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**ASSIGNMENT QUESTION ONE [1]**

**WITH REFERENCE TO DIFFERENT STATUS DEFINE A REFUGEE?**

With reference to different status the primary and universal definition of a refugee is contained in the 1951 Refugee Convention. Extended definitions are contained in regional instruments in Africa and Latin America. Clarify which refugee definition applies in your host country taking into account national and international law. The refugee definitions are declaratory, i.e people are to be regarded as refugees until it is determined otherwise, and apply in all situations including emergencies. The principle of protection ensure that refugee protection is afforded to all refugees and asylum-seekers that is to say those who have been determined as a refugees and those who await determination of their refugee status.

The 1951 Convention Relating to the Status of Refugees provides the universal definition of a refugee. This definition is extended by definitions contained in regional instruments and in national law, as applicable. Where UNHCR conducts Refugee Status Determination under its mandate, the authority to do so derives from its mandate under UNHCR's 1950 Statute. However, UNHCR applies the eligibility criteria as set out in the 1951 Convention, which constitutes the later, more specific and authoritative expression of the refugee definition, supplemented by definitions in regional instruments see The 1951 Convention article 1 [A] [2] and The 1951 Convention and its 1967 Protocol.

The **Primary** and **Universal** definition of a refugee that applies to states is contained in Article 1[A][2] of the 1951 Convention, as amended by its 1967 Protocol, defining a refugee as someone who: "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he/she is a national” The inclusion criteria in Article 1A are complemented by clauses contained in Articles 1D to 1F of the 1951 Convention. Together, they form the refugee definition in the 1951 Convention, but consideration of these aspects of the definition will generally not be a priority in emergency situations. For completeness they are listed below:

Article 1 D on its face excludes those presently receiving protection or assistance from another organ of United Nations essentially Article 1 E excludes those presently enjoying rights normally accorded to nationals in a country where they have taken residence.

Article 1 F excludes persons who would otherwise qualify for refugee status on account of having committed, or participated in the commission of, certain serious crimes or heinous acts. See also the Entry on exclusion clauses [article 1F].

Finally, Article 1 C describes the circumstances in which a refugee ceases to be a refugee. Cessation considerations are normally not relevant to emergency situations. However, in the event that an emergency causes refugees to return to their country of origin prematurely, they will remain of concern to UNHCR and will retain their status as refugees. Any return undertaken where there is effectively no other alternative, or where the alternative offers no more protection than does the country of origin, cannot be considered voluntary repatriation and does not change or cease the refugee character of the individuals concerned.

**Defining who is a “refugee.”** The international legal, normative, and policy framework for refugees was established with the adoption of the 1951 Convention Relating to the Status of Refugees. Under Article 1A [2] of the Convention, refugees are defined as persons with “a well-founded fear of being persecuted” who are unable or unwilling to avail themselves of protection in their country of origin, and are therefore eligible for protection in another country. Five specific grounds for persecution are given: race, religion, nationality, membership in a particular social group, or political opinion. Individuals recognized as refugees cannot be forcibly returned to their country of origin known as the principle of non-refoulement.

While the original Convention was limited to persons fleeing persecution as a result of the Second World War, the 1967 Protocol removed the temporal and geographical constraints and made the Convention truly global. To date, there are 142 states party to both the Convention and Protocol, and a further five states party to either the Convention or the Protocol. Several regional instruments, covering Africa and Latin America, build on the definition and rights laid out by the Refugee Convention.

The above mentioned definition in Article 1 of the 1951 Convention is supplemented by regional instruments in Africa and Latin America:

In **Africa**, Article I [2] of the 1969 OAU Convention governing specific aspects of refugee problems in Africa extends the refugee definition refers to “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”

In **Latin America**, Conclusion III of the 1984 Cartagena Declaration extends the refugee definition to: "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

The definition of Refugee under **UNHCR's** mandate, based on UNHCR's Statute and successive UN General Assembly and ECOSOC resolutions UNHCR's competence to provide international protection to refugees encompasses individuals who meet the criteria for refugee status contained in Article 1 of the 1951 Convention and its 1967 Protocol and is extended to “individuals who are outside their country of origin and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order”. See also the Entry on UNHCR’s mandate for refugees, stateless persons and internally displaced persons [IDPs.]

In any operational context of refugee definition, the national legal framework is also important because it is usually the primary source of law for national authorities and as such generally serves as their first point of reference. The definitions contained in international and regional instruments will generally have been incorporated into the national legal frameworks of the States parties to them. It is therefore critical to be aware of and understand the refugee definition provided under the relevant national legal framework

In the United States there have been several refugee acts, which mainly provided for special quotas for the admission of refugees.The Refugee Act of **1980, which** is treated more amply elsewhere in this book, constitutes a new departure. While the previous acts had defined as refugees only persons coming from "Communist or Communist-dominated countries and the general area of the Middle East," the 1980 Act contains a definition based on the 1951 Refugee Convention and the 1967 Protocol. In an expansion of the Convention definition, the Act also considers as a refugee any person who, in such special circumstances as the president after appropriate consultation may specify, is still in his or her country of origin and is persecuted or has well-founded fear of persecution. Persons who were themselves engaged in persecution are excluded. The spouse and minor children of a refugee are also to be admitted.

The **definition** of refugee status set out in the **1951** **Geneva** **Convention** Relating to the Status of Refugees is clear: to be recognized legally as a refugee, an individual must be fleeing persecution on the basis of religion, race, political opinion, nationality, or membership in a particular social group, and must be outside the country of nationality. In practice, however, the contemporary drivers of forced migration are complex and multi-causal, rendering protection predicated on persecution increasingly problematic and challenging to implement. In particular, the blurring of the lines between voluntary and forced migration, as seen in “mixed” migration flows, together with the expansion of irregular migration, have contributed to an increasing range of “protection gaps” and to the diminution of “protection space.” Forced migrants who fall outside the recognized refugee and asylum apparatus and even many of those who qualify face mounting risks.

Beyond traditionally defined persecution, much displacement today is driven by a combination of intrastate conflict, poor governance and political instability, environmental change, and resource scarcity. Together, such conditions leave individuals highly vulnerable to danger and uncertain of the future, compelling them to leave their homes in search of greater security. While most of the displaced as many as 95 percent will remain in their country of origin or in the immediate neighborhood, forced migrants are increasingly relying on wider patterns of mobility, both on the regional and global scale, to ensure their access to livelihoods and safety.

The **Convention** Refugee Definition Article 1A[1] of the 1951 Convention applies the term ‘Refugee’, first, to any person considered a refugee under earlier international arrangements. Then, Article 1A [2], read now together with the 1967 Protocol and without time or geographical limits, offers a general definition of the refugee as including any person who is outside their country or origin and unable or unwilling to return there or to avail themselves of its protection, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group an additional ground not found in the UNHCR Statute, or political opinion. Stateless persons may also be refugees in this sense, where country of origin citizenship is understood as ‘country of former habitual residence’.

The refugee must be ‘outside’ his or her country of origin, and having crossed an international frontier is an intrinsic part of the quality of refugee, understood in the international legal sense. However, it is not necessary to have fled by reason of fear of persecution, or even actually to have been persecuted. The fear of persecution looks to the future, and can emerge during an individual’s absence from their home country, for example, as a result of intervening political change.

**A Convention** refugee, by definition, must be unable or unwilling to avail him-or herself of the protection of the state or government, and the notion of inability to secure the protection of the state is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against persecution by non-state actors.

The Convention does require that the persecution feared be for reasons of ‘race, religion, nationality, membership of a particular social group, or political opinion’. This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, gives an insight into the characteristics of individuals and groups which are considered relevant to refugee protection. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights, while persecution implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could comprise a single act of torture

In 1969, the Organization of African Unity now the African Union adopted the Convention on The Specific Aspects of Refugee Problems in Africa [Sharpe 2012]Article I [1] incorporates the 1951 Convention definition, but paragraph [2] adds an approach more immediately reflecting the social and political realities of contemporary refugee movements. Also to be accepted as refugees are those compelled to flee owing to external aggression, occupation, foreign domination, or events seriously disturbing public order? In 1984, 10 Central American States adopted a similar approach in the non-binding Cartagena Declaration, recognizing in addition flight from generalized violence, internal conflicts, and massive violation of human rights. Two years later, in the extradition case of ***Soering Vs United Kingdom,*** the European Court of Human Rights laid the essential foundations for protection from removal under the European Convention. In this first judgment in what is now a long and consistent body of jurisprudence, the court ruled that it would be a breach of the Convention to remove an individual to another state in which there were substantial grounds to believe that he or she would face a real risk of treatment contrary to Article 3, which prohibits torture or inhuman or degrading treatment. Later judgments have confirmed the applicability of this principle without exception, for example, in’ security’ or criminal cases, and in the context also of extra-territorial interception operations.

This human rights jurisprudence contributed substantially to ‘legislative’ developments within the European Union. These include the adoption of the 2001 Directive on Temporary Protection, applicable to ‘displaced persons’ unable or unwilling to return to their country of origin, for example, because of armed conflict, endemic violence, or systematic or generalized violence, and whether or not they are Convention refugees;[p. 42] and the 2004 Qualification Directive, which besides providing for recognition of Convention refugees, now also calls for ‘subsidiary protection’ in the case of those who would face a real risk of serious harm if returned to their country of origin .

However, even when one looks more closely at specific groups, the definitions are not always clearer. The most basic definition of a “refugee” in international law is the definition adopted by the United Nations in the 1951 Convention Relating to the Status of Refugees and extended in the subsequent 1967 Protocol [United Nations, 1950 Article 1, Section A(2); United Nations, 1966: Article 1] “Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

The 1951 Convention definition was restricted to refugees in Europe following the end of World War II. The 1967 Protocol removed the geographical and chronological limitations to make the definition more general. However, some nations that are party to the Convention have not signed the Protocol, and vice versa. Refugees who fall under this definition are often known as “Convention” refugees. In contrast, “mandate” or “statutory” refugees fall under the mandate of the United Nations High Commissioner for Refugees [UNHCR], as declared in its 1950 statute, and are only two of the groups of persons of concern to UNHCR. Statistics on forced migrants who come under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East are not included in UNHCR’s estimates under U.N. High Commissioner for Refugees, 1997.

Hence, even UNHCR, a primary source for most statistics on forced migrants, uses different definitions to serve different groups, and by extension, to collect data on these groups [U.N. High Commissioner for Refugees, 1997:1] Refugees, which includes:

a) Persons recognized as refugees by Governments having ratified the 1951Convention and/or 1967 Protocol;

b) Persons recognized as refugees under the 1969 OAU Convention and the principles of the Cartagena Declaration;

c) Persons recognized by UNHCR as refugees in accordance with its Statute “mandate” refugees;

d) Persons who have been granted temporary protection on a group basis.

Returnees: persons who were of concern to UNHCR when they were outside their country of origin and who remain so for a limited time after their return. Others: asylum-seekers, others in a refugee-like situation who have not been granted refugee status “humanitarian” refugees. Internally displaced: persons displaced internally within their country for reasons that would make them of concern to UNHCR if they were outside of their country of origin

**Still** another definition comes from the U.S. Committee for Refugees [USCR 1997:4], which reports: two categories of people in need of protection and/or assistance: refugees, who are unwilling or unable to return to their home countries because they fear persecution or violence there; and asylum seekers, who claim that they are refugees. USCR statistics also generally do not include persons who have been granted permanent status [U.S. Committee for Refugees, 1997].

From these definitions it may seem that the key difference is whether the people counted have permanent or temporary status, but there are other sources of definitional variance. In order to ac5 persons who may be in need of protection and assistance, including those who may not be “official” refugees, USCR keeps statistics on a category of “selected populations in refugee -like situations.” These displaced populations are people whose legal status is unclear, such as Palestinians in Jordan who were displaced from the West Bank in 1967, the Burmese in Thailand who may be refugees but might also be economic migrants, and “forced migrants” from the former Soviet republics [Argent, 1997]. It is possible that, due to the more liberal definitions used, some of USCR’s data contain a number of economic migrants.

Of course, since most UNHCR and USCR statistics come from governments themselves, a key to understanding the data is knowing how various governments define and count forced migrants. Generally, it seems that industrialized countries tend to use the Convention definition, since they usually grant refugee status on an individual basis (Schmeidl, 1995).

However, the **definitions** of refugee found in the 1969 Organization of African Unity [OAU] Convention and the 1984 Cartagena Declaration make it evident that such a narrow interpretation does not always work for developing regions: they often use a definition that allows for recognition of the group displacement caused by systemic violence and internal conflict. It is not the status of individuals that matters in such situations, but rather the well-being and protection of the group. Yet not all developing nations have adopted the OAU Convention or the Cartagena Declaration definitions. Many other nations have not signed either the U.N. Convention or Protocol or both.

The guidelines and process used to determine if a person fits the specific interpretation of the accepted definition of refugee in a particular country may vary widely. Therefore, the numbers of refugees estimated by governments and in turn, many of the estimates produced by UNHCR and USCR are, at best, a representation of a government’s criteria and procedures for refugees [Bilsborrow et al., 1997].

Further the definition of “refugee” found in the UNHCR Statute is very similar to that found in the Convention, with the addition of a clause allowing for those who were previously considered refugees according to international law under the Arrangements of 1926 or 1928, the Conventions of 1933 or 1938, the Protocol of 1939, or the Constitution of the International Refugee Organization to be considered refugees for the UNHCR’s purposes.

The Constitution of the International Refugee Organization [IRO] created **definitions** of "refugee" and "displaced person" for a specific purpose-to determine eligibility for the services of that organization. The IRO definition of "refugee" includes all persons who were considered refugees before the outbreak of World War II, but there is no explicit reference to a denial of state protection. However, the notion of "victinos" of a given regime, a forerunner of the notion of "persecution, appears here as a criterion of refugee status. The requirements of a "well-founded fear of persecution" and a denial of state protection are combined in paragraph 6 of the UNHCR Statute, which defines the High Commissioner's competence ratione personae, and again in Article l (A) (2) of the Convention on the Status of Refugees.

Finally the Convention of the Organization of African Unity Governing the Specific Aspects of Refugee Problems in Africa of September **10,** 1969, is the regional supplement to the **1951** Convention relating to the Status of Refugees. It contains a broader definition of the concept of "refugee" than the **1951** Convention, covering persons outside their country of origin due to external aggression, military occupation, foreign domination, or other events seriously disturbing public order in either part or the whole of the country of origin. The **OAU** Convention also addresses matters not regulated in the **1951** Convention, such as asylum, subversive activities of refugees, and voluntary repatriation.

**In conclusion**

All in all the definitions and political concerns are very important in determining who is a refugee, an asylum, an internally displaced person, or other “person of concern.” Thus, numbers are likely to differ somewhat despite the accuracy of the counting, the reporting processes, and the best intentions of field staff and others simply because of definitional differences. The refugee definition is declaratory, i.e. a person is a refugee as soon as s/he fulfils the criteria contained in the definition. This would necessarily occur prior to a formal determination of her/his refugee status. Until such determination is made it must be assumed that those who have crossed an international border to escape a risk of serious harm in their country of origin are refugees and should be treated as such, the refugee definition applies both in emergency and non-emergency situations and can under no circumstances be changed, restricted or suspended. Emergency situations, however, typically do not allow for time and resource intensive individual status determination. Group determination on the basis of a prima facie recognition of refugee status may be more suitable in emergency situations. It is important to recall the declaratory character of the refugee definition and to operate on the assumption that all those fleeing a situation of serious harm in their country of origin are refugees, even if this is not always formally stated. As such, they all enjoy protection from refoulement as well as protection derived from human rights law and applicable international humanitarian law.

WORKS CITED:

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**See** Goodwin-Gill, Entry and Exclusion of Refugees: The Obligations of States and the Protection of the 09ce of the United Nations High Commissioner **for** Refugees, this volume, By Paul Weis [**Michigan Journal of International Law** Volume 3. Issue 1. 1982**.]**

See Martin, The Refugee Act of 1980: Its Past and Its Future; Griffith, Deportation and the Refugee; Parker, Victims of Natural Disasters in United States Refugee Law and Policy, this volume. By Paul Weis [**Michigan Journal of International Law** Volume 3. Issue 1. 1982**.]**

**The** Refugee Act of **1980,** & 201(b) to be codified at **8** U.S.C. & **1156.**

**ASSIGNMENT QUESTION TWO [2]**

**THE POLITICAL AND PRACTICAL ISSUES SURROUNDING DATA COLLECTION:**

It is easy to imagine the practical difficulties of counting hundreds or thousands of people who are moving. If people flee a dangerous situation, the danger they are trying to escape can travel with them, or a new threat can emerge. When the slaughter of innocent refugees occurs in such places as Zaire and Bosnia, it becomes clear that in a growing number of situations, even those persons located in camps or so-called “safe areas” are not always safe from attack by bands of militias and others. Consequently, security issues are a major issue surrounding the identification of the total number of forced migrants in a crisis situation.

The sheer number of people who may be forced to migrate can make it very difficult to ensure proper enumeration, especially if the population is constantly on the move. For example, it has been estimated that during a few days in 1994, approximately 1 million Rwandans crossed the border to Zaire to escape civil war and genocide [U.S. Committee for Refugees, 1997]. Even if relief agencies had foreseen this massive exodus, the logistics of counting 1 million people accurately would have required massive resources, which are simply not available in most forced migrant situations.

Moreover, forced migrant flows often occur in remote areas, away from centers of population and development. These areas may be further isolated due to a breakdown of infrastructure caused by the political crisis [Levine et al., 1985]. For instance, relief workers trying to assist Sudanese refugees in Uganda in 1996 were often unable to reach the refugees because of land mines and road closings U.S. Committee for Refugees, 1997. Under such circumstances, it may be difficult to reach the migrants, either to count them or to assist them.

Furthermore, the phenomenon of self-settlement can also create problems for those trying to estimate forced migrant populations. Refugees may not dwell in camps, but instead settle with the local population, who may share a similar language, ethnicity, or even kinship ties. For example, many of the Togolese refugees in Benin are self-settled refugees [U.S. Committee for Refugees, 1997]. Self-settlement can make it very difficult for assistance groups to determine who actually fled their homes and to get an accurate count of the forced migrants without accidentally including some of the local population [U.N. High Commissioner for Refugees, 1994].

Even when refugees do reside in camps, there are numerous ways for errors to occur in the counts. For example, refugees might misinform relief workers about their own numbers. They might be inclined to report larger numbers of refugees than there are in order to get larger food rations, or they may subvert attempts to get an accurate count because of fear U.N. High Commissioner for Refugees, 1994. Relief workers might also be guilty of over reporting of the numbers of forced migrants in an attempt to encourage more aid. For example, a recent report revealed that estimates of the number of internally displaced persons in one African country had been exaggerated by 60 percent in an apparent attempt to leverage more relief supplies Argent, 1997. In other situations, aid workers may underestimate the number of actual migrants by accident. In addition, refugees might leave a camp to return home without notifying relief workers, or they may be hesitant to report deaths of family members because they fear that their food rations will be decreased. Whatever the reason, however, such reporting biases definitely make it more difficult to attain accurate numbers. All of these factors can contribute to a total count of persons that may be vastly different from the actual number.

Many available statistics on forced migrants are derived from registers of people who are receiving assistance from a relief program. These beneficiary statistics, often kept by governments, international organizations, or non-governmental organizations, can be very useful when no other figures are available, but their quality is also subject to debate. They may be more reliable if persons are in closed camps, where their movements are restricted [Bilsborrow et al., 1997], but keeping refugees in such camps may actually be detrimental to their health and well-being [Van Damme, 1995].

The political as well as practical issues surrounding data collection of Forced migration is a highly charged political issue, and many people have a stake in how many refugees or internally displaced persons are counted. Government statistics may be manipulated for a variety of reasons. For example, if a regime is fighting a civil war that has displaced many persons, it might report their number as lower than it is so that the situation appears under control. Likewise, if the government is responsible for driving its own people into a neighboring country, it is likely to underreport the number of refugees.

Conversely, a state may be inclined to overstate the actual number of refugees from a bordering nation to draw negative attention to an adversary or in an attempt to gain more relief aid for the refugees. Sometimes governments will refuse to allow international organizations access to the refugee populations within their borders, which makes it nearly impossible to disprove their suspicious statistics (U.N. High Commissioner for Refugees, 1994). In an unstable situation, when the truth is being exaggerated or twisted by several different sources, it can become nearly impossible to arrive at an accurate figure.

In a presentation of the political and practical issues surrounding the collection of forced migrant statistics, Richard Black raised two primary points. First, accountability to donors can cloud the collection of data. For example, it can lead to false precision as assistance agencies attempt to be responsive to donors. Black declared that agencies should be more accountable to the forced migrants themselves and less accountable to their funding sources. He reminded participants that the reason refugees and internally displaced persons are of concern to the international community is because they are in need of protection and assistance, not because they have moved from one place to another [Harrell-Bond et al., 1992]

Second, Black said that aid is too often focused on assisting solely the forced migrants themselves, rather than aiding the entire needy population in an area. As a result, keeping track of who is and who is not a refugee can become the primary task. He suggested that perhaps a movement away from targeting aid toward refugees alone and toward “universal” aid to people in need in a given area could alleviate some of the difficulties associated with counting refugees. Because aid would not be targeted so strictly, refugee numbers would not be directly linked to the quantity of aid. Then, according to Black, refugees might not be as wary of participating in their counting, especially if the enumeration is done in a humane and dignified fashion.

Although registration and censuses in refugee camps could be made simpler and more effective, Black emphasized the need to rely more on sampling techniques to obtain accurate estimates of forced migrant camps. Sampling techniques are well developed and often used in the social sciences, yet they are not commonly used in forced migrant situations. Furthermore, sample surveys can furnish relatively accurate data and are both cheaper and easier to administer than a census or registration. The failure to use sampling techniques in the field was often cited by many workshop participants as a problem with current estimation approaches.

Not only the above, politically data are regularly captured, processed and disseminated to provide a better understanding of the movements and evolving needs of displaced populations and migrants, whether on site or en route, with over 30 million individuals tracked in 2017. The Global International Organization for Migration [IOM] collects forced migration data through the displacement tracking matrix [DTM]. The DTM is a system used to track and monitor displacement and population mobility due to natural disasters and conflict, and has been active in over 60 countries since 2004. Data on conflict- and disaster-induced displacement are presented in the [DTM Data Portal](https://displacement.iom.int/). In addition to this, IOM collects data on the number of migrants it assisted and resettled to States offering temporary protection or permanent resettlement and an overview of these data can be found in the summary of IOM Statistics.

The data collection is essential in provision of assistance and protection to Refugees for example Palestinian refugees in Gaza, Jordan, Lebanon, Syria, the West Bank and the Gaza Strip and the publication releases statistics on the number of Palestinian refugees and refugee camps. Today, over 5 million Palestine refugees have registered with United Nations Relief and Works Agency.

The organization of America state together operate them continuous progressive reporting on the refugees data collection, which produces biannual reports of collected data from various sources in the Americas Region. The publication provides a short chapter on asylum seeking in the Americas, including data by country of asylum from 2001 to 2015.

The Department of State’s Bureau of Population, Refugees and Migration, provides statistics on refugee arrivals and admissions in the United States, by region, state and nationality. In addition, the office of Immigration Statistics produces annual flow reports and data on refugee and asylum statistics, disaggregated by country of origin, age, sex and marital status. The Government of Canada’s [Immigration, Refugees and Citizenship Canada Department has an Open Government Portal](http://www.cic.gc.ca/english/department/index.asp) through which information on immigration and citizenship programmes can be found. Specifically, the portal provides monthly statistics on asylum claims, Syrian refugees and resettled refugees. The Australian Government provides statistics on their [humanitarian programme](https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/humanitarian-program), which include quarterly asylum statistics and yearly asylum trends as well as yearly outcomes for their Offshore Humanitarian programme (refugee visas) and monthly irregular maritime arrivals reports. Their archived [Fact Sheet](https://archive.homeaffairs.gov.au/about/corporate/information/fact-sheets/60refugee) provides an overview of their refugee and humanitarian programme with figures from 2011 to 2016.

**Data strengths & limitations**

Given the high public interest on forced displacement, complete and reliable data are essential. Existing data provide an indication of refugee and IDP figures globally, but they are based on estimates and varying data collection methods. Data discrepancies can occur due to disaggregation by country of origin or country of asylum only. Often data are lacking information on sex and age tracking forced migration population with limitations, Persons who are internally displaced within their own countries are often even more difficult to count than refugees who have crossed an international border, for three reasons.

First, these persons may be under 12 attack by their own government; thus, they are often in hiding in remote locations of the countryside, which makes them inaccessible. It is also highly unlikely that a persecuting government will allow international agencies any access to these people or even that it will divulge any of its own estimates of their number. And even if such numbers were made available, they would probably be very unreliable.

A second difficulty in counting internally displaced persons is that relatively few congregate in camps or in large and distinct groupings. The forced migration situations in Burundi, Rwanda, and Afghanistan, all beginning in the early 1990s, were exceptions to this rule. The more usual phenomenon is for people to travel to urban centers and “disappear” or to stay with relatives in the vicinity of their homes (which may be just across an international border). In other cases, such as Uganda, people may hide in forests during the night and return to their homes during the day. Such situations lead to the question: how long one can be classified as an internally displaced person, rather than someone who has made a permanent move to a different home? In Lebanon, for example, most of the internally displaced have been away from their original homes for 25 years without a “durable” solution.

A third reason that internally displaced persons are difficult to count is that they have not crossed an international border and their status under international law is ambiguous. Usually, they have few or no legal rights and protections. Although in recent years UNHCR has been asked by the Secretary General and by the Security Council of the United Nations to consider certain groups of internally displaced persons as “populations of concern,” this does not mean that they are all counted or that it is always clear who they are. USCR estimated the number of internally displaced persons worldwide in 1996 to be more than 19 million, but it admits that the number may be much higher because assessments may be “fragmentary and unreliable” [U.S. Committee for Refugees, 1997:6].

**In conclusion:**

Although the number of refugees worldwide has been decreasing steadily in recent years, the number of internally displaced people has been growing rapidly, due mostly to the ever-shifting international norms regarding refugee policy. Containing conflicts in their place of origin has taken precedence over the offering of sanctuary in other countries. Therefore, many people are displaced within their own countries, where their lives may be in danger and where they are usually unable to receive assistance from the international community [Bennett, 1997]. As one of the largest sources for data on forced displacement, UNHCR provides a unified approach to registering refugees, asylum seekers and IDPs through its [Handbook for Registration](http://www.refworld.org/docid/3f967dc14.html). The Handbook, which provides guidance and operational standards for registration, among other topics, is useful for UNHCR staff and governmental and non-governmental partners who independently operate camps.

Many forced or mixed migration movements are monitored through population movement tracking systems, which provide rough estimates of such population flows. Organizations such as UNHCR, IOM, and the Danish Refugee Council [DRC] have such tracking systems in place to monitor the movements of mixed migration flows and IDPs. However, such movement tracking systems are subject to caveats including but not limited to: massive population flows that overwhelm capacity; limited access to certain routes and locations due to instability; unwillingness of individuals to provide information when there is no assistance being offered; and political pressures to suppress accurate reporting on IDP movements [Sarzin, 2017]

Data collection of forced or mixed migration movements, where refugees move alongside irregular migrants or via irregular migration routes, can be difficult and scarce because of the clandestine nature of such migration and the various motives for migrating. The identification of individuals in need of protection also becomes challenging as many refugees travel together alongside migrants underway for work or other reasons. As more resources are needed in order to collect such data, governments tend to only collect data on forced migration in developed countries [Sarzin 2017].

In regard to collecting data relating to IDPs and other forcibly displaced persons, the problem of inconsistent definitions and methodologies arises. Inconsistent definitions and methodologies across countries, organizations and movement tracking systems can produce different totals, resulting in data that are not comparable under World Bank, 2017 report. In order to curb such inconsistencies, the [Humanitarian Data Exchange](https://data.humdata.org/) [HDX], founded in 2014 by the United Nation Office for the Coordination of Humanitarian Affairs [OCHA], and IDMC have been advocating for data interoperability, which describes the extent to which computer systems and devices can exchange data and interpret that shared data. The former has been advocating for this for the last 20 years. Both agencies are actively committed to advocating for data interoperability through the [Grand Bargain](https://interagencystandingcommittee.org/grand-bargain-hosted-iasc).

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**ASSIGNMENT QUESTION THREE [3]**

**DISCUSS THE IMPORTANCE OF ESTIMATING THE POPULATION COMPOSITION OF FORCED MIGRATION**

Estimating components of population change, such as fertility and mortality, can be much more difficult to account for in an emergency situation than under normal circumstances. Information such as the number of births or deaths, ages, and family relationships may be difficult to obtain from forced migrants themselves. And even if the refugees or internally displaced persons are willing to give information about demographic events or characteristics, relief workers may record these data in ways that do not correspond to Western statistical standards. These factors can often make it difficult to ascertain the true meaning of the statistics and further confuse the process of collecting information (U.N. High Commissioner for Refugees, 1994).

Conversely, a state may be inclined to overstate the actual number of refugees from a bordering nation to draw negative attention to an adversary or in an attempt to gain more relief aid for the refugees. Sometimes governments will refuse to allow international organizations access to the refugee populations within their borders, which makes it nearly impossible to disprove their suspicious statistics (U.N. High Commissioner for Refugees, 1994). In an unstable situation, when the truth is being exaggerated or twisted by several different sources, it can become nearly impossible to arrive at an accurate figure.

In a presentation of the political and practical issues surrounding the collection of forced migrant statistics, Richard Black raised two primary points. First, accountability to donors can cloud the collection of data. For example, it can lead to false precision as assistance agencies attempt to be responsive to donors. Black declared that agencies should be more accountable to the forced migrants themselves and less accountable to their funding sources. He reminded participants that the reason refugees and internally displaced persons are of concern to the international community is because they are in need of protection and assistance, not because they have moved from one place to another (Harrell-Bond et al., 1992).

Second, Black said that aid is too often focused on assisting solely the forced migrants themselves, rather than aiding the entire needy population in an area. As a result, keeping track of who is and who is not a refugee can become the primary task. He suggested that perhaps a movement away from targeting aid toward refugees alone and toward “universal” aid to people in need in a given area could alleviate some of the difficulties associated with counting refugees. Because aid would not be targeted so strictly, refugee numbers would not be directly linked to the quantity of aid. Then, according to Black, refugees might not be as wary of participating in their counting, especially if the enumeration is done in a humane and dignified fashion.

Although registration and censuses in refugee camps could be made simpler and more effective, Black emphasized the need to rely more on sampling techniques to obtain accurate estimates of forced migrant camps. Sampling techniques are well developed and often used in the social sciences, yet they are not commonly used in forced migrant situations. Furthermore, sample surveys can furnish relatively accurate data and are both cheaper and easier to administer than a census or registration. The failure to use sampling techniques in the field was often cited by many workshop participants as a problem with current estimation approaches.

**Estimating Internally Displaced Population:**

Persons who are internally displaced within their own countries are often even more difficult to count than refugees who have crossed an international border, for three reasons. First, these persons may be under 12 attack by their own government; thus, they are often in hiding in remote locations of the countryside, which makes them inaccessible. It is also highly unlikely that a persecuting government will allow international agencies any access to these people or even that it will divulge any of its own estimates of their number. And even if such numbers were made available, they would probably be very unreliable.

A second difficulty in counting internally displaced persons is that relatively few congregate in camps or in large and distinct groupings. The forced migration situations in Burundi, Rwanda, and Afghanistan, all beginning in the early 1990s, were exceptions to this rule. The more usual phenomenon is for people to travel to urban centers and “disappear” or to stay with relatives in the vicinity of their homes which may be just across an international border. In other cases, such as Uganda, people may hide in forests during the night and return to their homes during the day. Such situations lead to the question: how long one can be classified as an internally displaced person, rather than someone who has made a permanent move to a different home? In Lebanon, for example, most of the internally displaced have been away from their original homes for 25 years without a “durable” solution.

A third reason that internally displaced persons are difficult to count is that they have not crossed an international border and their status under international law is ambiguous. Usually, they have few or no legal rights and protections. Although in recent years UNHCR has been asked by the Secretary General and by the Security Council of the United Nations to consider certain groups of internally displaced persons as “populations of concern,” this does not mean that they are all counted or that it is always clear who they are. USCR estimated the number of internally displaced persons worldwide in 1996 to be more than 19 million, but it admits that the number may be much higher because assessments may be “fragmentary and unreliable” [U.S. Committee for Refugees, 1997:6].

Although the number of refugees worldwide has been decreasing steadily in recent years, the number of internally displaced people has been growing rapidly, due mostly to the ever-shifting international norms regarding refugee policy. Containing conflicts in their place of origin has taken precedence over the offering of sanctuary in other countries. Therefore, many people are displaced within their own countries, where their lives may be in danger and where they are usually unable to receive assistance from the international community [Bennett, 1997]. Jon Bennett discussed the working definition of internally displaced person that was recently adopted by the United Nations [Bennett, 1997:1]: This definition has been adapted over time by the U.N.’s Special Representative on Internally Displaced Persons and used by the Global Internally Displaced Person Survey. The UNHCR definition is slightly more restrictive, with an emphasis only on those who would be “Convention” refugees had they crossed a border. Persons or groups of persons who have been forced to flee or to leave their homes or places of habitual residence as a result of, or in order to avoid, in particular, the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.

As Bennett pointed out, many criticize the definition, and no one is satisfied with the term “internally displaced person.” In a crisis situation, a person’s official legal status can change rapidly, depending on the nature of the immediate threat, where the person is located, and other factors. Yet the needs of such displaced persons remain the same, in spite of their quickly changing legal status. Although the emphasis is on people who have been forced to flee violence or human rights violations, victims of natural disaster are included as internally displaced persons under the current working definition. This inclusion is intended to give the international aid community more leeway to assist such people, but it can create confusion when interpreting trends in internally displaced persons over time.

Bennett stated his view that USCR is currently the best source of data on internally displaced persons, although UNHCR has also published some estimates in recent years. Results from the Global Internally Displaced Person Survey, to be published in 1998, will combine data and knowledge of internally displaced persons in one volume, which will increase the amount of information available. Internally displaced persons are also difficult to count because it is sometimes hard to distinguish between voluntary migrants and true internally displaced persons.

Finally, it is difficult to determine when a person is no longer internally displaced, or when he or she has been “reintegrated” into their community. This problem is similar to that facing those who count repatriated refugees. In other words, although people may have returned to their homeland that does not necessarily mean that they have returned home. Charles Keely reminded the participants that a refugee situation is very different politically from a situation of internal displacement. Because refugee flows indicate that the state system is not working properly, other states will usually intervene to fix the problem. If people are displaced within their own country, however, other states may not even know about the problem. If they do, they have little incentive (and even strong disincentive) to interfere. Thus, as Keely emphasized, estimates of internally displaced persons are ultimately biased by the interests of the states involved.

The Estimates of population age and sex composition are needed both for planning services and for estimating and comparing mortality and fertility rates. High-risk groups that require special public health interventions, such as special feeding programs or immunizations, are most likely to be children under 5 years of age, pregnant women, and the elderly. Yet several participants noted the lack of information on population compositions in the literature on forced migration. Various standard demographic breakdowns of populations have been created by different organizations. One non-governmental organization uses at least three separate references to estimate the size of the various groups within a refugee population [Sandra Krause, American Refugee Committee, personal communication, 7/24/97].

If the total size of the population is known or estimated fairly well, one can then determine the numbers of vulnerable groups by using standard percentages. A commonly quoted figure is that about 80 percent of most refugee populations are comprised of women and children under the age of 18. Although this proportion may seem high to the casual observer, it is really not very surprising. Emphasizing the proportion of women and children in the population may be important from a policy and relief standpoint, but, demographically, a refugee population might look very similar to any population in the developing world

**Estimating Mortality Rates**

The first reason that mortality estimates are difficult to obtain in many forced migrant situations is because there is usually no existing vital registration system. If a registration system is in place, it is likely to break down in an emergency. Yet even if complete registration data were available, they would be likely to be flawed. Deaths are often underreported because people may fear that their family food rations will be reduced if their family size decreases. Cultural taboos about death may also lead to. Under reporting. Because the total population, which is the denominator when calculating mortality rates, is commonly overestimated, mortality rates are much more likely to be understated than overstated [Toole and Waldman, 1997].

**MORTALITY RATES ESTIMATE [AGE-SEX]**

In addition, in order to estimate age-sex-specific mortality rates, one needs to know the composition of the population, and this information, if available, is often faulty. Estimates are thought to be most reliable in situations in which refugees are in an organized camp setting and least reliable where internally displaced persons are spread over a large area. Generalizing findings beyond a specific sample is difficult, however, because of differing survey methods and lack of data on groups that are hard to locate or count.

Brent Burkholder discussed methods for estimating mortality rates in refugee camps. Because the total number of persons is used as the denominator when calculating a crude mortality rate, estimating the size of the entire population is important. Burkholder used the example of Goma, Zaire, in the summer of 1994 to illustrate how different methods of counting the total population led to very different estimates. Médecins Sans Frontières marked grids on crude maps to show population densities of certain areas. Individuals within selected areas were enumerated and their numbers extrapolated to provide an estimate of the total number of persons in the camps, which was 750,000. The French military, on the other hand, counted the number of shelters in aerial photographs and extrapolated from small ground surveys of population density to estimate a total number of 500,000; this count was likely to be an underestimate because many people did not have shelters at that point.

**ESTIMATE OF CRUDE MORTALITY RATE:**

The second important component of an estimated crude mortality rate is the total number of deaths over a period of time. Burkholder discussed several collection techniques for mortality data in emergency situations. Techniques range from burial site observation to collection of hospital or death records to surveys of community leaders or the population as a whole. In Goma, it was difficult to hide deaths (which refugees might have been inclined to do to avoid losing food rations) because graves could not be dug in the volcanic soil. Body collectors were employed to count the number of dead. At first, this led to over estimates of mortality because many collectors believed that they would be paid per body. As Burkholder explained, after this misunderstanding was cleared up, the estimates were thought to be fairly reliable. Ronald Waldman laid out a model of how the mortality rate typically changes over time in an emergency situation.

**BASELINE CRUDE MORTALITY RATE:**

In the field, epidemiologists often rely on baseline crude mortality rate “benchmarks” to know when a situation has changed from one phase to another. As Burkholder pointed out, however, one cannot always assume that these benchmarks are accurate. He proposed that demographers help assistance teams to know how to make them more precise and also more applicable to specific situations. The idea of estimating mortality differently during each of these different “phases” of an emergency was emphasized by Kenneth Hill. He distinguished between the acute phase and the stabilization phase. During the acute phase, approximate estimates are good enough to differentiate catastrophic mortality from more-or-less “normal” mortality. At this time, mortality rates may vary greatly from one situation to another and between groups i.e., children may be more vulnerable than adults. It is nearly impossible to do traditional household surveys because there are no actual households and there is not enough time to process this type of data.

Once the acute phase has passed and the population begins to stabilize, it is both easier and more important to conduct sample surveys. Although people may not be living in actual households, they can be surveyed in their living arrangements. Mortality estimates during this phase should be compared with estimates for the same group made prior to the crisis or with estimates for the surrounding population such as the host country population. Child mortality is a good general indicator of overall population health. Even 2 to 3 years after a crisis has ended, large sample surveys with detailed birth and migration histories can be very useful for learning more about mortality dynamics among forced migrants.

It is assumed that refugees are at the highest risk of mortality immediately after their arrival in a host country. They have often traveled long distances, sometimes on foot, without enough food, water, or medical care. During this first phase of a crisis, epidemiologists often find it useful to express the crude mortality rate as the number of deaths per 10,000 persons per day. Since accurate age sex composition is usually not known, it is difficult to assess what a “normal” level of mortality is in a particular situation.

Nevertheless, a situation with a CMR of greater than 1 per 10,000 per day is commonly regarded as an emergency [Toole and Waldman, 1997]. Mortality rates typically decline after the crisis phase, but the rate of decline varies greatly, usually related to how quickly and effectively international relief efforts are implemented. For example, high death rates among Cambodian refugees in Thailand in 1979 decreased to more normal levels much faster than did the death rates of Somali refugees in Ethiopia in 1988 [Centers for Disease Control and Prevention, 1992]. Although the data are insufficient and often unreliable, mortality rates are probably also very high among internally displaced populations [Toole and Waldman, 1997]. Allan Hill suggested that modeling mortality among forced migrant populations in various phases of an emergency could be very useful for future crisis response. This work could be done by studying data on births and deaths from past crises. Several participants expressed the need for more sample surveys, especially during the post-crisis phase of any situation. Jeremiah Sullivan cautioned that such surveys may not be the best choice because they are retrospective and attrition and mortality are likely to be problems with any sample. Zlotnik reminded participants that even the mortality methodologies for stable populations are not fully developed, so one should not expect immediate perfection in the field of forced migration. She also stressed the need to state clearly the methods of estimation used in published articles so that others can interpret the results properly.

**Estimating Fertility Rates**

Very little concrete information is available or known about fertility rates in forced migrant settings. Estimated crude birth rates, based on estimates of camp size and the number of reported births, have reportedly ranged from 45 to 55 per 1,000 population. One nongovernmental organization report states: “There seems to be little doubt that women in many refugee settings are having large numbers of children” (Wulf, 1994:7). Summarizing the scant information available on the subject, Kenneth Hill concurred that refugees are indeed bearing children and so need reproductive health care. Yet it is impossible to generalize about fertility rates in refugee settings because there appears to be enormous variation from one setting to the next. Once again, the type of data that can and should be collected depends on the maturity of the crisis. For example, during the onset of an emergency, current status measures are strongly needed. Detailed birth histories are unlikely to be useful or feasible. Instead, asking a simple question about recent pregnancies to women attending prenatal clinics may provide not only a reasonable estimate of fertility, but may also give an indication of the current health status of the population.

Kenneth Hill also emphasized the importance of using standardized measures and analyses. Most studies seem to restrict their sample to certain narrowly defined groups and disregard selectivity. For example, one study surveyed only women who already had a child under the age of 6 about their fertility. Another study looked only at marital or union fertility. Kenneth Hill stressed the need to create typologies, by comparing similarities and differences among similar populations; only then can one begin to classify situations and know how to better deal with them. Keely emphasized the need to institutionalize the available data so that it can be better used.

Hansch noted that the fertility studies to date only compare point estimates of fertility at a particular time. He stressed the need for longitudinal data in order to discover the processes behind fertility among forced migrants. Although Keely questioned the feasibility of acquiring longitudinal data, Bradley Woodruff pointed out that some long-term camps do have fairly good birth registration systems.

Allan Hill commented that a few pieces of data, such as a simple birth history, could be extremely useful and easy to obtain from medical assistance records or ration cards. Although many agreed that this information could be useful, some participants worried about data confidentiality. Many conflicting factors both support and discourage the fertility of forced migrants, so it is likely to vary greatly depending on the specific situation. Black cautioned that in some situations women may either claim to be pregnant when they are not or hide a pregnancy, for a variety of reasons. Researchers and aid workers alike must be able to analyze the specifics of a given situation in order to understand how fertility 19 will be affected. Better data, improved methods, and more research are needed in order to improve understanding of the phenomenon of fertility in forced migrant situations.

**Conclusion:**

The workshop highlighted many ways in which demographers can assist in the study of forced migration. Social science techniques that are common to demography, such as sampling and surveys, can be very useful for estimating total populations, as well as fertility and mortality rates. Demographers can share data on baseline populations and their understanding of population dynamics with those who work in the field to give them a base of knowledge about the populations they serve. For the future, demographers should investigate the phenomenon of forced migration using existing historical data in order to better understand the process. In turn, non-governmental organizations and aid agencies should make the data that they collect in the field as accessible as possible to researchers so that it can be analyzed. Exchanges among population scientists and persons who work in the field of forced migration at conferences, in training workshops, with manuals, or through the Internet is bound to be productive. Consequently, lines of communication should be opened between demographers, humanitarian workers, and advocacy groups so that they can share their respective knowledge of population science, relief work, and public policy. Participants agreed that the Workshop on the Demography of Forced Migration was an important step toward more cooperation and knowledge sharing among these groups.

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**ASSIGNMENT QUESTION FOUR [4]**

**SOURCES OF REFUGEE PROTECTION LAW**

In the last six decades, refugee law, a new branch of law, has developed both in the field of International Law and of Municipal law. There is an interrelation between the two, as municipal laws and regulations are frequently designed to implement treaties to which the states concerned are parties. The main feature of refugee status is that refugees do not enjoy the protection of any government, either because they are, as stateless persons, unable or, having a nationality, unwilling for political reasons to avail themselves of the protection of their country of origin, the link of nationality is either nonexistent or is ineffective.

The movement of people between states, whether refugees or ‘Migrants’, takes place in a context in which sovereignty remains important, and specifically that aspect of sovereign competence which entitles the state to exercise prima facie exclusive jurisdiction over its territory, and to decide who among non-citizens shall be allowed to enter and remain, and who shall be refused admission and required or compelled to leave. Like every sovereign power, this competence must be exercised within and according to law, and the state’s right to control the admission of non-citizens is subject to certain well-defined exceptions in favour of those in search of refuge, among others. Moreover, the state which seeks to exercise migration controls outside its territory, for example, through the physical interception, ‘interdiction’, and return of asylum seekers and forced migrants, may also be liable for actions which breach those of its international obligations which apply extra-territorially [Goodwin-Gill 2011;Moreno Lax 2011,2012].

**THE INTERNATIONAL LAW**

The International Law of refugee protection, which is the source of many such exceptions, comprises a range of universal and regional conventions or treaties, rules of customary international law, general principles of law, national laws, and the ever-developing standards in the practice of states and international organizations, notably the Office of the United Nations High Commissioner for Refugees. While the provision of material assistance food, shelter, and medical care is a critically important function of the international refugee regime, the notion of legal protection has a very particular focus. Protection in this sense means using the legal tools, including treaties and national laws, which prescribe or implement the obligations of states and which are intended to ensure that no refugee in search of asylum is penalized, expelled, or refouled, that every refugee enjoys the full complement of rights and benefits to which he or she is entitled as a refugee; and that the human rights of every refugee [p. 37] are guaranteed.

Generally Protection is thus based in the law; it may be wider than rights, but it begins with rights and rights permeate the whole. Moreover, while solutions remain the ultimate objective of the international refugee regime, this does not mean that the one goal is automatically subsumed within the other. That is, protection is an end in itself, so far as it serves to ensure the fundamental human rights of the individual. Neither the objective of solutions nor the imperatives of assistance, therefore, can displace the autonomous protection responsibility which is borne, in its disparate dimensions, by both states and UNHCR.

**INSTRUMENTS ADOPTED BEFORE 1950**

The legal instruments adopted before 1950 marked the sources and beginning of refugee protection law is inseparably linked with the name of the Norwegian Fridtj of Nansen, the great Arctic explorer, statesman, and philanthropist who, in 1921, was appointed High Commissioner for Russian Refugees of the League of Nations. His competence was later extended to other categories of refugees. The status of persons who do not have the protection of any government-refugees and stateless persons-is anomalous and extremely precarious. The Russian refugees under the High Commissioner's protection had been deprived of their nationality by the Soviet Government and lacked passports. Hitherto refugees had been treated like ordinary aliens; the law made no provision for persons who lacked travel documents.

The earliest international instruments dealing with refugees, established at the initiative of Dr. Nansen, therefore provided for the issuance of a travel document to refugees which has become known as the "Nansen passport." Among the international agreements relating to refugees that deal exclusively with travel documents belongs a later treaty, the Agreement relating to the issue of travel documents to refugees, signed in London on October 15, 1946. It provides for the issue of travel documents to refugees not benefiting from earlier agreements. This travel document is in booklet form, similar to a passport (the Nansen certificate was a simple sheet of paper), and entitles the holder to return to the issuing country during the document's period of validity (one or two years). Subsequent agreements regulated the legal status of refugees in general. The task of the High Commissioner in the legal field was described in later resolutions of the League of Nations as "the legal and political protection of refugees." In this category of instruments belongs a series of agreements dealing with the rights of refugees to work and to receive welfare and relief payments, the personal status of refugees, freedom from expulsion, rights to education, the fiscal regime of refugees, and exemptions from reciprocity provisions. Unfortunately, the agreements applied only to specific categories of refugees and were ratified, frequently with reservations, by only a few states.

**UNIVERSAL TREATIES CONCLUDED AFTER 1950**

Most of the treaties discussed above have been expressly superseded by the Convention relating to the Status of Refugees, adopted on July 28, 1951 by a Conference of Plenipotentiaries held at Geneva under the auspices of the United Nations. The Convention can be regarded as the most important international instrument relating to refugees. It contains a far more general definition of the term "refugee" than previous international instruments relating to refugees in order to ensure the universal scope of the Convention. For the purposes of the Convention, the term "refugee" applies to any person who a result of events occurring before **1** January **1951** and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside then country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Convention also contains a far more general catalog of the rights that are to be accorded to refugees than do previous instruments. The Convention lays down, in the first place, that its provisions are to be applied without discrimination as to race, religion, or country of origin. **It** stipulates that, except where the Convention contains more favorable provisions, contracting states shall accord to refugees the same treatment as is accorded to aliens generally **"-by** no means a self-evident rule, considering the precarious status of unprotected persons in international and frequently also in national law. The Convention provides for the exemption of refugees from the requirement of legislative reciprocity after three years' residence. Diplomatic or legislative reciprocity is still a requirement for the treatment of aliens under the law of many countries, but it has no raison d' ire in the case of refugees. Exceptional measures against the person, property, or interests of nationals of a foreign state may not be applied to a refugee who is formally a national of that state solely on account of his or her nationality.This provision is designed to prevent the recurrence of practices resorted to during World War **II** when refugees from Germany and its satellites were subjected in certain Allied countries to internment and other restrictions as "enemy aliens" on account of their enemy nationality, in spite of their opposition to Nazism and Fascism.

The personal status of a refugee is to be governed **by** the law of the country of domicile or, if he or she has no domicile, **by** the law of the country of residence. **The** term "domicile" refers not to the Anglo-Saxon but to the Continental law concept of habitual residence. The Convention embodies here a principle that is increasingly gaining ground in the conflicts rules of private international law. As to specific rights of refugees, the Convention establishes three standards of treatment: **[1]** national treatment, which is the same treatment as is accorded to nationals of the contracting states; [2] most-favored-nation treatment, the most favorable treatment accorded to nationals of a foreign country; and [3] "treatment as favorable as possible, and in any event not less favorable than that accorded to aliens generally in the same circumstances.” **The** Contracting states are to grant refugees national treatment with respect to freedom to practice religion and the religious education of their children,and with respect to access to courts, legal assistance, and exemption from cauho judicatum soiVi.In countries other than the country of habitual residence, refugees are, in the latter matters, to be granted the treatment accorded to nationals of the country of their habitual residence. The same treatment granted to nationals of the country of their habitual residence is also to be granted to refugees with regard to the protection of industrial property such as inventions, designs or models, trademarks and trade names, and to rights in literary, artistic, and scientific works. A refugee who has completed three years' residence in the contracting state, or who has a spouse whom he or she has not abandoned, or two or more children who possess the nationality of that country, is to be accorded national treatment with respect to wage-earning employment,rationing, and elementary education.Refugees are also entitled to national treatment as to the right to public relief and assistance, labor legislation and social security subject to certain qualifications, and, in particular, taxation.Most-favored-nation treatment is to be accorded to refugees as to their right to create and to join nonpolitical and nonprofit-making associations and trade unions. Refugees who do not fulfill the conditions required for the enjoyment of national treatment as to the right to engage in wage earning employment are nevertheless to enjoy most-favored-nation treatment.

The Convention furthermore provides for the issuance of travel documents to refugees by the state of residence of the refugee. This travel document entitles the holder to return within the period of its validity to the country that issued it. This so-called "Convention travel document," in passport form, has largely superseded the Nansen passport.

Finally, the Convention contains limitations on the expulsion or deportation of refugees, in view of the seriousness of such a measure against persons who are unable or unwilling to return to their country of origin. It contains, in particular, the most important principle of non-refoulement: no refugee shall-except in the case of serious criminals or persons constituting a danger to the security of the country-be expelled or returned in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. This principle, enunciated in Article **33,** can be regarded as the cornerstone of refugee law. It has acquired the character of a general principle of law or of a rule of customary international law; it is, by some, even considered as jus cogens. While the definition of "refugee" in the 1951 Convention is more general than that contained in previous instruments, it is limited in that the person must be outside his or her country of origin "as a result of events occurring before 1 January 1951." Moreover, contracting states may, by an optional declaration, attribute to the words "events occurring before 1 January 1951" the meaning "events occurring in Europe before 1 January 1951," thus limiting the application of the Convention to European refugees.

The dateline of January 1, 1951 excluded from the application of the Convention persons who had become refugees owing to political events that occurred after that date and that were not after-effects of earlier events, such as the events in Hungary in 1956 and the occupation of Czechoslovakia in 1968 particularly large numbers of refugees in Africa. This dateline has been removed by a Protocol relating to the Status of Refugees January**,** 1967. Under this Protocol, the contracting states undertake to apply the substantive provisions of the Convention as if the words "as a result of events occurring before 1 January 1951" were omitted from the definition in the Convention.

The Convention, or the Protocol, had been ratified by eighty-three states at the time of writing of this article. Two states-the United States and Swaziland-are parties to the Protocol only. Their obligations are, however, the same as those of parties to the Convention. While the 1951 Convention and the 1967 Protocol are the most important instruments relating to refugees, they are by no means the only ones. Some of the other notable treaties include the following five. The Agreement relating to refugee seamen, was adopted at The Hague on November 11, 1957. Among refugees, seamen are often in a particularly precarious situation, as they are, in the absence of documents, frequently unable to go on land and are virtually prisoners on board the ships on which they serve. The Agreement obliges the contracting states to issue Convention travel documents to refugee seamen who have a link with the state concerned, by virtue of previous residence, previous issuance of a travel document, or service during a specified period on a ship flying its flag. Some 2,000 seamen were thereby issued travel documents by Great Britain alone, even before the entry into force of the Agreement. A Protocol extends the provisions of the Agreement to persons who have become refugees as a result of events subsequent to January 1, **1951.36**

**The U.N. Convention** relating to the Status of Stateless Persons of September **28,** 1954, applies to refugees who are not considered nationals by any state under the operation of its law. It extends legal protection to stateless refugees who are not covered by the 1951 Refugee Convention. The Final Act contains, moreover, a recommendation to apply the provisions of the Convention to de facto stateless persons. The U.N. Convention on the Reduction of Statelessness of August **28,** 1961, benefits refugees in so far as it facilitates the acquisition of nationalityby refugees, particularly refugee children, who are de jure stateless. The Convention provides for the acquisition by a child of the nationality of the country of his or her birth, either at birth or, in jus sanguinis countries, at the age of majority provided the child has habitually resided in that state for more than ten years or for the acquisition of the nationality of one of the child's parents. The Convention limits, furthermore, the grounds on which a person may be deprived of his or her nationality. The Final Act recommends, moreover, that defacto stateless persons should as far as possible be treated as stateless de jure in order to facilitate acquisition of an effective nationality.

The U.N. Convention on the Recovery Abroad of Maintenance, which is designed to facilitate the establishment and execution of claims for maintenance, is of particular importance for refugees, as members of refugee families are frequently separated from each other. Protocol No. **1** to the Universal Copyright Convention, of September 6, 1952, assimilates refugees and stateless persons to the nationals of their country of habitual residence as regards copyright laws.

**THE REGIONAL TREATIES**

The Convention of the Organization of African Unity Governing the Specific Aspects of Refugee Problems in Africa of September **10,** 1969, is the regional supplement to the **1951** Convention relating to the Status of Refugees. It contains a broader definition of the concept of "refugee" than the **1951** Convention, covering persons outside their country of origin due to external aggression, military occupation, foreign domination, or other events seriously disturbing public order in either part or the whole of the country of origin. The **OAU** Convention also addresses matters not regulated in the **1951** Convention, such as asylum, subversive activities of refugees, and voluntary repatriation.On the European level, the Convention on Social Security of December 14, 1975, adopted in Paris under the auspices of the Council of Europe, assimilates refugees to nationals of the party in whose territory they reside with respect to social security laws. **A** Protocol to the European Convention on Social and Medical Assistanceprovides that the provisions of Section I of the Convention regarding access to social and medical services shall apply to refugees under the same conditions as they apply to nationals of the parties. The European Agreement on the Abolition of Visas for Refugees exempts refugees who hold Convention travel documents or travel documents issued under the London Agreement of October **15,** 1946from a visa requirement in the case of visits not exceeding three months. On October **16, 1980** the Council of Europe opened for signature an Agreement on Transfer of Responsibility for Refugees providing for travel documents to be issued to refugees moving lawfully from one country to another **by** the second state after two years of lawful residence **by** the refugee in that state. While these are the most important instruments of particular relevance to refugees, special provisions relating to refugees have been inserted in numerous bilateral and multilateral treaties, frequently at the initiative of the international agency entrusted with primary responsibility for the protection of refugees.

**MUNICIPAL LAW.**

There has been a distinct trend in the legislation of many countries in the past decades, to take into account, to an ever-increasing degree, the special position of refugees. Previously, the aliens' legislation of most countries did not distinguish between refugees and other aliens; the legislator had the normal, the protected alien in mind. But as mentioned above, the **1951** Refugee Convention and the **1967** Protocol have been widely ratified **by** states and they have been incorporated, by direct or indirect transformation, into national laws.

Where the principle of direct transformation applies, a treaty becomes by ratification ipso jure part of the law of the land; under the rule of indirect transformation, special legislative measures are needed to effect an amendment of national law. A number of countries have gone beyond their treaty obligations and have enacted special legislative provisions in favor of refugees. It is not possible to give an exhaustive picture of this legislation; a few examples of provisions exceeding the minimum requirements of the Refugee Convention must suffice at this point, with more detailed accounts found in the Appendix and other articles in this volume.

However, several countries in Europe grants protection to refugees and Asylum seeker based on the municipal law for example in Switzerland. The Asylum Act of October **5,** 1979 **provides** that Switzerland grants asylum to refugees on their application. Refugees are defined as persons who, in their country of origin, are exposed to serious prejudice on account of their race, religion, nationality, membership of a particular social group, or political opinion, or who have well-founded fear of being exposed to such prejudice. "Serious prejudice" is to be considered, particularly danger to life, body, or freedom, as well as measures that result in insupportable psychological pressure. Spouses and minor children are granted asylum on the same terms as the applicant. Asylum applications are decided by the Federal Department of Police. Appeal lies to the Federal Department of Justice and Police, and ultimately to the Federal Council. The Act also regulates assistance to refugees, which is within the competence of the federal authorities, and contains the principle of non-refoulement.

The same to United States, there have been several refugee acts, which mainly provided for special quotas for the admission of refugees.The Refugee Act of **1980,** which is treated more amply elsewhere in this book, constitutes a new departure. While the previous acts had defined as refugees only persons coming from "Communist or Communist-dominated countries and the general area of the Middle East," the 1980 Act contains a definition based on the 1951 Refugee Convention and the 1967 Protocol. In an expansion of the Convention definition, the Act also considers as a refugee any person who, in such special circumstances as the president after appropriate consultation may specify, is still in his or her country of origin and is persecuted or has well-founded fear of persecution. Persons who were themselves engaged in persecution are excluded. The spouse and minor children of a refugee are also to be admitted.

**CONCLUSION**

**A** considerable body of refugee law has developed, particularly since the end of the Second World War, much of it based on the **1951** Refugee Convention. The definition of refugee contained in the Convention, as amended **by** the **1967** Protocol, has gained wide acceptance. Some states have chosen to expand the definition to embrace persons fleeing a wider variety of unfortunate circumstances in their countries of origin; some have augmented the status and accompanying rights accorded refugees under the Convention. Finally, development and expansion has taken place in another dimension of refugee law as national law systems recognize with increasing frequency a duty to grant asylum to refugees, although no such obligation is imposed **by** international law.

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**ASSIGNMENT QUESTION FIVE [5]**

**Persecution and the Reasons for Persecution behind**

Although central to the refugee definition, ‘persecution’ itself is not defined in the 1951 Convention. Articles 31 and 33 refer to threats to life or freedom, so clearly it includes the threat of death, or the threat of torture, or cruel, inhuman, or degrading treatment or punishment. A comprehensive analysis requires the general notion to be related to developments within the broad field of human rights, and the recognition that fear of persecution and lack of protection are themselves interrelated elements. The persecuted do not enjoy the protection of their country of origin, while evidence of the lack of protection on either the internal or external level may create a presumption as to the [p. 39] likelihood of persecution and to the well-foundedness of any fear. However, there is no necessary linkage between persecution and government authority.

A Convention refugee, by definition, must be unable or unwilling to avail him-or herself of the protection of the state or government, and the notion of inability to secure the protection of the state is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against persecution by non-state actors.

The Convention does require that the persecution feared be for reasons of ‘race, religion, nationality, membership of a particular social group, or political opinion’. This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, gives an insight into the characteristics of individuals and groups which are considered relevant to refugee protection. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights, while persecution implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could comprise a single act of torture [Hathaway 2005; Goodwin-Gill and McAdam 2007].

The Convention does not just say who is a refugee, but also sets out when refugee status comes to an end Article 1C; for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin. For political reasons, the Convention also puts Palestinian refugees outside its scope at least while they continue to receive protection or assistance from other UN agencies; Article 1D; and it excludes those who are treated as nationals in their state of refuge [Article 1E]. Finally, the Convention definition categorically excludes from the benefits of refugee status anyone who there are serious reasons to believe has committed a war crime, a serious non-political offence prior to admission, or acts contrary to the purposes and principles of the United Nations [Article 1F]. From the beginning, therefore, the 1951 Convention has contained clauses sufficient to ensure that the serious criminal and the terrorist do not benefit from international protection.

**Non-refoulement**

Besides identifying the essential characteristics of the refugee, states party to the Convention also accept specific obligations which are crucial to achieving the goal of protection, and thereafter an appropriate solution. Foremost among these is the principle of non-refoulement. As set out in the Convention, this prescribes broadly that no refugee shall be returned in any manner whatsoever to any country where he or she would be at risk of persecution.

The word refoulement derives from the French refouler, which means to drive back or to repel. The idea that a state ought not to return persons to other states in certain circumstances was first referred to in Article 3 of the 1933 Convention relating to the International Status of Refugees. It was not widely ratified, but a new era began with the [p.40] General Assembly’s 1946 endorsement of the principle that refugees with valid objections should not be compelled to return to their country of origin.

An initial proposal that the prohibition of refoulement be absolute and without exception was qualified by the 1951 Conference, which added a paragraph to deny the benefit of non-refoulement to the refugee whom there are ‘reasonable grounds for regarding as a danger to the security of the country...or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.’ Apart from such limited exceptions, however, the drafters of the 1951 Convention made it clear that refugees should not be returned, either to their country of origin or to other countries in which they would be at risk; they also categorically rejected a proposal allowing for ‘cancellation’ of refugee status in cases of criminal or delinquent behaviour after recognition.

Today, the principle of non-refoulement is not only the essential foundation for international refugee law, but also an integral part of human rights protection, implicit in the subject matter of many such rights, and a rule of customary international law.

**Convention Standards of Treatment**

Every state is obliged to implement its international obligations in good faith, which often means incorporating international treaties into domestic law, and setting up appropriate mechanisms so that those who should benefit are identified and treated accordingly. The 1951 Convention is not self-applying, and while recognition of refugee status may be declaratory of the facts, the enjoyment of most Convention rights is necessarily contingent on such a decision being made by a state party. A procedure for the determination of refugee status thus goes a long way towards ensuring the identification of those entitled to protection, and makes it easier for a state to fulfil its international obligations.

In addition to the core protection of non-refoulement, the 1951 Convention prescribes freedom from penalties for illegal entry [Article 31], and freedom from expulsion, save on the most serious grounds [Article 32]. Article 8 seeks to exempt refugees from the application of exceptional measures which might otherwise affect them by reason only of their nationality, while Article 9 preserves the right of states to take ‘provisional measures’ on the grounds of national security against a particular person, but only ‘pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary...in the interests of national security’. States have also agreed to provide certain facilities to refugees, including administrative assistance Article 25; identity papers Article 27, and travel documents Article 28; the grant of permission to transfer assets Article 30; and the facilitation of naturalization Article 34.

Given the further objective of a solution [assimilation or integration], the Convention concept of Refugee status thus offers a point of departure in considering the appropriate standard of treatment of refugees within the territory of contracting states. It is at [p. 41] this point, where the Convention focuses on matters such as social security, rationing, access to employment and the liberal professions, that it betrays its essentially European origin; it is here, in the articles dealing with social and economic rights, that the greatest number of reservations are to be found, particularly among developing states. Otherwise, however, the Convention proposes, as a minimum standard, that refugees should receive at least that treatment which is accorded to non-citizens generally. In some contexts, ‘most favoured nation’ treatment is called for [Articles 15, 17[1], in others, ‘national treatment’, that is, treatment no different from that accorded to citizens [Articles 4, 14, 16, 20, 22(1), 23, 24(1), 29].

**Refugee Definition and Protection beyond the Convention**

In addition to measures adopted at the universal level, the international legal protection of refugees and forced migrants benefits from regional arrangements and instruments which, in turn, may be refugee specific or oriented more generally to the protection of human rights.

In 1969, the Organization of African Unity now the African Union adopted the Convention on the Specific Aspects of Refugee Problems in Africa [Sharpe 2012]. Article I [1] incorporates the 1951 Convention definition, but paragraph [2] adds an approach more immediately reflecting the social and political realities of contemporary refugee movements. Also to be accepted as refugees are those compelled to flee owing to external aggression, occupation, foreign domination, or events seriously disturbing public order? In 1984, 10 Central American States adopted a similar approach in the non-binding Cartagena Declaration, recognizing in addition flight from generalized violence, internal conflicts, and massive violation of human rights. Two years later, in the extradition case of Soering v United Kingdom 1989 11 EHRR 439, the European Court of Human Rights laid the essential foundations for protection from removal under the European Convention. In this first judgment in what is now a long and consistent body of jurisprudence, the court ruled that it would be a breach of the Convention to remove an individual to another state in which there were substantial grounds to believe that he or she would face a real risk of treatment contrary to Article 3, which prohibits torture or inhuman or degrading treatment. Later 29 judgments have confirmed the applicability of this principle without exception, for example, in ‘security’ or criminal cases, and in the context also of extra-territorial interception operations.

This human rights jurisprudence contributed substantially to ‘legislative’ developments within the European Union. These include the adoption of the 2001 Directive on Temporary Protection, applicable to ‘displaced persons’ unable or unwilling to return to their country of origin, for example, because of armed conflict, endemic violence, or systematic or generalized violence, and whether or not they are Convention refugees;[p. 42] and the 2004 Qualification Directive, which besides providing for recognition of Convention refugees, now also calls for ‘subsidiary protection’ in the case of those who would face a real risk of serious harm if returned to their country of origin [McAdam 2007]

**Asylum**

No international instrument defines ‘asylum’. Article 14 of the 1948 Universal Declaration of Human Rights simply says that ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution.’ Article1 of the 1967 UN Declaration on Territorial Asylum notes that ‘Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights...shall be respected by all other States.’ But it is for ‘the State granting asylum to evaluate the grounds for the grant of asylum’ [Goodwin-Gill 2012].

Neither instrument creates any binding obligations for states. Indeed, both texts suggest a considerable margin of appreciation with respect to who is granted asylum and what exactly this means. In practice, however, states’ freedom of action is significantly influenced by ‘external’ constraints, which follow from an internationally recognized refugee definition, the application of the principle of non-refoulement, and the overall impact of human rights law. Regional instruments and doctrine have also had an important impact on the ‘asylum question’. Again, the 1969 OAU Convention was among the first to give a measure of normative content to the discretionary competence of states to grant asylum (Article II). Within the EU, the 2000 Charter of Fundamental Rights declares expressly that ‘the right to asylum shall be guaranteed.’, and that no one may be removed to a state where he or she faces a serious risk of the death penalty, torture, or other inhuman or degrading treatment or punishment [Articles 18, 19]. The Qualification Directive provides in turn that member states ‘shall grant’ refugee status to those who satisfy the relevant criteria [Article 13; see also Article 8 of the Temporary Protection Directive] [Gil-Bazo 2008].

**Protection and Solutions**

UNHCR’s responsibility to seek permanent solutions for the problem of refugees is commonly translated into a preferential hierarchy, with voluntary repatriation as a first priority, followed by local asylum and resettlement in a third state.

The ultimate purpose of protection is not to ensure that refugees remain refugees forever, and voluntary repatriation reflects the right of the individual to return to his or her country of citizenship. No universal instrument deals with this, but the ‘right to return’ is widely accepted as an inalienable incident of nationality. The only formal reference (p. 43) appears in the 1969 the OAU Convention, Article 5(1) of which emphasizes that the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will’. On several occasions, the UNHCR Executive Committee has proposed standards and guidelines for voluntary repatriation operations.

The general rule is that refugees should return voluntarily and in conditions of security, and the international community has a legal interest in the follow-up to any repatriation movement; the security of those returning and the implementation of amnesties and other guarantees are rightly considered matters of international concern, and therefore subject to monitoring against relevant legal standards. Local integration, that is, residence and acceptance into the local community where the refugee first arrives, is the practical realization of asylum. States may be bound to the refugee definition and bound to observe the principle of non-refoulement, but they retain discretion as to whether to allow a refugee to settle locally; this point was underlined by the UNHCR Executive Committee in its 2005 Conclusion on local integration, although with little if any regard or reference to states’ other obligations under international law which govern the treatment of non-nationals on state territory.

Resettlement aims to accommodate a variety of objectives, the first being to provide a durable solution for refugees and the displaced, unable to return home or to remain in their country of first refuge. A further goal is to relieve the strain on receiving countries, sometimes in a quantitative way, at others in a political way, by assisting them in relations with countries of origin. Resettlement thus contributes to international solidarity and continued fulfilment of the fundamental principles of protection, but given the continuing relevance of the sovereign competence referred to above and the challenges of translating the principle of international cooperation into effective action, it is difficult to see what more international law can contribute to this solution.

**Refugees and Human Rights**

The refugee problem cannot be considered apart from the field of human rights as a whole, which touches on both causes and solutions, so that knowledge and appreciation of the rights at issue helps to understand the refugee concept. The treatment of refugees and asylum seekers within a state is governed not only by the refugee treaties, but also by the broader human rights treaties (and even rules of customary international law), which set out general standards, whether of a procedural or substantive nature (for example, the requirement that a remedy be provided for every violation of human rights; or the duty of a state to protect everyone within its territory or jurisdiction from torture). Here, local law and practice play an important role in ensuring that international rules are applied.

The 1951 Convention is frequently described as a ‘human rights treaty’, to be approached as a living instrument, evolving to meet the needs and challenges of the day. Given the subject matter and the inescapable linkage between human rights violations [p. 44] and forced displacement, this descriptive language is understandable. The Convention, however, is not like most other human rights treaties, and it is styled a convention relating to the status of refugees, rather than 31 one on the rights of refugees. Moreover, it does not frame ‘refugee rights’ in terms of what ‘every refugee’ shall enjoy and ‘no refugee’ shall be denied; in this sense its approach differs markedly from that later adopted in the 1966 Covenants, the 1989 Convention on the Rights of the Child, or the 2006 Convention on the Rights of Persons with Disabilities. Whereas later human rights treaties tend to identify the individual as the point of departure whether simply by virtue of being human, or a child, a woman, a worker, or someone with a disability the practice of states and international organizations has itself helped to bring the concept of refugee rights into the foreground of international legal protection doctrine.

The 1951 Convention remains quite ‘state-centric’, in the sense that it represents undertakings and obligations, accepted between the parties, to respect, protect, or accord certain rights and benefits. Sometimes a right may be stated simply, unqualified other than by reference to the refugee’s lawful presence [Article 32], but at others, it has to be implied ‘the refugee shall be allowed’: Article 32[2], or must be assumed as the reverse side of a qualification to the competence of the state, rather than a right strictly correlative to duty (contracting states ‘shall not expel a refugee save on grounds of national security or public order’: Article 32[1]; ‘shall not impose penalties.’: Article 31; ‘shall issue identity papers...’: Article 27; and ‘No contracting State shall expel or return [“refouler”] a refugee.’: Article 33[1].

In addition to the ‘protection gap’ between the principle of non-refoulement and asylum in the sense of solution, there are further doctrinal gaps between the Convention/Protocol refugee regime and the seemingly broader regime, or regimes, of human rights protection. The 1969 Vienna Convention on the Law of Treaties provides no answer, for example, to the question of how far the general prohibition of discrimination in Article 26 of the 1966 International Covenant on Civil and Political Rights is to be applied to refugees; or how, if at all, their specific entitlements under the 1951 Convention are to be ‘updated’ or ‘expanded’ in the light of parallel systems of protection which seem to be simultaneously applicable. The practice of states at present provides no clear answers, save that states themselves appear to want to maintain the specific, refugee focused approach of the 1951 Convention. The fundamental principles of refugee protection, particularly refuge, non-return, or ‘non-refoulement’, are necessarily common material to both fields, but reports of human rights undermining the refugee protection regime are likely exaggerated or premature, or just plain academic speculation.

**Evaluation and Conclusion**

The 1951 Convention is sometimes portrayed today as a relic of the Cold War, inadequate in the face of ‘new’ refugees from ethnic violence and gender-based persecution,(p. 45) insensitive to security concerns, particularly terrorism and organized crime, and even redundant, given the protection now due in principle to everyone under international human rights law. The 1951 Convention does not deal with the question of admission, and neither does it oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities for example, by prescribing which state should deal with a claim to refugee status. The Convention does not address the question of ‘causes’ of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration. At the regional level, and notwithstanding the 1967 Protocol, refugee movements have necessitated more focused responses, such as the 1969 OAU Convention and the 1984 Cartagena Declaration; while in Europe, the development of protection doctrine under the 1950 European Convention on Human Rights has led to the adoption of provisions on ‘subsidiary’ or ‘complementary’ protection within the legal system of the European Union.

Nevertheless, within the context of the international refugee regime, which brings together states, UNHCR, and other international organizations, the UNHCR Executive Committee, and non-governmental organizations, among others, the 1951 Convention continues to play an important part in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring the security and related interests of states, sharing responsibility, and generally promoting human rights. Ministerial Meetings of States Parties, convened in Geneva by the government of Switzerland to mark the 50th and 60th anniversaries of the Convention in December 2001 and December 2011, expressly acknowledged, ‘the continuing relevance and resilience of this international regime of rights and principles...’ and reaffirmed that the 1951 Convention and the 1967 Protocol ‘are the foundation of the international refugee protection regime and have enduring value and relevance in the twenty-first century’.

In many states, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention refugee definition, and helped to consolidate the fundamental principle of non-refoulement. While initially concluded as an agreement between states on the treatment of refugees, the 1951 Convention has inspired both doctrine and practice in which the language of refugee rights is entirely appropriate.

The concept of the refugee as an individual with a well-founded fear of persecution continues to carry weight, and to symbolize one of the essential, if not exclusive, reasons for flight. The scope and extent of the refugee definition, however, have matured under the influence of human rights law and practice, to the point that, in certain well-defined circumstances, the necessity for protection against the risk of harm can trigger an obligation to protect.

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Article 1, 1984 Convention against Torture: 1465 UNTS 85; Article 7, 1966 International Covenant on Civil and Political Rights: 999 UNTS 171; Article 3, 1950 European Convention on Human Rights: ETS No 5; Article 6, 1969 American Convention on Human Rights: OAS Treaty Series No. 36 [1969]; Article 5, 1981 African Charter on Human and Peoples’ Rights: 1530 UNTS No. 26,363.

Article 3 of the 1984 Convention against Torture extends the same protection where there are substantial grounds for believing that a person to be returned would be in danger of being tortured.

See UNHCR, Handbook on Procedures and Criteria for the Determination of Refugee Status, Geneva: UNHCR, 1979; UNHCR Executive Committee Conclusion No. 8 [XXVIII], 1977: UN doc. A/AC.96/549, para. 36.

1984 Cartagena Declaration on Refugees: OAS/Ser. L/V/II.66, doc. 10, rev. 1, 190–3; text in Goodwin Gill and McAdam 2007.

**ASSIGNMENT QUESTION SIX [6]**

**THE HUMAN RIGHTS THAT PEOPLE WHO HAVE BEEN SUBJECTED TO FORCED MIGRATION ARE ENTITLED TO.**

The States parties that rectified the Convention of 1951 and it protocol of 1967 are responsible for respecting and ensuring the human rights of everyone on their territory and subject to their jurisdiction. International and regional human rights instruments are therefore relevant to both defining and protecting the integration standards for recognized refugees. In its General Comment No. 15 for example, the Human Rights Committee [HRC] reaffirmed this by stressing that the enjoyment of Covenant rights i.e. International Covenant on Civil and Political Rights [ICCPR] is not limited to citizens of States Parties but must be available to all individuals regardless of nationality or statelessness; thereby including asylum-seekers and refugees, for example This was also reiterated by UNHCR’s Executive Committee (ExCom) in its Conclusion No. 82, where reference is made to the “obligation to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments.”

While the 1951 Convention continues to be the most commonly relied upon and most specific international instrument regarding the rights of refugees and, more specifically, the integration rights of recognized refugees, international human rights law offers an increasingly important complement to the Convention. For example, international human rights law provides a minimum core content of human rights which applies to everyone regardless of their legal status or any other pre-requisite. Furthermore, with the evolution of human rights law, the 1951 Convention standards have in some cases been complemented or even superseded by more generous provisions in subsequent international and regional instruments. When this is the case, States are obliged to accord refugees the benefit of the highest standard or most generous provision from amongst the international instruments they have ratified. Some of these international and regional human rights instruments also have the added advantage of addressing specific issues and rights not elaborated upon in the 1951 Convention and making available international enforcement or supervisory mechanisms.

In these various ways, human rights instruments often play a significant role both in further defining and protecting i.e. enforcing refugee integration rights. Human rights are rights that guaranteed under the 1951 convention of refugees this paragraph discussed a human rights that a refugee people who have been subjected to forced migration are entitled to; a refugee has the right to safe asylum. However, international protection comprises more than physical safety. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including freedom of thought, of movement, and freedom from torture and degrading treatment. Economic and social rights are equally applicable.

However the States parties have been granting protection to individuals and groups fleeing persecution for centuries; however, the modern refugee regime is largely the product of the second half of the twentieth century. Like international human rights law, modern refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it. Article 14[1] of the Universal Declaration of Human Rights [UDHR], which was adopted in 1948, guarantees the right to seek and enjoy asylum in other countries. Subsequent regional human rights instruments have elaborated on this right, guaranteeing the “right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions.” American Convention on Human Rights [ACHR], article. 22[7]; African [Banjul] Charter on Human and Peoples’ Rights, article. 12[3].

The controlling international convention on refugee law is the 1951 Convention relating to the Status of Refugees 1951 Convention and its 1967 Optional Protocol relating to the Status of Refugees 1967 Optional Protocol. The 1951 Convention establishes the definition of a refugee as well as the principle of non-refoulement and the rights afforded to those granted refugee status. Although the 1951 Convention definition remains the dominant definition, regional human rights treaties have since modified the definition of a refugee in response to displacement crises not covered by the 1951 Convention.

The 1951 Convention does not define how States parties are to determine whether an individual meets the definition of a refugee. Instead, the establishment of asylum proceedings and refugee status determinations are left to each State party to develop. This has resulted in disparities among different States as governments craft asylum laws based on their different resources, national security concerns, and histories with forced migration movements. Despite differences at the national and regional levels, the overarching goal of the modern refugee regime is to provide protection to individuals forced to flee their homes because their countries are unwilling or unable to protect them.

**Who Is a Refugee?**

Article 1[A] [2] of the 1951 Convention defines a refugee as an individual who is **outside his or her country of nationality or habitual residence** who is**unable or unwilling to return** due to a **well-founded fear of persecution** based on his or her **race, religion, nationality, political opinion, or membership in a particular social group**. Applying this definition, internally displaced persons [IDPs] – including individuals fleeing natural disasters and generalized violence, stateless individuals not outside their country of habitual residence or not facing persecution, and individuals who have crossed an international border fleeing generalized violence are not considered refugees under either the 1951 Convention or the 1967 Optional Protocol.

Countries in the Americas and Africa experiencing large-scale displacement as the result of armed conflicts found that the 1951 Convention definition did not go far enough in addressing the protection needs of their populations. Consequently, both Article 3 of the Cartagena Declaration and Article 1[2] of the 1969 OAU Convention extend refugee status to an individual who “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, art. 1[2]; *accord*Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico & Panama, art. 3. The African Union is unique in having a convention that specifically addresses the protection needs of IDPs under The African Union Convention for the Protection and assistance of Internally Displaced Persons in Africa. Finally, the United Nations High Commissioner for Refugees [UNHCR] provides protection to Refugees, Internally Displaced Persons and stateless individuals in addition to 1951 Convention refugees.

**Exceptions: Exclusion and Cessation Clauses for the Refugees**

The 1951 Convention places a number of restrictions on eligibility for refugee status. Article 1[D] excludes individuals who, at the time of the 1951 Convention, were already receiving protection or assistance from another UN organ or agency. Article 1[D] largely applied to Koreans receiving aid from the United Nations Korean Reconstruction Agency [UNKRA] and Palestinians receiving aid from the United Nations Relief and Works Agency for Palestine Refugees in the Near East [UNRWA] and continues to apply to the latter. UNHCR, Handbook on Procedures for Determining Refugee Status under the 1951 Convention & the 1967 Protocol relating to the Status of Refugees, paragraph 142. Although Palestinians living in areas where UNRWA operates are eligible for refugee status under the 1951 Convention*.*at para. 143.

Additionally, Article 1[F] excludes individuals: with respect to whom there are serious reasons for considering that:

[a] He/she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

 [b] He/she has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

 [c] She/he has been guilty of acts contrary to the purposes and principles of the United Nations.

Individuals who voluntarily avail themselves of the protection of their country of nationality or habitual residence or individuals who have received protection in a third country are also not considered refugees. *See*1951 Convention relating to the Status of Refugees, art. 1[C].

**What Rights Do Refugees Have?**

Refugee law and international human rights law are closely intertwined; refugees are fleeing governments that are either unable or unwilling to protect their basic human rights. Additionally, in cases where the fear of persecution or threat to life or safety arises in the context of an armed conflict, refugee law also intersects with international humanitarian law.

**NON-REFOULEMENT**

The basic principle of refugee law, non-refoulement refers to the obligation of States not to refoule, or return, a refugee to “the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” 1951 Convention relating to the Status of Refugees, article. 33[1]. Non-refoulement is universally acknowledged as a human right. It is expressly stated in human rights treaties such as Article 22[8] of the American Convention on Human Rights and Article 3 of the Convention against Torture, the latter of which was further interpreted in the Committee against Torture’s and General comment No. 4. [IJRC]

Additionally, both regional and domestic courts have interpreted the rights to life and freedom from torture to include a prohibition against refoulement. *See a Minor [Afghanistan v. Sec’ of State for the Home Department* [2011] EWHC 2937 Administration. [U.K]; ECtHR, case of M.S.S. v. Belgium and Greece [GC], no. 30696/09, ECHR 2011, Judgment of 21 January 2011. The principle of non-refoulement prohibits not only the removal of individuals but also the mass expulsion of refugees. *See, e.g.,* African [Banjul] Charter on Human and Peoples’ Rights, art. 12[5].

There are two important restrictions to this principle. Persons who otherwise qualify as refugees may not claim protection under this principle where there are “reasonable grounds” for regarding the refugee as a danger to the national security of the host country or where the refugee, having been convicted of a particularly serious crime, constitutes a danger to the host community. 1951 Convention, art. 33[2].

**FREEDOM OF MOVEMENT**

At the regional level, the rights to seek asylum and freedom of movement can be found within the text of the same article. *See*African [Banjul] Charter on Human and Peoples’ Rights, art. 12[1] and [3]; American Convention on Human Rights, art. 22. The rights are closely related, since the inability to return to one’s country is the basis of an asylum claim while the ability to leave one’s country is a prerequisite for claiming refugee status under the 1951 Convention.

Freedom of movement, however, is also a key right for refugees within their host country. *See, e.g.,*International Covenant on Civil and Political Rights, art. 12. Article 26 of the 1951 Convention provides that States shall afford refugees the right to choose their place of residence within the territory and to move freely within the State. Meanwhile, Article 28 obliges States parties to issue refugees travel documents permitting them to travel outside the State “unless compelling reasons of national security or public order otherwise require.”

Freedom of movement is an especially important issue with regard to protracted refugee situations in countries with limited national resources and/or limited legal frameworks for protecting refugees who nonetheless host large refugee populations. In such countries, refugee warehousing in which refugees are confined to refugee camps, thereby restricting their access to employment and education – is commonly practiced. U.S. Comm. for Refugees & Immigrants, World Refugee Survey 2009 [2009]. Countries such as Kenya and Ethiopia specify in their national laws that the movement of refugees throughout the country may be restricted and that refugees may be limited to living in designated areas, namely refugee camps under the National Refugee Proclamation, No. 409/2004, article 21[2]; Refugees Act [2014] Cap. 173 and 12 [3] Kenya.

**RIGHT TO LIBERTY AND SECURITY OF THE PERSON**

The right to liberty and security of the person is important in the context of how asylum seekers are treated within the intended country of refuge. The national laws of several countries provide for the detention of asylum seekers at one point or another during the adjudication of their claims. *See, example* 8 Convention on Refugees [CFR] and 235.3 [C] United State [U.S]; Refugees Act 2014 Chapter. 173 & 12[3] [Kenya].

The detention of asylum seekers is a contentious issue because of the conditions found in the detention facilities of several countries. This is particularly an issue in Greece, a country overwhelmed by the number of asylum seekers it receives, many of whom use Greece as a port of entry as they try to access other European countries. In order to clarify which State has responsibility for a particular asylum applicant, the Council of the European Union issued Council Regulation EC No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member States by a third country national commonly known as the Dublin Regulation.

Under the Dublin Regulation, the State through which the third country national first entered Europe is generally considered the State responsible for adjudicating that national’s asylum claim. *See*Dublin Regulation, art. 10[1]. As a result, many of these asylum seekers are returned to Greece to have their claims adjudicated. Human rights organizations including Amnesty International have reported on unsanitary and over-crowded conditions in Greek detention centers. Amnesty International Annual Report 2012, 157. Additionally, asylum seekers have claimed that they did not have access to a UNHCR representative or information about how to apply for asylum while in detention*.* The European Court of Human Rights [ECtHR] has held in a number of cases that the conditions in the Greek detention centers violate individuals’ rights to humane treatment and dignity under the European Convention on Human Rights. *See, e.g.,*ECtHR, M.S.S. v. Belgium and Greece [GC], no. 30696/09, ECHR 2011, Judgment of 21 January 2011.

**RIGHT TO FAMILY LIFE**

The family is seen as the “natural and fundamental group unit of society and is entitled to protection by society and the State.” *See, example, International Covenant on Civil and Political Rights*, article. 23[1]. In respect of this right, a number of countries provide for the granting of derivative status to dependent relatives. Thus, where an individual is granted asylum, his or her dependent relatives will also receive protection through him or her. *See 8 U.S.C. & 1158 (b) (3) (A) [U.S.]; Immigration Rules, 2012, S.I 2012/11, article 339Q (iii) [U.K.];* National Refugee Proclamation, No. 409/2004, article. 12; Refugees Act (2014) Chapter 173&15 [Kenya]. However, should that individual’s refugee status be terminated, the status of dependent relatives will also be terminated. National Refugee Proclamation, No. 409/2004, art. 6[1]; Refugees Act [2014] Cap. 173 & 20(1) [Kenya]. Consequently, these domestic laws do not preclude dependent relatives from making their own asylum claims. National Refugee Proclamation, No. 409/2004, art. 12(5) (Eth.); Refugees Act 2014 Cap. 173 & 15[4] [Kenya].

The definition of a dependent relative, however, varies by the cultural notions of family prevalent in the State party. In the U.K., dependents are defined as the “spouse, civil partner, unmarried or same-sex partner, or minor child accompanying [the applicant]” while in Kenya, dependent relatives include the brother or sister of an applicant under the age of eighteen, “or any dependent grandparent, parent, grandchild or ward living in the same household as the refugee.” Immigration Rules, 2012, S.I. 2012/11, art. 349 U.K.; Refugees Act 2014 Cap. 173 & 2 Kenya.

**THE CONVENTION OUTLINE OTHER RIGHTS GUARANTEED TO REFUGEES OR FORCED MIGRANTS;**

The 1951 Convention also protects other rights of refugees, such as the rights to education, access to justice, employment, and other fundamental freedoms and privileges similarly enshrined in international and regional human rights treaties. In their enjoyment of some rights, such as access to the courts, refugees are to be afforded the same treatment as nationals while with others, such as wage-earning employment and property rights, refugees are to be afforded the same treatment as foreign nationals. 1951 Convention, article. 16 refugees are to be granted equal access to the courts, article. 17 refugees are to be afforded the same access to wage-earning employment as foreign nationals, article. 13 refugees are to be afforded the same rights to moveable and immoveable property as foreign nationals.

Despite these rights being protected in the 1951 Convention and under human rights treaties, refugees in various countries do not enjoy full or equal legal protection of fundamental privileges. Ethiopia, for example, made reservations to Article 22 public education and Article 17 wage-earning employment, treating these articles as recommendations rather than obligations. U.S. Committee for Refugees & Immigrants, World Refugee Survey 2009; Ethiopia [2009]. Although not a party to the 1951 Convention, Lebanon is host to a large population of refugees, predominately Palestinians. Restrictive labor and property laws in Lebanon prevent Palestinians from practicing professions requiring syndicate membership, such as law, medicine, and engineering, and from registering property, see Human Rights Watch, World Report 2014; Lebanon [2014].

The Refugees should have access to medical care, schooling and the right to work. In certain circumstances when adequate government resources are not immediately available, such as the sudden arrival of large numbers of uprooted persons, international organizations such as UNHCR provide assistance. This may include financial grants, food, tools and shelter and basic infrastructure such as schools and clinics. With projects such as income-generating activities and skill training programmes, UNHCR makes every effort to ensure that refugees become self-sufficient as quickly as possible.

**International Covenant on Economic, Social and Cultural Rights** Article 6 “the States Parties to the present Covenant recognize the **right to work,** which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

**The Universal Declaration of Human Rights Article 23 [1-3]“**everyone has the right to work free choice of employment, to just and favourable conditions of work and to protection against unemployment, and without any discrimination, has the right to equal pay for equal work. Nevertheless forced migrants who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests. See 1951 Convention relating to the Status of Refugees Article 17 Wage-earning employment and the Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years residence in the country,

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse,

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes. Article 18 Self-employment. The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

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| **Work cited:** |

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Article 3 of the 1984 Convention against Torture extends the same protection where there are substantial grounds for believing that a person to be returned would be in danger of being tortured. UNGA Resolution 2198 (XXI), 16 December 1966; 1967 Protocol relating to the Status of Refugees: 606 UNTS 267; text in Goodwin-Gill and McAdam 2007.

Article 1, 1984 Convention against Torture: 1465 UNTS 85; Article 7, 1966 International Covenant on Civil and Political Rights: 999 UNTS 171; Article 3, 1950 European Convention on Human Rights: ETS No 5; Article 6, 1969 American Convention on Human Rights: OAS Treaty Series No. 36 (1969); Article 5, 1981 African Charter on Human and Peoples’ Rights: 1530 UNTS No. 26,363.

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