessary to situate it within the contemporary perceptions of world order. But the policy is more than a reflection, it is also constitutive of political reality. In its diagnostic and prescriptive functions, it justifies and/or condemns the present, validates particular values and norms, and promotes certain models of society.

My argument is that the comprehensive refugee strategy is linked to representations of world order that encourage a wide range of humanitarian activities. UNHCR has enlarged its domain of intervention - often under the neologism of global governance. But the expansion of activities is unbalanced. The emphasis is on the conditions in refugee generating countries and in-country assistance for refugees is redefining the notion of protection and solution. Sadly, the "holistic" approach is contributing to the erosion of asylum as an institution of international protection and third country resettlement and integration as durable solutions. The options available for refugees have narrowed. Moreover, it is sustaining a vision of world order that cultivates and sanctions acts of violence in the name of humanity.

The paper begins by exploring some themes that have emerged in discussions of international relations in the post-Cold War period, particular attention will be paid to how these accounts of world order have shaped the contemporary character of humanitarianism. This leads to an examination of UNHCR's humanitarian agenda as a response to the global refugee crisis, and finally to a discussion of the agency's approach to protection and solution. This last discussion brings us back to the connection between world order and UNHCR.

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7 G. Goodwin-Gill, "Refugee identity and protection's fading prospect", in F. Nicholson and P. Towmey eds., *Refugee Rights and Realities: Evolving International Concepts and Regimes* (Cambridge: Cambridge University Press, 1999) at 220, and G. Loescher, "UNHCR and the erosion of refugee protection" (2001) 10 Forced Migration Review 28.

8 B. S. Chimni, "The Meaning of Words and the Role of UNHCR in Voluntary Repatriation" (1993) 5(3) International Journal of Refugee Law 442 and *From Resettlement to Involuntary Repatriation: towards a critical history of durable solutions to refugee problems*, UNHCR Working Paper No.2 (1999), and J. Hathaway, "New Directions to Avoid Hard Problems: The Distortion of the Palliative Role of Refugee Protection" (1995) 8(3) Journal of Refugee Studies 288.

I. The Will to Order

Since the end of the Cold War, there is a general consensus that the international political environment has been transformed. For many analysts, the bipolar hegemonic system that once provided the framework of explanation in international relations is now inappropriate[9]. But there is no consensus on the significance of these changes or their consequences. Hence, the search for explanatory certainty has inspired reflections on "a world transformed", "turbulence in world politics", and "new security agenda". Despite the talk of "new times", the problem of order and security in international relations remains central. What have changed are ways of imagining and interpreting the problems of managing international affair and maintaining order[10]. In the post-Cold War period, the search for order has focused largely on competing hierarchies of norms and values in international relations, that is, the principles of sovereignty and human rights.

One response to these "new times" is optimism about the possible realization of the ideals of the Enlightenment. International relations is no longer paralyzed by the superpower gridlock and as such, the prospect appears positive for progressive global and social transformations like democracy, justice, peace, and prosperity[11]. The future of international relations, according to some proponents of this view, is heading towards the emergence of a cosmo-politics based on notions of human security, international justice, and global civil society. Their narratives of hope and the immediate air of confidence in liberal democratic states have inspired efforts to expand international activities in the name of humanity and human rights. In light of

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9 In the past, for the sake of parsimonious theory-building, IR theorists tended to present the international system as one that is comprised of states as billiard balls and "high" politics as politics between states. But the uncertainties brought on by the end of the Cold War and the meta-theoretical debate within the discipline have enabled different explanations of international relations to emerge.

10 The notion of world order has two distinct and related aspects. One is the structural aspect. The division of the world's territory and human population into sovereign states and national citizens can be seen as this structural or organizational order. The other is a normative order that describes "what is" and prescribes "what should be" in the world. The structural ordering of populations into citizens, however, is a normative practice with important implications – one of them being the refugee experience. Thus both structural and normative dimensions of world order are fundamental to the meaning of refugees.

11 For this view see: D. Archibugi, D. Held and M. Kohler, *Re-imagining political community: studies in cosmopolitan democracy* (Stanford, California: Stanford University Press, 1998), C. R. Beitz, "Social and Cosmopolitan Liberalism" (1999) 75(3) International Affairs 515, R. Cox, "Civil society at the turn of the millennium: prospects for an alternative world order" (1999) 25(1) Review of International Studies 3, R. Falk, *Humane Governance* (Cambridge: Polity Press, 1995), D. Held and D. Archibugi, *Citizenship, Sovereignty and Cosmopolitanism* (Cambridge: Polity Press, 1999), D. Held, *Democracy and the Global Order: from the modern state to cosmopolitan governance* (Cambridge: Polity Press, 1995), C. W. Kegley, Jr., "The Neoidealist Moment in International Studies? Realist Myths and the New International Realities" (1993) 37(1) International Studies Quarterly 131, A. Linklater, *The Transformation of Political Community: ethical foundations of the post-Westphalian era* (Cambridge: Polity Press, 1998), and "The evolving spheres of international justice" (1999) 75(3) International Affairs 473. Though these works are distinctively liberal in orientation, they are different from previous liberal-institutionalist writings on "interdependence". The literature on "complex interdependence" and cooperation in international relations do not question the primacy of the states where as current analyses on globalization - the term that has replaced interdependence - identify "a crisis of sovereignty" as one of the greatest challenge for the pursuit of peace and order.

this development, refugee issues have become human rights and human security issues and accordingly, UNHCR's primarily palliative role is seen as inadequate. An appropriate response to the apparent "deepening" of humanitarianism is a commitment by the agency to secure at least the minimal conditions for the enjoyment of human rights for refugees.

But there is also a darker side to this development. The collapse of communism has removed the main competitor to liberalism as a form of government. The "accomplishments" of modern democracy have become the benchmark and the regulatory norm that all other forms of political community will be compared and judged against[12]. As David Scott argues, democracy has been naturalized to the extent that it has come to set the standard for the assessment of all political institutions, not only for those of Europe's own past, but also for those of the non-European, non-Western worlds "whose political presence have been re/constructed in colonialism's wake"[13]. Occupying the apex of human development, Western liberal ideals represent the models of both a well-ordered society and moral subjectivity. Other forms of rule are on the road to liberal democratic institutions, failed alternatives, or imperfect approximations to them. Non-modern, non-liberal and non-democratic forms of government and political community are characterized as a past that is out of sync with the forces of history. Coming to the "present" means embracing the thoughts, institutions, and practices of Western liberalism.

The effects of contemporary liberal internationalism, or in Susan Marks' view liberal millenarianism, are many but among one of the most significant is the erasure of alternatives[14]. As Malkki points out, "the exclusions built into universalizing visions of social progress and global solidarity" involve "the asymmetrical and uneven ways in which people and societies are incorporated" into that vision[15]. This is done by deploying democratic ideals to govern "Others", by imposing policies that "encourage" the development of conditions for liberal governance, and by embarking on a dispersed and multi-dimensional civilizing project.

But alongside the displays of self-confidence exhibited by liberals like Fukuyama, is a fear that in the face of global changes, liberal-democracies may not be the clear "winners" after all[16]. In this vision of world order, universal consensus on

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[12] The most extreme example of this line of thinking is Francis Fukuyama's end of history thesis where he asserts that "we may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of government". Francis Fukuyama, 'The End of History', *The National Interest* (Summer 1989), at 4.

[13] D. Scott, "The Aftermath of Sovereignty: Postcolonial Criticism and the Claims of Political Modernity" (1996) 14(3) Social Text.

[14] S. Marks, "The End of History? Reflections on Some International Legal Theses" (1997) 3 European Journal of International Law 449 at 451.

[15] L. Malkki, "Things to Come: Internationalism and Global Solidarities in the Late 1990s" (1998) 10(2) Public Culture 431 at 440.

[16] Paul Kennedy uses the concept of winners and loser to define the capacity of states to deal with the challenges raised by contemporary global transformations and to outline his futurology of the coming century. See P. Kennedy, *Preparing for the Twenty-First Century* (London: HarpersCollins, 1993).

values is absent and foreign policies that aim to make liberal values universal are dubious and imprudent. Rather than embarking on the establishment of a liberal global order, the strategy should be to safeguard present liberal communities or Western civilization from attack and decay. This is the story told by Samuel Huntington in *The Clash of Civilizations*[17].

According to Huntington, the emerging pattern of conflict and cooperation in global politics will be based on cultural difference[18]. People and countries with similar cultures are coming together, while "people and countries with different cultures are coming apart"[19]. In Huntington's view, there are no universals and attempts at universalization are dangerous, because "it would lead to a major civilizational war between core states and it is dangerous to the West because it could lead to defeat of the West"[20]. Western civilization is unique and the responsibility of the West, or rather the United States, is to "preserve, protect, and renew the unique qualities of Western civilization"[21].

As a description of order, Huntington's geopolitics of civilizations rests on an understanding of culture, identity, and social groups as bounded and largely incommensurable entities. His claim that the cause of war is cultural is, for some, an oversimplification[22]. It is beyond the scope of this paper to discuss in any depth the implications of Huntington's "divide and rule" arrangement as a guide for international conduct. For the current purposes, suffice to say that his argument tends to distort the competing interests and policies of state that give rise to conflict, and encourages solutions based on separatism as a method of conflict prevention and resolution. Related to the belief of cultural separatism is his moral geography of cultural defensiveness that positions the West against the rest. At stake is the survival of the Western cultural identity. As victims of denigration in Huntington's world order, the West is no longer active in the contemporary processes of marginalization. The trade policies of Western states, in the name of economic liberalization, are not seen as contributing to the pauperization of sub-Sahara Africa. Their restrictive and exclusionary migration policies are justified on the basis of national and cultural integrity and the harm caused by abolishing boundaries that distance and control incompatible lifestyles and cultural traditions.

In addition to Huntington's cartography of civilizational disorder, which after the terrorist attacks in New York has re-entered the public discourse, writers like Brzezinski, Kaplan, Mearsheimer, and Moynihan have also call for firm boundaries in

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17 S. Huntington, *The Clash of Civilizations and the Remaking of World Order* (London and New York: Touchstone books, 1998).

18 Ibid., at 125.

19 Ibid., at 125.

20 Ibid., at 311.

21 Ibid..

22 For critiques of Huntington's civilizational thesis see L. Binyan, "Civilization grafting: no culture is an island" (1993) 72(4) Foreign Affairs 19, S. Bromley, "Culture clash" (1997) 85 Radical Philosophy 2, S. Chan, "Too Neat and Under-Thought A World Order: Huntington and Civilisations" (1997) 26(1) Millennium 137, and S. Qadir, "Civilisational clashes: surveying the fault-lines" (1998) 19(1) Third World Quarterly 149.

a world that is even more dangerous than the Cold War "balance of terror"[23]. Their work may be vulnerable to certain criticisms but they reflect a prevailing perception of the relationship between the West and the non-West. In their view, the dark side of globalization has increased the vulnerability of Western states. Human, drug and small arms trafficking, terrorism, and the consequences of ethnic conflict or "postmodern tribalism" are some of the "new" problems that threaten their national security and international order.

Ostensibly, the narrative of disorder is antithetical to the grand ambition of liberal internationalism. The former focuses on the causes of conflict while the latter attends to the conditions for peace. But they are similar on two counts. First, both characterizations of world (dis)order are considerations of the place of West in the contemporary international system, and the relationship between the Western and non-Western world(s). Second, they are "mindscapes" or maps that are re-interpreting the nature of international order and the meaning of security.

II. Security and Humanitarianism

The demand for a new security agenda has come from all sides of the political spectrum. Population movement and in particular refugees have emerged as core concerns of the new global security agenda. On the one hand, the concern for refugees echoes the call for a people-centered concept of security where individuals become the subjects of security. The proposition is that the meaning of security can no longer be conceived as national security and the absence of armed conflict. Instead security should be a positive affirmation for the building of a more just and humane world in which human beings can realize their aspirations and potential.

Ken Booth and Richard Falk are two notable advocates of making individuals the focus of security[24]. Booth argues that states are, or at least can be, a means of providing security, but ultimately it is only with reference to individuals that the notion of security has any meaning[25]. The United Nations Development Program's Human Development Report has used the term human security to redefine security concerns at the individual level and to provide an institutional setting to reformulate the practices of security[26]. If the referent subject of security is the

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[23] See Z. Brzezinski, *Out of Control. Global Turmoil on the Eve of the Twenty-First Century* (New York: Macmillan, 1993), R. Kaplan, *The Ends of the Earth* (New York: Random House, 1996), J. Mearsheimer, "Back to the future: instability in Europe after the Cold War" (1990) 15(1) International Security 5, and D. P. Moynihan, *Pandaemonium: Ethnicity in International Politics* (Oxford: Oxford University Press, 1993).

[24] K. Booth, "Human Wrongs and International Relations" (1995) 71(1) International Affairs 105, and "Security and Emancipation" (1991) 17(4) Review of International Studies 313. R. Falk, *supra* note 11.

[25] K. Booth, (1991), *supra* note 24.

[26] In 1994, UNPD arranged the potential threats to human security in seven categories: economic, food, health, environmental, personal, community, and political security. UNPD, *Human Development Report 1994* (New York: Oxford University Press, 1994) at 24-5.

individual, then it is not surprising that human rights becomes an important issue in this security paradigm.

The human security discourse has influenced the contemporary character of humanitarianism enormously. It has provided a reconceptualization of issues such as humanitarian intervention, refugees, and structural economic inequalities, enhanced the value of human rights, enlarged the scope of international regimes to intervene in human affairs and redefined the idea of responsibility in the name of global governance[27]. As we shall see later in the paper, the language of human security is central to UNHCR's formulation of its comprehensive approach to refugee protection.

On the other hand, the movement of refugees is a security threats that transcends national borders and draws attention to the impact of intrastate conflicts on national, regional and international order[28]. In this context, the refugee problem represents a danger to the national security of receiving states and to common security. The global dimension of today's security problems - including the "global refugee crisis" - threatens the entire system that can only be resolved through the concerted and coordinated efforts of diverse means and agencies. This line of argument appeals for cooperative behavior based on a sense of collective self-interest of states rather than human security.

While the pursuit of human and state security appear to be in tension, they are not mutually exclusive. One could argue that state or national security and interests do not displace human security but rather ranks it lower in the hierarchy of norms and values. This view emphasizes the value of national security and state sovereignty for world order and by extension, as a precondition for the enjoyment of human security. Therefore, the abstract individual of human security is in fact a citizen. It is as a citizen that one can make demands for security against war and civil disobedience, criminal violence, and economic wellbeing against the government. The state serves a protective role. Today, the extent to which a government satisfies this protective role is seen as an important test of its legitimacy. The failure or inability to serve this protective function denies the human security of its citizens, which could result in conflict that could also destabilize regional and international order. Both world order and human security are threatened. A call for intervention could come from those motivated by a compulsion to restore order or/and by an impulse to address human wrongs.

In the post-Cold War period, the new security agenda has been followed by the notion of a "new" humanitarianism. There are a number of issues that a "new"

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[27] An invitation to interpret global politics along this line is *Our Global Neighbourhood. The Report of the Commission on Global Governance* (Oxford: Oxford University Press, 1995).

[28] The number of works that link the movement of people with security threat has increased dramatically over the last decade. See G. Loescher, *Refugee Movements and International Security*, Adelphi Paper No. 268, London (1992), N. Poku and D. T. Graham, *Redefining Security: Population Movements and National Security* (Westport: Praeger, 1998), O. Waever, B. Buzan, M. Kelstrup and P. Lemaitre, *Identity, Migration and the New Security Agenda in Europe* (London: Pinter, 1993), M. Weiner, "Security, Stability, and International Migration" (1992/3) International Security 91 (1992/3), M. Weiner, *International Migration and Security* (Boulder: Westview Press, 1993).

humanitarianism could be referring to but a significant one is, at least at the discursive level, there is an explicit recognition of certain humanitarian values within regular and formal exchanges in the international arena. Another noteworthy point is the increasing legitimacy of humanitarian interventions based on principles of human rights[29].

Human rights has become a public language embraced by politicians, policymakers and activists. Although the UN Charter contains an inherent tension between "state system values" protected by the norms of nonintervention in Articles 2(4) and 2(7), and "human rights values" enshrined in Articles 1(3), 55, and 56, Ramsbotham suggests that there is a shift in the humanitarian intervention debate from UN Charter Article 2(4) to 2(7) and to the human rights value clusters[30]. To right human wrongs that "shock the conscience of humankind" is a duty. Bernard Kouchner, founder of *Médecins sans Frontières* (MSF) and later head of the UN mission in Kosovo (UNMIK) suggests that there is "a right to intervention" in extreme cases of human rights abuses. The emergence of such a "right" represents a chance to act on behalf of democratic legitimacy and to create democratically legitimate states across the globe[31]. National sovereignty and non-interference, the constituent principle of international society, are increasingly seen to be contingent upon states adopting certain modes of conduct.

What is being advocated is "a liberal ethics of world order" that subordinates the principle of state sovereignty to the recognition and respect of human rights[32]. In this world order, state sovereignty cannot be presumed. Rather it is derived from the individual's whose rights are to be protected. It follows then, that if a state oppresses and violates the autonomy and integrity of its subject, it forfeits its moral claim to full sovereignty. Accordingly, the principles of human rights enshrined in the UN Declaration of Human Rights should be recognized as the highest principle of world order and state sovereignty recognized and accepted as a circumscribed and conditional norm. A "liberalism of human rights", according to Michael Smith, does not solve the problem of consistency but it provides a guide for humanitarian intervention in situations of extreme and systematic human rights abuses[33].

This new rights-based humanitarianism is being used regularly to justify the humanitarian policies of governments, international institutions, and NGOs. There is a growing belief that this form of interventionism is both legitimate and motivated by

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29 On this last point, I adopt Oliver Ramsbotham and Tom Woodhouse's conception of humanitarian intervention that sees "forcible humanitarian intervention" as one form – albeit an extremely potent one - among others within the broader category of "humanitarian intervention". See O. Ramsbotham and T. Woodhouse, *Humanitarian Intervention in Contemporary Conflict* (Cambridge: Polity, 1996).

30 O. Ramsbotham, "Islam, Christianity, and Forcible Humanitarian Intervention" (1998) 12 Ethics and International Affairs 81 at 82.

31 T. Franck, "The Emerging Right to Democratic Governance" (1992) 86 American Journal of International Law 46.

32 M. J. Smith, "Humanitarian Intervention: An Overview of the Ethical Debates" (1998) 12 Ethics and International Affairs 63 at 75.

33 Ibid., at 77.

nonpolitical and ethical intent[34]. But the discourse of human rights would easily be cooped by actors, including states, to increase the legitimacy of their policies. It is foolish to ignore the actuality of a world of sovereign, yet unequal, states pursuing diverse goals. In Chimni's view, the "new" humanitarianism is the ideology of hegemonic states and heralds a new phase of imperialism[35]. Such an observation certainly has validity when, despite claims of universality and inclusiveness by its proponents, the salient feature of this mode of humanitarianism is inconsistency or arbitrariness in terms of policy response.

Moreover, the new rights-based approach, often represented in terms of human security, overtly politicizes humanitarian activities and challenges the norm of consent for the conduct of humanitarian operations. The principles of impartiality and neutrality - the principles that UNHCR endorses as its guiding rules of engagement – are secondary if certain "humanitarian" goals are to be achieved. Indeed, a rights-based approach would assert that in some circumstances, neutrality is an impediment to achieving broader and long-term goals of maintaining and securing peace. This devaluation of impartiality and neutrality means that humanitarian action is based less on needs and more on political interests. Given the inconsistency or selectivity of Western policy towards humanitarian crises a rights-based approach would exacerbate the difference in the allocation of resource. Thus, advocates often fail to see that the strategy of deploying the language of human security and the principles of human rights as the categorical means and ends of humanitarian action does not always serve the people they try to assist.

With the normalization of a human rights-based humanitarianism, human rights has become the new standard of civilization in international relations[36]. This development has enabled a range of disciplinary and civilizing projects to be applied to societies that do not conform to the current standards of liberal-democratic capitalist societies. The revival of the barbarism/civilization binary – one of the most conspicuous discourses in the public domain and one that is deeply embedded in the modern thinking of international relations – is giving great impetus to this mission to discipline, re-educate, and transform. Thus promoting the capacity of national governments of usually non-Western and developing countries for "good governance" has become a major political undertaking for international organizations, NGOs, and Western government. For the Western states, the tasks are to segregate the zone of peace from the zone of turmoil, and to transform chaos into order through the installation of institutions and practices of "good government". Their current policies and the policies of international organizations are based on a belief that the expansion

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34 D. Chandler, "The Road to Military Humanitarianism: How the Human Rights NGOs Shaped A New Humanitarian Agenda" (2001) 23 Human Rights Quarterly 679.

35 B. S. Chimni, *Globalisation, Humanitarianism and the Erosion of Refugee Protection*, Refugee Studies Centre Working Paper No.3, Oxford (February 2000), at 2 and 7.

36 J. Donnelly, "Human Rights: a new standard of civilization" (1998) 7(4) International affairs 1. See also G. Gong, *The Standard of 'Civilization' in International Society* (Oxford: Clarendon Press, 1984). The idea of civilization conjures up imageries of belonging, civility, integrity, and achievement. Despite the arbitrariness of civilizational codes or standard of civilization, they perform important functions as regulative (and moralizing) ideals. These codes of civility as an influential basis for judgment and social conduct operate in the domestic and international environment.

of Western liberal democratic institutions will foster internal and international stability and peace - as liberal democracies rarely go to war with one another[37].

But the characterization of violence and gross human rights violations as exceptional politics that has no part in civilized and modern democratic polities is a form of collective amnesia; forgotten is the systematic violence practiced by democratic governments against the "other" within and outside. The "mythical history of democracy" has expunged the trials, errors, and horrors of the modern political experiment in the West, in particularly in relations with the non-West, from its consciousness[38]. The current focus on ethnic conflicts in international relations again erases the history of authoritarianism and barbarity in the West and distances the West from the non-West[39]. Today the polarity between violence and civilized politics has the double effect of normalizing the violence within these populations and depoliticizing the prescribed interventions carried in the name of good governance and humanitarianism.

III. UNHCR's humanitarian agenda

According to its Statute, the work of UNHCR is to be "humanitarian" and "social". This enables the organization to claim impartiality in the way it carries out its activities under the categories of "international protection" and "assistance". Its protection function requires the agency to coordinate, direct, and supervise governments in the protection of refugees – as the ultimate capacity for international protection rests with receiving states. UNHCR also promotes and creates instruments that would enhance the commitment and legal obligations of governments to offer protection. Its assistance activities are perceived in terms of the search for durable solutions for refugees.

But the idea of human security, the potency of human rights in public discourse, and the redefinition of security threats have shifted the value of humanitarianism and the characterization of refugee issues.

Refugee issues are in many respects strategic issues.... The days of ad hoc reactions which concentrate on symptoms rather than on causes should belong to the

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37 See J. E. Alvarez, "Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory" (2001) 12(2) European Journal of International Law 183, M. E. Brown *et al* eds., *Debating the democratic peace* (Cambridge, Mass.: MIT Press, 1996), and A.-M. Slaughter, "International Law in a World of Liberal States" (1995) 6 European Journal of International Law 503.

38 R. Mangabeira Unger, *False Necessity: Anti Necessitarian Social Theory in the Service of Radical Democracy* (Cambridge: Cambridge University Press, 1987) at 211.

39 See Special issue on "Ethnic Conflict and International Security" (1993) 35(1) Survival 3, M. Brown ed., *The International Dimension of Internal Conflict* (Cambridge, MA: MIT Press, 1996), D. Carment, "The ethnic dimension in world politics: theory, policy and earning warning" (1994) 15(4) Third World Quarterly 551, T. Gurr and B. Harff, *Ethnic Conflict in World Politics* (Boulder: Westview Press, 1994), T. Gurr, ed., *Minorities at Risk: Origins and Outcomes of Ethnopolitical Conflicts* (Washington, D.C.: United States Institute of Peace, 1993), and M. Weiner, "Peoples and states in a new ethnic order?" (1992) 13(2) Third World Quarterly 317.

past. The management and solution of humanitarian crises must be explored in the context of a system of global governance befitting the post-Cold War era[40].

UNHCR has reconceptualized its purpose within the international humanitarian system and its capacity as a humanitarian agency. It does not deny its humanitarian function but the scope of humanitarianism has expanded. As indicated by the quote above, the organization also sees itself as an institution of global governance, which provides further motivation to expand and diversify its activities to include broader considerations of maintaining peace and security. UNHCR's dual function in the "new world order" is a crucial factor in its involvement in the prevention and solution of internal conflicts that create mass population displacement, and adoption of a comprehensive approach to not just refugees but to forced migration in general.

The discursive shift to characterize the refugee problem as a global crisis has also been crucial for the invention of a comprehensive approach to refugees. This crisis is a crisis of practice because refugee flows are now "complex humanitarian emergencies" - the outcomes of communal violence, minorities at risk, and unstable government. The multidimensional approach, it is hoped, will rectify the perceived limitations of the international refugee regime, particularly the meaning and practice of international protection and durable solution. But this seemingly sensible approach obscures another impetus for the need for innovation - the determination of numerous Western states to undermine asylum as a viable form of international protection.

A closer inspection reveals that the term "global", more often than not, refers to the flow of refugees from the developing South and Eastern Europe to industrialized countries of the North. In *Beyond Charity: International Cooperation and the Global Refugee Crisis*, Loescher presents the predicament in terms of the increase in South-North movements and "the perpetuation and growth of the refugee problem in the Third World", which have resulted in an increased number of asylum seekers in industrialized countries[41]. Accordingly, there is a growing concern in among developed countries that these movements can no longer be handled adequately by uncoordinated responses on the part of individual receiving states[42]. The challenge for governments and UNHCR is to find formulas and mechanisms that will ensure an effective and humane approach. In Loescher's view, it is insufficient to respond to the refugee crisis as a strictly humanitarian problem; "there is a need for a comprehensive political response and solution to the problem of refugee generation"[43]. The disruptive potential of forced migration demands the creation of early-warning mechanisms that can prevent displacement and address root causes. Similarly, Suhrke has distinguished the problems of repressive governments or anarchic conditions in the developing world, the stabilization of emerging

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40 Sadako Ogata, *Peace, Security and Humanitarian Action*, The Alastair Buchan Memorial Lecture at the International Institute for Strategic Studies, London (3 April 1997), Available online: http://www.unhcr.ch/refworld/unhcr/hcspeech/3ap1997.htm (Accessed 2 November 1999).

41 Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, (Oxford: Oxford University Press, 1993), at 4.

42 Ibid., at 6.

43 Ibid., at 10.

democracies, and the disorder of militant nationalism as the central challenges of an effective refugee regime[44]. Like Loescher, she advocates a multilevel, cooperative and integrative refugee policy[45]. Such a policy will emphasize the root causes of population displacement and the processes of peacemaking and reconstruction.

For almost a decade, UNHCR has promoted and defended its comprehensive prevention-protection-solution strategy[46]. Its biennial reports on the state of the world's refugees have described and prescribed the various elements of this humanitarian cum governance program[47]. According to UNHCR, the changing nature of conflict has affected its work and its identity as a humanitarian agency. Its primary tasks used to be receive and protect persons who have crossed an international border due to the failure or inability of his or her state to provide protection. But this form of assistance is no longer seen as adequate because it treats the symptoms and not the disease. Since the perception is that the refugee problem is mainly the consequence of internal conflict related to ethnic, religious and nationalistic aspirations, UNHCR has also modified the idea of international protection to allow a range of activities inside refugee-generating states[48]. The former High Commissioner argues that the distinctive features of the contemporary refugee problem have brought "a transformation of UNHCR principles, policies and practices".

Traditionally, UNHCR's activities have concentrated on the country of asylum. Today, the growing scale and complexity of the refugee problem makes clear the inadequacy of asylum as the whole response. We need to concentrate not only on the middle stage of the refugee flow, but also on the ends of prevention and solutions. The entire continuum of refugee flows from its root causes and prevention, to emergency response, protection and eventual solution deserves our attention. Consequently, the focus of our activities is a shift gradually from the relatively stable conditions in the country of asylum to the more turbulent and often evolutionary process in the country of origin of refugees....We are having to call upon military logistics more frequently. The inviolable nature of national sovereignty is being question[49].

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[44] Astri Suhrke, 'Towards a comprehensive refugee policy: conflict and refugees in the post-Cold War world', in W. R. Böhning and M. L. Schloeter-Paredes eds., *Aid in place of migration?* (Geneva: International Labour Office, 1994), at 33-34.

[45] Ibid., at 29.

[46] Sadako Ogata, "Prevention, protection and solution: elaborating a post-Cold War refugees strategy", (1994) 1(2) Browns Journal of World Affairs at 203.

[47] United Nations High Commissioner for Refugees, *The State of the World's Refugees 2000. Fifty Years of Humanitarian Action*, (Oxford: Oxford University Press, 2000), *The State of the World's Refugees 1997-1998. A Humanitarian Agenda*, (Oxford: Oxford University Press, 1997), *The State of the World's Refugees 1995. In Search of Solution*, (Oxford: Oxford University Press, 1995), and *The State of the World's Refugees 1993. The Challenge of Protection*, (Oxford: Oxford University Press, 1993).

[48] Sadako Ogata, *Refugees: Challenge of the 1990s*, Statement at the New School of Social Research (11 November 1992). Available online: http://www.unhcr.ch/refworld/unhcr/hcspeech/11no1992.htm (Last accessed 15 October 1999).

[49] Ibid..

This is UNHCR's vision of enterprising humanitarianism[50]. If international order is to be realized, then humanitarian activities must be linked to the protection of human rights, peace-making and peace-building activities. It is collaborating with the World Bank on post-conflict reconstruction projects that aim to secure the conditions for repatriation and prevent future refugee flow[51].

Institutional reforms are commendable. The robustness of any organization depends on its ability to be flexible, creativity and responsive. But at a time when NGOs increasing compete with international institutions like UNHCR for funding, recognition and media attention, the idea of enterprise can take on a slightly different meaning. The agency's perceived need to be seen as relevant is partly responsible for its engagement in peace-building and post-conflict reconstruction diverts resources from its core task of providing legal protection. But when there are other UN agencies with competency in such endeavors and a burgeoning array of NGOs already working on post-conflict reconstruction and civil society projects, it makes little sense to duplicate roles and tasks. More is not always better and to be sidetracked from one's area of expertise, in the case of UNHCR, international protection, is an unproductive management practice that no effective organization would endorse.

Another troublesome issue is UNHCR's involvement in internal humanitarian assistance, resulting in entanglements in peacekeeping missions and military humanitarianism. In Iraq and Bosnia-Herzegovina, the agency operated in the context of international sanctions imposed on the protagonists. In both cases, it depended on the protection of the armed force of a military contingent considered not impartial by the parties to the conflict in order to carry out its tasks. In eastern Zaire, it used Zairean troops to maintain some semblance of order within the border camps. The civilian-military relationship has raised questions about the organization's claim to neutrality and impartiality.

Despite criticisms, UNHCR maintains that it has an obligation to adapt its own system and structure in such a way as to ensure maximum effectiveness in responding to the complex challenges that confront it[52]. Refugee flows are complex political emergencies and the challenge is no less than tackling the conditions that compel people to flee. To meet this goal the organization advances three types of action: preventive mechanisms to defuse tensions, human rights measures to protect the people for whom flight is the only option, and development strategies to promote better governance and to tackle poverty[53].

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50 Thomas Weiss and Amir Pasir, "Reinventing UNHCR: Enterprising Humanitarians in the Former Yugoslavia 1991-1995", 3(1997) (1) Global Governance at 41.

51 See UNHCR and World Bank, *Report on the roundtable on the gap between humanitarian assistance and long-term development*, (Washington, D.C.: Brookings Institution, 1999).

52 UNHCR, *Handbook on Voluntary Repatriation: International Protection*, Geneva (1996), para 6.

53 For an elaboration of this program see, *The State of the World's Refugees 1995*, Supra note 47.

IV. Human Security and The Evolving Meaning of Protection

Protection does not only mean defending legal rights. Protecting refugees means monitoring borders to ensure that they remain open when refugees cross them; demanding access for food and medicines needed for assistance; fighting discrimination; relieving trauma; counseling on legal procedures; deciding when to advise refugees when to return home;…. At times, it demands speaking out to denounce abuses and violations. Refugee protection is a set of legal instruments, operational activities and material contributions that can restore a sense of security in people in whom flight has deprived of everything – sometimes, … even of their identity[54].

The Refugee Convention is specific on the condition of international protection. In international law, a refugee is someone who is outside his or her country of origin and who does not have the protection of the state. The Convention accords protection to persons who can demonstrate inability or legitimate unwillingness to avail themselves of the protection of the "home" state. A key criterion for determining refugee status is the failure or inability of a state to protect its citizens, which may be due to persecution by the government and/or its agents. International protection functions as a surrogate for the failure of a state's duty to protect its citizens. But the victims of general insecurity and oppression, and people who have not crossed international borders to seek asylum are outside the Refugee Convention's scope of protection.

In the last decade the meaning and practice of refugee protection has been transformed. The old form of protection is seen as a reactive and short-term response, while the new mode of a comprehensive international protection is characterized as being proactive and a durable solution. It anticipates and addresses root causes of displacement with the aim to prevent, or at least reduce, the need for flight across international borders or from one's home within a state. Today, prevention and solution are keywords in UNHCR's lexicon of protection and are integral aspects of the organization's humanitarian agenda.

UNHCR argues that preventive protection contributes to the actualization of human security by allowing refugee to enjoys two new rights: the right to remain and the right to return. Refugees have a right to remain in their countries of origins and not to be displaced because humanitarian assistance cannot heal the wounds suffered by exile. The notion of home stirs up images of acceptance and belonging. It is a potent contrast to the experience of displacement. So powerful is the homeland attachment that it is invoked again in the endorsement of repatriation as durable solution. Sadako Ogata pronounces that

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[54] Sadako Ogata, *Human Security: a Refugee Perspective*, Keynote speech at the Ministerial Meeting on Human Security issues of the "Lysoen Process" Group of Governments, Bergen, Norway (19 May 1999). Available: http://www.unhcr.ch/refworld/unhcr/hcspeech/990519.htm [Accessed: 2 November 1999].

> [a]t the heart of such a preventive and solution-oriented strategy must be the clear recognition of people (sic) to remain in safety in their own homes. ... In speaking of the right to "remain", I mean the basic right of the individual not to be forced into exile, ...The right to remain is implicit in the right to leave one's country and to return.... [W]hen people are forced to leave their homes, a whole range of other rights are threatened....I know that the international protection that my office, ... can offer to refugees is not an adequate substitute for the protection they should receive from their own Governments in their own countries. The generosity of asylum countries cannot fully replace the loss of a homeland or relieve the pain of exile.[55]

According the former High Commissioner, UNHCR's protection mandate is threefold: right to asylum, right to return and right to remain[56]. The right to remain emphasizes the right of the individual not to be displaced. In order to satisfy this aspect of human security UNHCR must turn its attention to the states where potentially refugee-generating situations are taking place.

At the 51st Executive Committee session, various in-country activities such as establishing refugee security in camps, generating the conditions for voluntary repatriation, monitoring returnees, and designing post-conflict reconstruction projects were classified as protection activities[57]. These activities had been widely promoted in previous Executive Committee sessions but at this session the agency outlined its intention to broaden the scope of protection by linking international human rights law and international humanitarian law with international refugee law.

In its new humanitarian agenda, UNHCR has identified human rights abuses as the fundamental root cause of displacement. At the 49th Session of the agency's Executive Committee Meeting, the message is that the refugee experience, in all its stages, is linked closely to the degree of respect accorded by states to human rights and fundamental freedoms[58]. The common examples used to demonstrate the connection between systematic violation of rights and displacement are ethnic conflicts where national governments do not recognize the rights of certain ethnic or religious groups by implementing discriminatory and harmful policies. In such circumstances the task is to prevent such abuses by encouraging the development of conflict prevention mechanisms such as minority protection and an early-warning system consisting of activities like human rights monitoring that can identify the danger signals, gathers and analyses observations. However, the art of prediction is difficult to master and the events in Rwanda and Kosovo have exposed the limitations

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55 Sadako Ogata, Statement at the Roundtable on 'Refugees: Challenges to Solidarity', New York (9 March 1993). Available online: http://www.unhcr.ch/refworld/unhcr/hcspeech/9ma1993.htm (Accessed 11 October 1999).

56 Ibid.

57 *Note on International Protection*, submitted by the High Commissioner, Executive Committee of the High Commissioner's Programme, Fifty-first session: UN doc. A/AC.96/930 (7 July 2000).

58 *Note on International Protection*, submitted by the High Commissioner, Executive Committee of the High Commissioner's Programme, Forty-nineth session: UN doc. A/AC.96/868, (3 July 1998).

of an "information-gathering enables appropriate action" formula for preventing refugee movement or even providing preventive protection.

Another form of preventive protection is the inclusion of IDPs as subjects of UNHCR's international protection mandate. While a legal framework for protecting specifically IDPs has yet to emerge, UN agencies and numerous NGOs have often invoked human rights law and prevention as the grounds for involvement in the issue[59]. After all, prevention is the most effective form of protection for people in danger of becoming refugees[60]. UNHCR explains its commitment to assisting and protecting IDPs through pointing out the similarity between them and refugees in terms of the causes and consequences of their displacement and humanitarian needs[61]. The incorporation of IDPs increases the number of "persons of concerns" under its protection dramatically and has the effect of reinforcing the importance of preventive measures.

UNHCR's commitment to IDPs can also be interpreted as a response to the pressure from industrialized donor countries to formulate a policy that limits the numbers of refugees seeking asylum. Many donor states are deploying preventive measures and in-country programs as barriers to asylum and urging UN agencies, like UNHCR to assist displaced people "at home"[62]. The "challenge of protection" is inextricably linked to the decline in asylum opportunities and the increase refugee numbers. In-country assistance has the effect of preventing and containing the population movements across international borders. It keeps would-be asylum seekers at a distance, As Jennifer Hyndman suggests, the idea of preventive protection "give rise to a new set of political spaces and management practices for forcibly displaced people"[63]. "Safe havens" for abused and vulnerable populations, and assistance for IDPs are two examples of practices of protection that are no longer limited to those who have crossed international borders. Both can be deployed as technologies of containment that maintain the non-entrée policies of states[64]. The preferred solution is to prevent refugees and asylum seekers from arriving at their borders.

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59 In 1992 Francis Deng, as Special Representative of the UN Secretary-General for Internally Displaced Persons began to formulate a legal framework for IDPs. In 1998 his Office published *Guiding Principles on Internal Displacement*, which sought to expand the practice of protection beyond refugees to refugee-like situations. See Francis Deng, *Guiding Principles on Internal Displacement*, (New York: United Nations, 1998), and Francis Deng and Dennis McNamara, 'International and national responses to plight of IDPS', (2001) 10 Forced Migration Review at 24.

60 Ibid., at 121. Assistance to the victims of armed conflict, which include the internally displaced, has been the central responsibility of the International Committee of the Red Cross (ICRC).

61 UNHCR, *Internally Displaced Persons: the role of the United Nations High Commissioner for Refugees*, (Geneva: UNHCR EC/59/SC/INF.2, 2000).

62 The harmonization of national refugee policies among EU states through treaties agreements like the Schengen Agreements and the Dublin Convention and idea of "safe country of origin" are powerful deterrence technologies that are undermining the tradition of asylum. See Rosemary Byrne and Andrew Shacknove, "The Safe Country Notion in European Asylum Law", 9(1) (1996) Harvard Human Rights Journal 185.

63 Jennifer Hyndman, "Managing and Containing Displacement after the Cold War: UNHCR and Somali Refugees in Kenya", (1997)16(5) Refuge, at 7.

64 See Karin Landgren, "Safety zones and International Protection: A dark grey area", 7(3) (1995) International Journal of Refugee Law at 436, and Jens Vedsted-Hansen, 'Non-admission policies and

Although not a form of preventive protection nor a post-Cold War invention, temporary protection deserve a mention because increasingly, temporary protection is seen as a pragmatic tool for meeting the immediate needs of refugees and the interests of states. Temporary protection is a compromise that acknowledges the rights of states to control conditions of entry by aliens and provides protection for people fleeing from persecution. It offers interim protection until the risks in the country of origin subside or no longer exist. UNHCR maintains that temporary protection meets the principle of international protection on the grounds that it is part of a comprehensive program of prevention and solution[65] But the extent to which temporary protection address the protection needs of asylum seekers is disputable. As Barutciski argues, experience in the EU shows that once temporary protection no longer applies, few gain access to the refugee determination process and even fewer gain refugee status[66]. But given that Western states even have misgivings about temporary protection due to the fear of over-stayers and the difficulties of deportation, internal-preventive protection seems to provide a solution to the needs of states and refugees.

One can argue that internal assistance is better than none at all. In a way, this is how UNHCR has conceptualized the "protection challenge". Preventive protection deals with the human security issue of refugees and relieves the pressure on asylum. One can also suggest that it is a creative solution to the types of mass displacement that have occurred in the past decade, or which cannot be resolved solely by providing protection in countries of asylum. Such propositions play down the wider implications of this strategy for humanitarianism and international order.

The practices of prevention challenge the principle of sovereignty and non-interference, an international norm that is seen, at least not too long ago, as crucial to order and coexistence. This conception of an international order is grounded on a belief that a society of sovereign states provides the preconditions for the attainment of human security and human rights. Preventive protection, however, reinterprets the idea of sovereignty by arguing that the full recognition of a state's sovereignty only comes with the full recognition of human rights for the citizen-population within its territory. Since it is rogue governments' incapacity to exercise their authority in a responsible and effective manner that threatens international order, the focus shifts from the issue of protection in asylum states to the conditions within refugee generating states.

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the right to protection: refugees' choice versus states' exclusion?'. For analyses of recent practices of non-entrée, containment and preventive protection in the Balkans see, Michael Barutciski, "Crisis in Bosnia-Herzegovina and the Myth of Preventive Protection", 14(3) (1994) Refuge at 27, "The Reinforcement of Non-Admission policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia- Herzegovina (1992-1994)", (1996) 8(1) International Journal of Refugee Law at 49, and Bill Frelick, "Preventive Protection" and the Right to Seek "Asylum: A Preliminary Look at Bosnia and Croatia", (1992) 4(4) International Journal of Refugee Law at 439.

65 *Note on International Protection*, submitted by the High Commissioner, Executive Committee of the High Commissioner's Programme, Forty-fifth session: UN doc. A/AC.96/911 (September 1994).

66 Michael Barutciski, "EU States and the Refugee Crisis in the Former Yugoslavia", (1994)14(3) Refuge, at 35.

There is a growing acceptance among governments, international organizations and NGOs that the domestic affairs of states are subjects of legitimate international concern[67]. In extreme circumstances the "international community" has a duty to militarily intervene in order to address situations of extreme human suffering. This raises questions about the value of sovereignty and the consequences of its repeated subversion - usually by powerful states. In practice, sovereignty has always been contextual, but the introduction of preventive strategies by UNHCR - endorsed by some states - has the potential to make conditional sovereignty an international norm. The danger, as I have mentioned before, lies in the politicization and manipulation of humanitarian needs for political purposes. Such a development will also add to a growing skepticism about the objectives of humanitarianism and undermine UNHCR's credibility as an impartial humanitarian agency.

UNHCR's concern for the conditions in countries of origin is also the result of its reconceptualization of durable solution for refugees. Within its comprehensive agenda, solution works alongside preventive protection to minimize the need for flight and maximize return. From the three traditional accepted forms of durable solutions: integration in the asylum state, third country resettlement, and repatriation to the country of origin, UNHCR is promoting repatriation as the most desirable solution[68].

As part of its effort to promote and consolidate voluntary repatriation and to prevent new displacement, UNHCR's activities in countries of origins have expanded very rapidly in the last few years. In the context of a new solution-oriented and preventive strategy, the Office has sought to play a more active role in ensuring that repatriation is a truly durable solution by extending assistance to refugees who have returned to their own country and monitoring their welfare…. It is likely that UNHCR's activities in countries of origin will continue as international efforts are increasingly focused on addressing conditions which lead to refugee flows and promoting conditions conducive to lasting and safe return[69].

The above excerpt from UNHCR's Executive Committee gives a clear indication of the deeply implicated relationship between prevention, protection, and solution. It is also clear on the character of durable solution and the organization's self-appointed tasks. The organization's handbook on voluntary repatriation unequivocally defines repatriation as international protection[70]. The "repatriation

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67 Alan Dowty and Gil Loescher, 'Changing Norms in International Responses to Domestic Disorder' in Raimo Vayrynen ed., *Globalisation and Global Governance*, (New York: Rowman and Littlefield, 1999) at 199.

68 In 1992, UNHCR declared the 1990s would be the decade of repatriation.

69 *Annual Theme: The Pursuit and Implementation of Durable Solutions*, submitted by the High Commissioner, Executive Committee of the High Commissioner's Programme, Forty-seven session: UN doc. A/AC.96/872 (30 August 1996).

70 UNHCR, *Voluntary Repatriation: International Protection*, UNHRC: Geneva (1996). In the 1980s and 1990s, organized repatriation programs for Cambodia and Mozambique, and assisted repatriation programs for Namibia, Angola, Eritrea, Liberia, and Guatemala were major "achievements" for UNHCR. The conclusion of regional initiatives such as the International Conference on Central American Refugees (CIREFCA) for Central America and the Comprehensive Plan of Action (CPA) for South-east Asia reinforced the agency's belief in the potential of mass return programs as a durable

solution" for refugees has four distinguishable aspects: return, reintegrate, reconstruction, and reconciliation. Each process is necessary for the refugee go "home" and stay there.

Notwithstanding the kind of protection possible through "the repatriation solution", the normalization of repatriation undermines the principles of *non-refoulement* and the right to seek asylum, and reduces the demand for third country resettlement. Indeed, the emphasis on repatriation acts like a self-fulfilling prophecy; it confirms the belief that third country resettlement is almost impossible and integration is unlikely for most refugees. If such are the circumstances, then, repatriation is preferable to a life in limbo. The representation of refugees as a figure of lack and loss gives a distinctive social and psychological meaning to "return". In effect, the primacy of this durable solution has narrowed the range of protection and solution options opened to those who fled persecution.

The agency's commitment to end the refugee cycle means that repatriation, as a permanent solution, goes beyond the activity of return[71]. It seeks to continue to be active in post-conflict or high-risk countries to ensure the political and economic situation will not deteriorate to an extent that the population is compelled to flee again. It invests in humanitarian assistance and long-term development projects with the aim to "help rebuild shattered infrastructure and rekindle the economic life of the community"[72]. Returnees are to be re-integrated back into society with the help of UNHCR. The agency clearly sees a role for itself in peace-building, post-conflict reconstruction and reconciliation initiatives[73]. Development programs hold the key to the success of repatriation. They concentrate on the root causes of displacement, thus eliminating if not the need for people to leave their country. It is an important practice in the repatriation solution and preventive protection.

Ostensibly, the extension of activities after repatriation suggests that UNHCR is responsive to the changing dynamics of displacement and the needs of refugees. Again this engagement is far from innocuous. Beyond the reservations already noted above, two other issues warrant closer examination: the strategy of development and the invocation of home.

Development suggests the best of intentions, but there are embedded power relations within this mode of thought that need to be taken seriously. The historical and anthropological studies by Cowen and Shenton, Escobar, Ferguson, and Rist reveal that development ranks states and populations in a hierarchy of wealth, power, and desirable human attributes, and has as its principal focus the West's relationship

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solution. It is important to note that most voluntary repatriation today occurs without, and despite, the involvement of UNHCR.

71 See Richard Black and Khalid Koser eds., *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*, (Oxford and New York: Berghahn Books, 1999). This volume contains excellent case studies of repatriation programs.

72 *Annual Theme: UNHCR@50: From Response to Solution*, submitted by the High Commissioner, Executive Committee of the High Commissioner's Programme, Fifty-first session: UN doc. A/AC.96/938. The importance of development to the ending the "refugee cycle" can be found in *The State of the World's Refugees 1995*, Supra note 48.

73 These ideas are expressed in *The State of the World's Refugees 1997-98*, Supra note 47.

with the non-West, and in particular the Third World[74]. Development, Escobar argues, is a mechanism "that links forms of knowledge about the Third World with the deployment of forms of power and intervention, resulting in the mapping and production of Third World [non-Western] societies", where "individuals, governments and communities are seen as "underdeveloped" and treated as such"[75]. The discourse of development contains a "chronopolitics" that constructs an "Other" that lags behind on the one and continuous path of progress and human purpose[76].

Development programs are about more than economic wellbeing; they are concerned with the transformation of political and social institutions, of hearts and minds. As "underdevelopment" becomes a domain of experience, strategies for dealing with the condition result in the subjection of people, who in turn subject themselves to systematic intervention. A motivation for change is the perception and the fear that one's existence is both lacking and incomplete. The word "development" is a profound reminder of what they are not[77].

UNHCR's support for development, then, implicates the organization in reproducing the specificities of Western modernity as the norm and reinforcing the assumed temporal or historical distance between the West and non-West. It also contributes to the representation of the refugee as an object of intervention who suffers the double indignation of underdevelopment and displacement. These accomplishments suggest that the agency is fulfilling its role in global governance because development is, among other things, a strategy for administrating diverse and dispersed populations and territories.

UNHCR's repatriation policy, like the strategy of preventive protection, deploys the motifs of exile and home to describe the refugee experience. By appealing to home and belonging, the discourse of repatriation represents refugeehood as a condition of abnegation and non-recognition in a world of rootedness. Repatriation ends the anguish of displacement – of being out of place. But the attachment to certain places and territories is taken as a given in the refugee discourse. Daniel Warner argues that if communities evolve then the meaning of return and home is more complex than the idea of repatriation suggests[78]. One may indeed long for home, but the imaginary homeland may not be a territorial one. UNHCR's repatriation solution, however, defines home as a spatialized community of belonging

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74 Michael Cowen and Robert W. Shenton, *Doctrines of Development*, (London: Routledge 1996), Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World*, (Princeton, N.J.: Princeton University Press, 1995), James Ferguson, *The Anti-Politics Machine: 'Development', Depoliticisation and Bureaucratic Power in Lesotho*, (Cambridge: Cambridge University Press, 1990), Gilbert Rist, *The History of Development: from Western Origins to Global Faith*, London: Zed (1997).

75 Arturo Escobar, Supra note 73, at 213.

76 For a study on the conception of time in the Western thought, particularly anthropology see, Johannes Fabian, *Time and the other: how anthropology makes its object*, (New York: Columbia University Press, 1983).

77 Gustavo Esteva, 'Development', in Wolfgang Sachs ed., *The Development Dictionary. A Guide to Knowledge as Power*, (London: Zed Books, 1992).

78 Daniel Warner, "The Community of Refugee", (1991) 4(3) International Journal of Refugee Law at 731. The text that speaks directly about the modern condition of rhimoze is Gilles Deleuze and Felix Guattari, *A Thousand Plateau: Capitalism and Schizophrenia*, (London: Athlone Press 1988).

and in doing so, transform it into a disciplinary technology that assist to secure the return of refugees to their countries of origin[79]. It is the homecoming that grants the refugee the definitive form of protection and human security.

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Over the past decade, "international protection" and "durable solution" have acquired a density of meaning and practice in the international refugee regime. This development is lamentable for a number of interconnected reasons. Firstly, UNHCR's increasing involvement in the internal affairs of states has jeopardized its neutral and impartial character – necessary credentials if it is to be seen as nonpolitical in often already tense situations. The humanitarian principles of impartiality and neutrality empower the organization to serve its purpose of refugee protection, and lessen the danger of refugees being held hostage to political machinations and of UNHCR being accused of opportunism. Secondly, the comprehensive policy is inadvertently complicit in a system of deterrence and containment. At a time when the restrictive and containment policies of Western states are undermining the integrity of asylum as the cornerstone of international protection and the prospects of third country resettlement as a durable solution, one has to question the wisdom of focussing so intensely on reforming the conditions in refugee-producing countries. Indeed, a consequence of UNHCR's current policy orientation is its susceptibility to accusations of being a political tool of powerful states rather than a humanitarian agency. Finally, the reconceptualization of protection and solution to include addressing the root causes of refugee movements, and rebuilding the lives of returnees diminishes the organization's capacity to perform its core competency. UNHCR has neither the human nor financial resources to address every aspect of a humanitarian crisis, but this seems to be its ambition. The need to appear relevant in the present international environment has distorted its sense of responsibility.

UNHCR increasingly invokes the discourse of rights and human security to justify the expansion of activities and the emphasis on in-country assistance. But to protect groups from gross human rights violations within state boundaries challenges the principles of the Westphalian system of states. The tension between the values of state sovereignty and the values of human rights is inherent in the international system and this is reflected in the UN Charter. The former - not long ago - is considered to be the minimal condition for international order and co-existence. The push for a rights-based humanitarianism, however, subordinates the principle of sovereignty and non-interference. An obvious danger lies in human rights being co-opted by actors to legitimize their policies. A less obvious danger is that the development and institutionalization of a human rights approach, accompanied by

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[79] I am grateful to Kurt Iveson for drawing my attention to the cultural politics of place in everyday life. Jennifer Hyndman suggests that in the past decade, there has been a re-spatialization of responses to refugee issues. See Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. (Minneapolis: University of Minnesota Press).

moral certitude and evangelism, has the potential to sanction violent interventions in the name of humanity. The humanitarian operation in Kosovo points toward this unfortunate direction.

Yet the substance of human rights is far from self-evident, and we can do great harm when we are blinded by moralism[80]. History provides enough evidence of the violence that repeatedly accompanies assuming possession of ultimate truth and unreflective certainty[81]. This is not about universalism versus relativism. It is about being open to explore uncertainties. Doubt is an antidote to the ideals of truth and reason that ultimately robs people and institutions of their capacity for critical self-awareness. To call something into question, particularly its foundational status, is the beginning of the reinvigoration of that term. Humanitarianism (and human rights), then, is best practiced as an agonistic process in which the very meaning of the word and its attending concepts and practices are reshaped and contested continually. In this way we are less prone to create a world order that legitimizes acts of civilized violence upon others.

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[80] One approach that is opening up a space to "rethink" human rights can be characterized as the critique of modern Western rationalist constructions of political community and the capturing by those constructions in defining a "proper" life. This scholarship points to the parochialism of dominant constructions of universality and the painful history of Western conception of "man". But this critique is not an effort to reject the need to work against violations and indignities. Rather it draws attention to the need to probe deeper and response to a much wider scope of human suffering, and to be open to richer and more nuanced conceptions of the "human" who is the subject of rights. See Talal Asad, 'On Torture, or Cruel, Inhuman and Degrading Treatment', in Richard A. Wilson ed., *Human Rights, Culture & Context: Anthropological Perspectives*, (London: Pluto Press 111, 1997), Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference*, (Princeton and Oxford: Princeton University Press, 2000), Ashis Nandy, *The Intimate Enemy: Loss and Recovery of Self Under Colonialism*, (New Delhi: Oxford University Press, 1983), Octavio Paz, *One Earth, Four and Five Worlds. Reflections on Contemporary History*, translated by Helen R. Lane, San Deigo, New York, and London: Harcourt Brace Jovanovich, and Edward Said, 'Nationalism, Human Rights, and Interpretation', in Barbara Johnson ed. *Freedom and Interpretation: The Oxford Amnesty Lectures 1992*, (New York: BasicBooks 175, 1993).

[81] See Sven Lindquist, *Exterminate All the Brutes*, translated by Joan Tato, (London: Granta, 1996). This remarkable book is a historical and philosophical inquiry into European colonial policies in Africa, including the origins of European genocide in Africa. Lindquist argues that the genocidal experiments at the colonies were later applied on the populations of Europe. Hannah Arendt briefly alluded to a similar connection in *The Origins of Totalitarianism*. See Hannah Arendt, *The Origins of Totalitarianism*, (New York and London: Harcourt Brace, 1979).