

## STELLUNGNAHMEN

# Voluntary Repatriation and UNHCR

### A Proposal

1. The situation of refugees throughout the world remains an unsolved problem. The very considerable efforts and highly commendable activities of international governmental and non-governmental organizations have not reduced the overall number of refugees, which still amounts to some 10 million persons. Despite new and difficult problems arising recently in Central America, Europe and Africa, no massive refugee movements of the kind so familiar a few years ago have occurred; the frightening picture of the refugee question is still due mainly to events of the end of the 1970s and early 1980s when large numbers of people left their countries of origin, especially in Indochina, Afghanistan and the Horn of Africa<sup>1</sup>.

a) Among the policies dealing with the refugee problem on the international level, one has to distinguish those aiming to avert new flows of refugees from those seeking permanent solutions for already existing refugee situations. The first category, including e.g. the initiative taken by the Federal Republic of Germany within the framework of the United Nations<sup>2</sup>, clearly falls outside the mandate of the United Nations High Commissioner for Refugees (UNHCR) as the General Assembly's principal subsidiary organ to protect and assist refugees<sup>3</sup>. For this reason it will not be dealt with in this context.

---

<sup>1</sup> See United Nations: Report on UNHCR assistance activities in 1982-1983 and proposed voluntary funds programmes and budget for 1984, UN Doc.A/AC.96/620, paras. VIII-XIV.

<sup>2</sup> See UN Doc. A/36/582, p. 18 *et seq.*, and General Assembly Resolutions 35/124 and 36/148. See also Böhm, Grenzüberschreitende Flüchtlingsströme. Präventive Behandlung im Rahmen der Vereinten Nationen, Vereinte Nationen, Vol.30 (1982), p.48 *et seq.*

<sup>3</sup> Grahl-Madsen, Refugees, United Nations High Commissioner, in: R. Bernhardt (ed.), Encyclopedia of Public International Law, Instalment 5 (1983), p. 255 *et seq.*

b) The second category, however, constitutes one of UNHCR's main tasks as provided for by the first article of its Statute. In fact, there has always been a strong emphasis on the promotion of durable solutions even if the actual resources devoted directly to finding such solutions have varied from year to year depending on the nature and changing character of refugee situations and the degree of governmental support. Thus, in 1970, some 83 % of UNHCR's General Programme budget went towards the promotion of durable solutions. This situation had already changed in 1977 when only 54 % was allocated towards such ends. The emphasis on this kind of policy was of necessity even more weakened when the three major refugee movements in Indochina, in Pakistan and in the Horn of Africa called for massive emergency relief and care in order to respond to this refugee crisis of a dimension hitherto unknown. As a consequence of this development the percentage of funds attributed to the promotion of permanent solutions decreased from some 33 % of UNHCR's budget in 1980 to 26 % in 1981; the figures recently grew again to a projected 33 % for 1984. It should be stressed, however, that the actual sums dedicated to durable solutions have remained more or less constant during these last years<sup>4</sup>.

c) Regardless of this financial aspect, recently there seems to be a stronger emphasis on seeking such permanent solutions to the refugee problem reflected in UNHCR's present policy. Permanent solutions include voluntary repatriation to the country of origin, local integration in the refugee's country of residence, which is most frequently the country of first asylum, and resettlement to a third country. Provided conditions in the country of origin are conducive to the refugee's return, voluntary repatriation is generally considered as the most satisfactory solution<sup>5</sup>. Taking into account the evident socio-psychological problems faced by most of the refugees coming from developing countries and considering the generally precarious economic situation of the majority of the countries of first asylum, voluntary repatriation appears in fact to be the best solution provided the conditions which originally caused the flight of the persons concerned no longer prevail. Therefore, in accordance with its Statute, UNHCR has sometimes assumed direct responsibility for promoting the dialogue and negotiations between the country of origin and the country of asylum. It has also contributed to limited assistance programmes for the rehabilitation of returnees in their countries of origin, both in order to

<sup>4</sup> See UN Doc. A/AC.96/620, paras. IX-X.

<sup>5</sup> See e.g. Goodwin-Gill, *The Refugee in International Law* (1983), p.219 *et seq.*

enable them to re-establish themselves and as an incentive to others who would like to follow if their basic needs could be met.

2. a) Over the years, UNHCR has coordinated large-scale voluntary repatriation programmes in several parts of the world, especially in Africa. In 1962 one of UNHCR's earliest involvements in such a programme concerned the 200.000 Algerian refugees in Morocco and Tunisia after the end of Algeria's war for independence<sup>6</sup>. In 1972/73, UNHCR coordinated the return of some 200.000 Sudanese refugees after the Addis Ababa Agreements that ended the civil war in southern Sudan<sup>7</sup>. In the following years, UNHCR arranged for several hundred thousand refugees to return to Guinea-Bissau, Angola, and Mozambique after independence from Portugal. Likewise, some 250.000 people from Zimbabwe were repatriated in 1980/81 as a consequence of the Lancaster House Agreements<sup>8</sup>. In 1982, the temporary cessation of hostilities in the Chad enabled 250.000 refugees to return from exile, particularly from Cameroon and the Central African Republic<sup>9</sup>.

Outside Africa, where most of the activities took place, UNHCR arranged for the return of several million people who had fled what was then East Pakistan during the war of secession<sup>10</sup>. It also played an important rôle in the repatriation programme concerning Burmese refugees from Bangladesh in 1978/79<sup>11</sup>.

b) In 1982, a special programme of assistance to returnees to Ethiopia was launched. At UNHCR's initiative, a Tripartite Commission, comprising the Governments of Djibouti and Ethiopia and UNHCR, met in Djibouti in January and in Addis Ababa in April 1983 to establish the legal and practical framework within which repatriation was to take place. In contrast to the repatriation programmes mentioned above, this one has been strongly criticized, mainly on the grounds that some of the refugees had been put under pressure to apply for repatriation. For this reason it seems appropriate to examine its implementation in more detail<sup>12</sup>.

aa) Already in 1980, first negotiations had been arranged on a more informal level between the interested Governments of Djibouti and

<sup>6</sup> See Holborn, *Refugees: A Problem of Our Time*, Vol. II (1975), p. 1005 *et seq.*

<sup>7</sup> *Ibid.*, p. 1346 *et seq.*

<sup>8</sup> See UN Docs. A/AC.96/564, paras. 255-6, 275-80, and A/AC.96/577, paras. 321-5.

<sup>9</sup> See UN Doc. A/AC.96/606, paras. 303-5.

<sup>10</sup> See Holborn (note 6), p. 754 *et seq.*

<sup>11</sup> See UN Doc. A/AC.96/564, paras. 392-4.

<sup>12</sup> See as well Hodges, *Africa's Refugee Crisis*, Africa Report 29 (1984), p. 4 *et seq.* (pp. 7-8).

Ethiopia in order to establish a procedure to facilitate the repatriation of the then 35.000 refugees who were living mainly in two camps in Djibouti. Considering that this number of refugees constituted one-eleventh of the whole population of this poverty-stricken country and given the arid climate, the lack of infrastructure, and the very few natural resources, there was hardly any hope to solve the plight of these refugees by local integration; in fact, repatriation appeared to be the only possible solution. Ethiopia, on the other hand, seemed to be anxious to achieve the return of these people, not least for political reasons, thus improving the shattered image of her régime in the world. So on June 16, 1980 the Ethiopian Government promulgated Proclamation 183/1980 entitled "Repatriation of Ethiopian Refugees in the Republic of Djibouti Proclamation"<sup>13</sup>. It accorded an amnesty exempting any Ethiopian refugee in Djibouti "from all prosecutions for any crime committed by him for political purposes before he left Ethiopia or prior to the date of his return to Ethiopia"<sup>14</sup>. Following the extension of the validity of this Proclamation<sup>15</sup> and at the urging of the governments concerned, the aforementioned Tripartite Commission finally agreed upon terms for implementing the repatriation programme stressing the essentially voluntary character of any repatriation<sup>16</sup>. To meet this condition, refugees were to sign a declaration stating their desire to return to Ethiopia when registering for repatriation<sup>17</sup>. The Ethiopian Government allowed UNHCR and voluntary agencies to monitor repatriation movements across the frontier and to have free access to returnee settlements in the country<sup>18</sup>. Ethiopia was clearly interested in the success of this relatively small-scale repatriation programme, wishing to

<sup>13</sup> Negarit Gazeta No. 11, p. 97.

<sup>14</sup> Art. 6 of the Proclamation, *ibid.*, p. 98.

<sup>15</sup> Proclamation 231/1982 of December 15, 1982, Negarit Gazeta No. 4, p. 13.

<sup>16</sup> See Report on the Tripartite Commission Djibouti - Ethiopia - UNHCR (Djibouti, 31 January - 1 February 1983) and Report on the Second Tripartite Commission Meeting Djibouti - Ethiopia - UNHCR (Addis Ababa, 15-16 April 1983). Throughout both of these reports, the entirely voluntary character of any repatriation is strongly emphasized.

<sup>17</sup> Decision No. 5 taken at the second meeting of the Tripartite Commission reads as follows: "5. The Government of Djibouti and the UNHCR will jointly register Ethiopian refugees who have, of their own free will, decided to return to their country of origin. Registration forms will be completed for each head of family and single adult. Returnees will be issued identity cards certifying their eligibility for assistance under the programme. This registration process will start without delay".

<sup>18</sup> Decision No. 6 taken at the first meeting of the Tripartite Commission reads as follows: "6. The Governments of Djibouti and Ethiopia will facilitate the travel of UNHCR's and the voluntary agencies' staff involved in the implementation of this programme, to enable them to efficiently carry out their missions and tasks and, more particularly, free

prove the sincerity of its amnesty and to win the confidence of those refugees not yet willing to return<sup>19</sup>.

The actual registration of volunteers for repatriation did not begin until August 1983 and by November 1983 1.650 returnees had arrived in Ethiopia and another 3.000 registered for repatriation. However, rumours had quickly spread among the refugees that in breach of the agreement reached by the Tripartite Commission and international law repatriation would be compulsory; their fear of forced repatriation led some 1.000 refugees to flee to Somalia<sup>20</sup>.

bb) The criticism of this repatriation agreement and its implementation, often voiced by the various liberation movements engaged in guerrilla warfare against the Ethiopian Government, is in general not shared by UNHCR which is of the opinion that practically all returnees registered voluntarily for repatriation. It is expected, moreover, that eventually most of the refugees in Djibouti will want to be repatriated. Having fled to escape the fighting in their home areas during the Ogaden war in 1977/78 and peace there being restored, they should have little reason to stay. It must be recognized, however, that there will be hardly any volunteers for repatriation among the strictly political exiles in Djibouti coming from Ethiopian cities who represent about 15% of the refugees sheltered in Djibouti<sup>21</sup>.

cc) So, in spite of some individual cases of repatriation in which refugees may have come under some pressure from Djibouti officials, the programme as a whole should be welcomed as an attempt to find a permanent solution to the refugee problem in Djibouti. It must be stressed, moreover, that after the cessation of hostilities in the refugees' home area and the promulgation of the amnesty proclamation by the Ethiopian Government, the authorities of Djibouti might have been in a position to argue that these

---

access to installation sites and movement between the two countries for co-ordination purposes".

<sup>19</sup> See the Statement of the Representative of the Ethiopian Government made during the second meeting: "The Delegation of Socialist Ethiopia had made it clear that we had made the most essential legal instrument the amnesty of the returnees for any political offence they may have committed prior to their departure for the Republic of Djibouti and, while residing abroad prior to their return to Ethiopia. In the letter and spirit of the two international legal instruments, the 1951 Convention and the 1967 Protocol and the more recent and more generous provisions of the 1969 OAU Convention, we are prepared to receive our brothers and sisters who are now residing in Djibouti with open arms and observe the provisions of these instruments scrupulously".

<sup>20</sup> See Hodges (note 12), p. 8.

<sup>21</sup> *Ibid.*

refugees could no longer be considered as such because the circumstances in connection with which they had been recognized as refugees had ceased to exist<sup>22</sup>.

3. Although frequently the subject of resolutions and debates, and generally being considered the most preferable among the durable solutions to refugee problems, voluntary repatriation does not figure to any great extent in international instruments. The one exception is Art. V of the 1969 OAU Convention on Refugee Problems in Africa<sup>23</sup>; it is no surprise, therefore, that the Arusha Conference on the Situation of Refugees in Africa, held in 1979, called upon all African governments to consider official proclamations of amnesty to their nationals in exile in order to encourage, with the appropriate guarantees, their voluntary repatriation<sup>24</sup>.

<sup>22</sup> This argument could be founded on the wording of Art. 1 C(5) of the 1951 Convention Relating to the Status of Refugees and Art. I(4) *lit. e*) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. See as well Grahl-Madsen, *The Status of Refugees in International Law* (1966), Vol. I, p. 399 *et seq.*, and Goodwin-Gill (note 5), p. 51.

<sup>23</sup> It reads as follows: "1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return".

For an analysis of the OAU Convention, see e.g. P. Weis, *The Convention of the OAU Governing the Specific Aspects of Refugee Problems in Africa*, *Human Rights Journal*, Vol. 3 (1970), p. 449 *et seq.*; Kimminich, *Der Schutz der politischen Flüchtlinge in Afrika*, *Verfassung und Recht in Übersee*, Vol. 3 (1970), p. 443 *et seq.*, and R. Hofmann, *Zur Flüchtlingsproblematik in Afrika*, *Jahrbuch für Afrikanisches Recht*, Vol. 3 (1984), p. 105 *et seq.*

<sup>24</sup> See UN Doc. A/AC.96/INF.158. For more details, cf. Eriksson/Melander/Nobel, *An Analysing Account of the African Refugee Problem* (1983), *passim*.

a) A legal basis for a refugee's wish to return home, apart from special repatriation agreements, is found in the right to return to one's own country, proclaimed in Art. 13(2) of the Universal Declaration of Human Rights which subsequently has been incorporated in a number of universal and regional conventions<sup>25</sup>. It must be doubted, however, whether this human right to return already forms part of general international law outside of the treaty context. In general, the duty to readmit nationals is considered as an obligation bearing upon inter-State relations and as the corollary of any State's right to expel foreign nationals from its territory. This right, however, is considerably limited with regard to refugees by the principle of *non-refoulement* which protects any refugee from being returned to his country of origin against his will. The principle of *non-refoulement* thus implies the necessity of any repatriation being voluntary even outside of the framework of the 1969 OAU Convention<sup>26</sup>.

However, considering the growing tendency to recognize the right to return as a human right forming part of general international law and the large number of States parties to international conventions safeguarding this right, one could argue that any refugee wishing to return to his country of origin has an internationally protected right to do so.

b) Since forced repatriation constitutes a most serious violation of international law and no refugee can be expected to return to his country as long as the circumstances justifying his flight still prevail, a considerable change in the interior situation within the country of origin is an essential precondition, both legal and for all practical purposes, for any repatriation programme to be successful. Obviously, any attempt by UNHCR to seek to bring about such changes would be in breach of its mandate. It is the international community represented by the United Nations which is called upon to strive to attain such internal changes while respecting every State's sovereignty.

---

<sup>25</sup> See e.g. Art.5(d), 1966 Convention on the Elimination of All Forms of Racial Discrimination; Art.12, 1966 Covenant on Civil and Political Rights; Art.3(2), Fourth Protocol, 1950 European Convention on Human Rights; Art.22(5), 1969 American Convention on Human Rights. For an analysis of this right, see Inglès, Study of Discrimination in respect of the Right of Everyone to leave any Country, including his own, and to return to his Country, UN Doc.E/CN.4/Sub.2/229/Rev.1(1964), *passim*, and The Right to Leave and to Return, Uppsala Colloquium (1976), *passim*.

<sup>26</sup> See Grahl-Madsen (note 22), Vol.II (1972), p.93 *et seq.*, and Goodwin-Gill (note 5), p.69 *et seq.* The principle of *non-refoulement* is laid down in Art.33, 1951 Convention and Art.II(3), 1969 OAU Convention.

4. The picture seems to be different, however, once those internal changes actually have taken place; then, all efforts should be made to set up a programme of voluntary repatriation as the preferred solution to refugee problems. Its success will obviously depend on political factors, including the clearly expressed wish of the country of origin that the refugees should return, which should be accompanied by an explicit amnesty, and on the personal choice of the refugees themselves.

a) It is the latter which could be influenced by the establishment of a formal procedure agreed upon in a Tripartite Agreement between the country of origin, the country of refuge and UNHCR. The willingness to return would be further enhanced if such an agreement were to provide for UNHCR to supervise the return of the refugees and, even more important, the first phase of their reinstallation. The confidence of refugees in the stability of the changes in their country of origin would surely be strengthened and their fear of being persecuted, possibly by subordinate local authorities, in spite of an amnesty previously proclaimed, considerably reduced if they could address their complaints to officers of UNHCR competent to supervise the repatriation programme and to mediate with the local authorities concerned. Moreover, UNHCR should have the right to take such an issue to the competent international organs, such as the Secretary-General of the United Nations or the General Assembly, if, after a thorough investigation in the situation complained of, interventions even on the governmental level should remain without result.

b) The question is, however, whether such an extension of the activities of UNHCR would be possible legally and advisable in political terms.

aa) In the African context, Art. V of the 1969 OAU Convention could serve as the legal basis<sup>27</sup>. On the universal level, a basis might be the provision of Art. 8(c) of UNHCR's Statute: supervising the fulfilment of an agreement to which it is a party should fall within UNHCR's competence "to assist governmental and private efforts to promote voluntary repatriation". One must acknowledge, however, that this interpretation might be criticized as going too far and that a specific mandate of the General Assembly, as provided for in Art. 9 of the Statute, would be necessary. On the other hand it must be strongly emphasized that the conclusion of any agreement providing for such an extended supervisory

<sup>27</sup> See *supra* note 23. See as well Kimminich (note 23), at p.456. For an excellent presentation of the problem of repatriation of refugees, cf. van Krieken, *Repatriation of Refugees under International Law*, Netherlands Yearbook of International Law, Vol.13 (1982), p.93 *et seq.*



function of UNHCR necessarily depends upon the explicit consent of the country of origin. But, if there is a sincere determination on the part of the government of the country of origin to fully respect an amnesty proclamation promulgated by itself and to facilitate the reinstallation of all refugees wishing to be repatriated, one does not see why that government should not be prepared to accept such a supervisory function of UNHCR officials. Considering UNHCR's traditional impartiality and strictly humanitarian approach, no government should have any reason to fear that such supervision would turn into an intervention into internal affairs. Again, it must be stressed that the main task of this additional activity would be to increase the confidence of refugees still hesitating to return. UNHCR officials would have the right to intervene upon local authorities in order to bring about a solution to the problem complained of only in those rather exceptional cases where the provisions of a repatriation agreement would not be observed. To inform the international community would always remain the very last resort.

bb) One might wonder, however, whether such a supervisory function of UNHCR is politically advisable. There can be no doubt that the unchallenged success of UNHCR's activities is due to a considerable extent to its entirely non-political, but strictly humanitarian and social character<sup>28</sup>. Some may fear that, by assuming such supervisory functions, UNHCR might become involved in interior politics which would reduce the effectiveness of its activities. But, regardless of whether it is still convenient and possible to draw a line between political and humanitarian aspects, a line which often enough appears to be rather blurred, it must be stressed that this proposal requires the voluntary consent of the government concerned to admit such limited supervision within a set of rules and procedures freely agreed upon. What seems to be needed in a world still facing a most serious refugee problem with all its very detrimental implications for the international community as a whole, is to begin an unbiased discussion on the means and ways to promote voluntary repatriation as the unanimously preferred permanent solution to refugee problems. Rainer Hofmann

---

<sup>28</sup> This is explicitly laid down in Art. 2 of UNHCR's Statute.