

FOREVER AT THE END OF THE LINE? THE PLIGHT OF REFUGEE WOMEN

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The majority of the world's adult refugees are women, yet both international law and the bulk of refugee assistance programs have responded inadequately to their needs. This article provides an overview of the special human rights problems of refugee women, including their vulnerability to sexual abuse and the persistence of gender biases in most material assistance programs. Although citizens' associations and nongovernmental organizations are making progress toward gender-sensitizing the international refugee assistance regime, the prospects for enhancing women's protection under international law remain grim.

Although 80 percent of the world's 20 million refugees are women and children, it is only within the last decade that any significant attention has been given to the special needs and resources of refugee women (Martin 1992, 1). Before then, few refugee experts challenged the notion that because international refugee instruments apply equally to men and women, they must also be non-discriminatory. Even now, the majority of social scientists and legal scholars attach no gender to the term "refugee." Yet a growing number of relief agencies are beginning to realize that

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precisely because international refugee instruments have been applied indiscriminantly of sex, they have failed to take account of the special problems of refugee women and have, in effect, placed women at a disadvantage relative to men (Loescher and Monahan 1989, 145). As Barbara Harrell-Bond put it: "gender blindness does not ... lead to gender neutrality" when men and women are unequal to begin with (Harrell-Bond 1986, 282). Indeed, the world community's commitment to equality in principle may have caused it to discriminate in practice.

While recognizing that refugee women do not conform to a single profile, this article maintains that they nevertheless share a common predicament: they are in many ways "forgotten," both by so-called refugee experts and by the world community of states. They are typically "last in line" for everything from material assistance to health care, and their special protection needs are scarcely met. Even their special resources are under-utilized. Many of these problems could be alleviated if refugee planners were more aware of women's needs and if refugee relief workers were better trained to detect and counteract discrimination against women. Securing refugee women against sexual abuse, through adequate international legal protection, poses a greater challenge. The principle of state sovereignty precludes the international community from enforcing even existing protection measures, and there is little hope that the 1951 Convention Relating to the Status of Refugees will be amended any time soon to grant women the right to asylum on the grounds of a well-founded fear or experience of sexual persecution. There are simply too many prominent states that oppose this type of international legal reform. A number of Southern states, specifically, resist the inclusion of women's rights in international refugee law because it implies that these rights are both a matter of legitimate international concern and universal. These states view gender issues not only as culturally specific, but also as a matter of exclusive domestic jurisdiction. Northern states, for their part, are wary of broadening the 1951 Convention definition of a "refugee" to include victims of sexual persecution because they fear that this kind of legal reform will trigger female mass migration from the Third World to the societies of the North, which are in many ways more liberal. The number of Southern women who might flee from female circumcision, to take but one example, is potentially huge.

This paper discusses the threat of sexual persecution, and other legal and human rights issues that adversely affect refugee women. It describes the legal instruments that apply to female refugees, identifies their special assistance needs, and evaluates progress towards more responsive legal and assistance regimes.

ON THE PLIGHT OF REFUGEE WOMEN...AND MEN

Clearly, refugee men and women share a number of problems concerning the promotion of their human rights and their needs for physical protection. A full account of these gender-neutral aspects of the refugee experience goes beyond the scope of this paper, yet a few examples will be given for the purpose of illustration.

First, in the human rights area, men and women suffer equally from the reality that although they have a right to "leave any country ... including [their] own," (Universal Declaration of Human Rights 1948) there are no provisions under international refugee law that oblige foreign states to take them in. Thus many forced migrants are left in a state of limbo, having neither the option of seeking safe havens abroad nor the choice of returning to their home communities. Some of them end up as illegal immigrants in foreign countries, vulnerable to exploitation and abuse. Others become internal refugees, or "displaced persons," or perish under the strains of perpetual uprootedness. Whatever the result, these individuals' human right to flee and seek safe havens abroad is practically void.

Second, men and women who flee their countries of citizenship effectively relinquish their human rights as set out *inter alia* in the Universal Declaration of Human Rights (1948). International law designates human rights as a claim of citizens against their state rather than *jus naturale*, i.e. a right accruing to the individual by virtue of his or her humanity. Human rights, in this respect, are part of the social contract of modern nation states. International refugees break this contract by fleeing and they are legally without rights until they succeed in establishing a new "social contract" somewhere else. Arguably, recognition as an "official" refugee to some extent restores the rights of individuals in flight by forging a limited contract between refugees and host states on mutual duties and obligations. Yet the rights of international refugees remain precarious. Not only do refugees' rights (e.g. the right to relief, religious freedom, and protection from forced repatriation) fall far short of the rights spelled out in the Universal Declaration of Human Rights (1948) and the two Human Rights Covenants of 1966, but the international community has no effective means of preventing host states from violating them. The principle of state sovereignty and the absence of authoritative international enforcement mechanisms render refugee law extremely "soft." In a human rights sense, refugees constitute a human "under-class" in the current world order.

A third human rights problem that affects refugee men and women equally is that the official definition of a "refugee" inadequately reflects the causes of forced migration. The 1951 Convention Relating to the Status of Refugees reserves the term "refugee" for individuals who have suffered, or fear to suffer, persecution primarily for political reasons, and who have crossed international borders in their search for security. The Convention

specifically defines a "refugee" as a person 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 [*sic.*] nationality and is unable, or owing to such fear, is unable to avail himself [*sic.*] of the protection of that country." (The International Convention Relating to the Status of Refugees, 1951) Yet even the United Nations High Commission for Refugees (UNHCR) has acknowledged that "violence, tension, total disregard of human rights, poverty, and ecological degradation" cause refugee movements as frequently as does individual persecution.¹ Moreover, there are as many internally displaced persons in the world today as there are refugees. Have they no right to relief and protection under international law? The 1951 Convention would suggest they don't.

Finally, refugee men and women suffer equally from the geopolitical and domestic political considerations that bias receiving governments' decisions on granting asylum. On the geopolitical side, receiving states are well aware that granting official refugee status to a country's citizens amounts to criticizing its human rights record. Depending on these receiving states' foreign policy goals, this may or may not be a desirable outcome. For example, during the Cold War, it suited the United States perfectly to open its doors to Cuban refugees as a means of "snubbing" Fidel Castro,² whereas admitting Haitian refugees held no comparable foreign policy rewards. Domestic political considerations may also cause receiving states to apply the 1951 Convention selectively, since accepting too many refugees could disrupt a country's internal cohesion and put politically unacceptable strains on its social service systems (Loescher 1992, 4-15). As the French, German and Swedish governments, among others, have discovered over the past ten years, there are limits to their peoples' tolerance for foreign immigration. Many of their citizens feel that their national cultures are threatened, to some extent, and they are increasingly reluctant to share their wealth with immigrants. Indeed, most Western countries have tightened their immigration policies since the late 1960s in an attempt to keep tidal waves of economic migrants from crossing their borders.³ Unfortunately, these policies also have screened out thousands of international forced migrants whose requests for asylum were based on actual cases of persecution (New York Times 1993). In addition to common human right problems, male and female refugees have overlapping needs for physical protection. First, the security guarantees contained in the 1951 Convention extend only to refugees, male or female, who fit its narrow definition, leaving everyone else uncovered. This has negative implications for the many international refugees in the Third World who have been allowed to stay in their country of first refuge but have not been accorded official refugee status. In Africa, this category of refugees

constitutes a majority (Martin 1992, 22). Second, the 1951 Convention assigns host governments the full responsibility for the physical security of refugees within their borders. This is highly problematic, as Zia Rizvi candidly explains, because it means that the "individual has to depend on the state for its protection, the monster that we have created [...] which has further monsters at its disposal, like the notion of sovereignty and the question of national security—all the arguments you hear from a Minister of the Interior, or a policeman, or a soldier." (Rizvi 1984, 261) In addition to worries about the state being too strong, there are also problems when host states are "too weak" to dispense properly with their protection responsibilities. The Thai government, for example, had great difficulties in the mid-1970s protecting Vietnamese boat refugees from piracy and abductions even after it decided to make a concerted effort to do so in conjunction with the United Nations.⁴

Thus, it is not that the human rights predicament of refugees is gender-specific in every way. Rather, refugee women face additional hardships simply because they are women. The international community's widespread neglect of their special needs exacerbates these problems.

THE NEGLECTED NEEDS OF REFUGEE WOMEN

Protection Against Gender Violence

Several legal instruments accord special protection to women, especially the four Geneva Conventions of 1949 and the two Additional Protocols of 1977.⁵ In international conflicts, for example, women benefit from general protection under the Fourth Geneva Convention, as persons taking no part in the hostilities (Chapter II, Article 76). In internal armed conflicts, Article 3 of the same Convention provides for the protection of (male and female) non-combatants. In addition to these gender neutral security guarantees, Article 27 of the Fourth Geneva Convention spells out the particular rights of women in the context of armed conflict. It states that "women shall be especially protected against any attack upon their honour, in particular against rape, enforced prostitution or any form of indecent assault." Article 38(5) adds that "children under 15 years, pregnant women, and mothers of children under seven years shall benefit by any preferential treatment." And the Second Additional Protocol specifically forbids "outrages upon [women's] personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault," (Article 4). (League of Red Cross and Red Crescent Societies 1991, 8-9) Finally, the Universal Declaration of Human Rights (1948) and the United Nations Human Rights Covenants of 1966, lay out a basic framework both for promoting women's rights inside their countries of citizenship on the basis of gender equity and for ensuring the full and effective participation of women in activities affecting them.

Together, these provisions ought to shield women in flight from most kinds of abuse, yet they have failed demonstrably. One need but look to Bosnia, where thousands of women of all ethnic groups have been raped by enemy forces during the past eighteen months, to appreciate the extreme vulnerability of refugee women (Riding 1992, A1). The Bosnian stories are not unique. According to the UNHCR, more than 2400 Vietnamese women were raped by pirates in the course of fleeing Vietnam between 1980 and 1984. Refugee women in Djibouti have also reported numerous cases of sexual abuse (Loescher and Monahan 1989, 146). And, stories of sexual persecution of refugee women in Latin America abound (Martin 1992, 20-24). Although the general public and the media may have been oblivious to refugee women's security problems, these problems are real enough to tens of thousands of women across the world.

Few people realize, moreover, that refugee women's troubles with sexual abuse do not necessarily end after they have reached so-called "safe havens" in foreign refugee camps. The UNHCR has received numerous reports of camp guards either raping refugee women or extracting sexual favors from them in return for food and clothes for their children (Camus-Jacques 1989, 146). Refugee men also are known to have raped refugee women, who they learned had already been sexually abused and therefore no longer "deserved" respect (Johnsson 1991, 100). Domestic violence is also common in refugee settlements. Many refugee men are frustrated and psychologically distressed (e.g. from having been tortured or having lost their traditional roles as providers), and a significant proportion of them take it out on their wives and children (Martin 1992, 8 and League of the Red Cross and Red Crescent Societies 1991, 10). Despite the prevalence of these two forms of violence against women, neither security patrols nor psychological counseling facilities are standard features of Third World refugee camps. Significantly, the UNHCR took nearly five years after learning of rapes and abductions of Vietnamese refugee women before it began implementing a counseling program staffed by Vietnamese-speaking *female* staff. So far, none of the UNHCR's refugee camps in Croatia and Slovenia have psychological support staff or female counselors. Only after a recent initiative by the International Federation of the Red Cross (IFRC, formerly the League of the Red Cross and Red Crescent Societies) to provide gynecological and psychological assistance to sexually abused women and their families in the former Yugoslavia, did the UNHCR and its partners in the World Health Organization (WHO) begin to show an interest in the matter.⁶ Outside the former Yugoslavia, refugee women's physical, psychological, and social safety needs are still largely neglected. The consequences are tragic and predictable. As the International Red Cross has stated in addressing the problem of rape:

it can virtually destroy a person. It can cause serious internal damage (and in the worst cases death), and it inevitably causes serious psychological damage. Furthermore, it is one of the most socially-disruptive forces, for although the victim is completely innocent, she is likely to be treated with contempt, made an outcast, and certainly cannot hope for a normal affective life in the future (either with a husband, or, if unmarried at the time the rape occurs, with a future partner), *at least unless and until she receives expert help* (and perhaps the partner too). Furthermore, it has been observed that women can lose all sense of their own value as a consequence of rape, and may even feel that they deserve their rejection by their husbands and community. In certain traditional societies, rape and any sex outside marriage are cognizable offenses which have to be punished. (IFRC 1991, 10) [Emphasis added].

Gender blindness in the realm of physical protection is almost certainly a recipe for human suffering.

Refugee Women's Special Assistance Needs

In addition to inadequate protection and counseling services in refugee camps, refugee women have to deal with various forms of gender bias in their contacts with the international refugee relief system. Not only do many relief programs routinely overlook women's special assistance needs in the food and health realms, they also tend to reinforce existing patterns of gender inequality in the refugee community. For example, men have easier access to education in the refugee camp setting and, unlike women, they are occasionally included in camp decision-making processes that affect their daily lives.⁷ These subtle forms of gender discrimination may be a less dramatic form of neglect than the world's inattentiveness to gender violence, but they constitute an injustice nonetheless.

In the area of food distribution, many refugee assistance programs are unduly gender biased. In an illustration of this problem, Barbara Harrell-Bond reported from her experiences in the Sudan that the UNHCR's decision to hand out each household's ration to its designated head had the unintended effect of causing widespread female malnutrition. The refugees, in this case, were from a culture in which the man traditionally is not responsible for feeding his own family, but is obliged to take care of his unmarried or widowed female kin. Food rations distributed to male heads of household, therefore, were frequently diverted from their intended use, and sometimes married women never saw the food rations that their husbands collected. To make matters worse, the men in the refugee settlement that Harrell-Bond described were accustomed to eating their meal before letting their families join in. As a result, there was often far too little food left over to meet their wives' and children's needs (Harrell-Bond 1986, 268-270). Food distribution *by* males presents another problem in

terms of ensuring adequate food rations for women and children. As Susan Forbes Martin reports, "food distributed through male networks has [occasionally] been diverted to resistance forces or sold on the black market, with women and children suffering as a result." It is also not uncommon for "male distributors of food and other items to have required sexual favors in exchange for the assistance goods." (Martin 1992, 36)

In addition to inadequate quantities of food reaching refugee women, the available food is often improperly balanced for their nutritional needs. Food relief packages, for example, are commonly designed without any thought for the nutritional requirements of pregnant and lactating women. The results of this neglect can be life-threatening: pregnant women who develop anaemia are prone to fatal hemorrhages during child birth (League of Red Cross and Red Crescent Societies 1991, 13).

The low priority accorded by male refugee planners to the provision of safe water for refugee camps is also grossly disrespectful of women's rights to life and personal security. Since women usually are in charge of fetching water in the Third World, they are the ones who are exposed to water-borne diseases and who may have to traverse mine-infested areas to serve their families' water needs. A number of Somali refugee women, notably, are known to have been killed by mines while searching for water and firewood (League of Red Cross and Red Crescent Societies 1991, 15 and Martin 1992, 8).

Refugee women's health needs is another area where refugee planners' gender blindness is both harmful and alarming. Despite the fact that a woman's health is crucial both to her own survival and to that of her children, refugee camp health care services are typically either inappropriate for or inaccessible to refugee women. In Pakistan, for example, Afghan refugee women are precluded from using existing health services for cultural and religious reasons. Muslim women are prohibited from being viewed by any male outside their immediate family and, therefore, cannot consult health clinics that lack female examiners. Yet international relief organizations have sent out few female health care providers to Pakistani camps.⁸ Many refugee camp health services also pay little attention to refugee women's schedules. This detracts severely from the clinics' usefulness because a refugee woman who needs every hour of daylight to take care of her household duties and who has no one to look after her children simply cannot take the time to trek long distances for health care during "normal business hours." (The International NGO Working Group on Refugee Women 1991, 19)

Even where health services are both available and accessible to refugee women, they are rarely properly equipped. Few refugee camp health programs, for example, are set up to handle female-specific illnesses such as serious gynecological disorders or complications arising from female

circumcision and infibulation. Refugee camp health services generally have been unable to accommodate such basic female needs as adequate cloth and washing facilities for menstruating women, although the IFRC's Slovenian and Croatian operations are a commendable exception (IFRC 1993). According to a 1991 report by the International Red Cross, programs on the needs of adolescent girls are virtually non-existent in refugee relief programs in the Third World, "despite the prevalence of early marriages and pregnancies (a root cause of poor health in certain parts of the world)." (League of Red Cross and Red Crescent Societies 1991, 16) Considering that the vast majority of the world's adult refugees are women, the latter health service deficiencies are disgraceful.

If refugee women's unequal access to food and health assistance results partly from insensitivities in program planning and operations, their exclusion from most decision-making processes is a case of outright gender discrimination. Cultural constraints undoubtedly play a role in excluding women from camp decision making, particularly when women have never participated in public life. Moreover, many men resent the idea of treating women as equals in administrative matters. It is also quite common among Muslim refugees for women to be physically confined to the family compound, which inevitably limits their ability to participate in camp life. Unfortunately, international and expatriate relief workers often reinforce these discriminatory patterns rather than trying to soften them or work around them. As Lance Clark of the Refugee Policy Group in Washington, DC points out:

There is a widespread tendency for expatriates to feel that simply by talking to those whom they understand to be 'traditional leaders' they have heard an accurate statement of refugee needs. This often leads to an over-representation of the picture as seen by older men, to the detriment of other sub-groups. For example, older men seldom see the problems of fuelwood collection, or the difficulties in participating in income generating activities when one is taking care of small children, with quite the clarity that women do. (Clarke 1985)

Arguably, encouraging women to participate in decision-making processes alongside men may amount to tampering with traditional customary norms and should be approached cautiously by refugee planners. Yet as Susan Forbes Martin notes, "the culture of refugees and displaced persons has already been tampered with. Social structures which existed prior to flight often become fragmented or destroyed when people are displaced. Deaths of natural leaders, and family separations, contribute to strains on the social order. In these situations, it may be impossible to select leaders on the basis of previous decision-making processes." (Martin 1992, 12) Moreover, many refugee women have lost their traditional source of influence on community decisions—namely their husbands—during flight.

Whereas before their views may have carried some weight in private family councils, women are now effectively deprived of a voice. In Barbara Harrell-Bond's words, "women may be 'muted' but this should not be interpreted to mean that they are either ignorant of their needs or unable to express them if the situation is right for them." (Harrell-Bond 1986, 280-281) Involving women in decisions on such issues as food distribution and educational opportunities would be a step towards the elimination of unintentional gender inequities and basic inefficiencies. It would also have positive effects on women's self-esteem and sense of purpose.

If refugee women had been consulted on the design of educational programs and income-generating activities, they might have adapted the programs more to their needs and skills. Certainly, they would have pointed out the need for some kind of financial assistance and child care facilities to permit women to partake in organized courses. As things stand, however, Article 26(1) of the Universal Declaration of Human Rights means little to refugee women: "Everyone" may have "the Right to an Education," but these women never get to enjoy it. In some instances, cultural constraints prevent refugee women from undertaking training that takes them out of the household. In these cases, "take-home" courses and house visits by educators would be helpful. More frequently, women are excluded from educational programs because these programs assume some level of prior education, such as literacy, which many Third World women do not have. The following statistics on Ugandan refugees in the Sudan are typical of the discrepancies between refugee men's and women's educational level: 67.0 percent of the surveyed refugee women had no education at all, compared to 25.4 percent of men (Harrell-Bond 1986, 270). Other constraints on women's participation relate to the design and content of training programs. As the International NGO Working Group on Refugee Women noted, "in some cases, the courses [offered] have been too far removed from the everyday activities of the refugee women and ... therefore appeared irrelevant to their needs." (The International NGO Working Group 1989, 47-49) Indeed, most educational and income generating activities for refugees have been geared more towards enhancing the marketable skills of men rather than enabling refugee women through literacy building and foreign language training.

This discrimination disempowers refugee women and reduces their ability to secure anything but a menial job once they are repatriated or settled more permanently in foreign countries. It also reduces their likelihood of being accepted for third country resettlement because of perceptions that women are unlikely to become self-sufficient as quickly as male refugees and, therefore, represent a larger burden on the host country's social service system. Certainly, advanced industrialized countries are known to discriminate against women on these grounds despite the non-

discrimination provisions of the 1951 Convention Relating to the Status of Refugees (Article 3) (The International NGO Working Group 1989, 17). Thus, another route for refugee women to escape their marginal existence has been needlessly closed off.

Women and International Refugee Law

In light of refugee women's extreme vulnerability to sexual abuse and the institutionalized neglect of their special protection needs, it is troubling to find that international legal instruments afford them so little relief on these accounts. Most notably, women have no right to asylum based on "a well-grounded fear" of sexual persecution. Although grassroots work is being done at present to win recognition for rape as a war crime, or possibly as an instance of torture, it will be a long time until these efforts produce concrete results. The international refugee regime could well remain insensitive to women's needs for years to come.

Women's difficulties in obtaining refugee status revolve around two issues: 1) the grounds upon which a person is granted refugee status; and 2) the process of establishing these grounds. As noted above, the 1951 Refugee Convention defines a refugee as someone who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership in a particular social group. Persecution for reasons of gender does not qualify an individual for refugee status. This means that women who have been sexually assaulted or otherwise persecuted by national authorities have no claim to refugee status unless they can somehow prove that this abuse served politico-strategic ends. The claim to refugee status of women who have suffered cruel or inhuman treatment because they have infringed upon the moral or ethical rules of their local communities (e.g. lost their virginity prior to marriage), is, in the UNHCR's words, "even more difficult to handle within the context of the 1951 Convention."⁹ First, these women have not been persecuted by a national authority, which is what the 1951 Convention is set up to address. Second, the Convention does not recognize transgressing social mores as legitimate grounds for refugee status. In sum, international refugee law offers scant protection for women who have fled their countries or communities for reasons of sexual abuse or violent gender discrimination.

Recognizing this problem, the European Parliament (EP) adopted a resolution in 1984, which called upon all member states to consider women "fearing cruel or inhuman treatment as a result of seeming to have transgressed social mores" as constituting a "particular social group" under the 1951 Convention (Martin 1992, 24). To the extent that EP member states choose to follow the Parliament's recommendation, this resolution marks a clear sign of progress towards a more humane international refugee regime. However, a few cautions against undue optimism should

be considered. First, the European Parliament's resolution is not legally binding upon states under current EC law. Nor is it clear that the Maastricht Treaty's provisions to enlarge the Parliament's powers will necessarily change this fact (provided that the Treaty comes into force at all). Second, the UNHCR has failed to adopt a similar recommendation, despite strong urgings from its senior professional staff. In 1985, when the issue was first discussed in the Executive Committee, a number of states refused to accept the EP definition of women as a particular social group because of a concern that it would interfere with cultural and religious practices. Other states opposed the definition on more principled grounds as an unwanted and unlawful interference in the internal affairs of states (Johnsson 1989, 100). Because it is dependent on the goodwill of its state sponsors, the UNHCR was forced to compromise: Instead of adopting the EP formulation, it limited itself to "recognizing" the right of states "in the exercise of their sovereignty, ... to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to having transgressed the social mores of their society in which they live, may be considered as a 'particular social group' within the meaning of Article 1A(2) of the United Nations Refugee Convention." (Johnsson 1989, 98) Since this abortive attempt to win greater recognition for women's rights under international refugee law, no further progress has been made within the U.N. system to gain legal justice for harassed refugee women.

Women's legal difficulties in obtaining refugee status on grounds of sexual persecution are compounded by a rather practical problem: they often have a tough time establishing these grounds. Women who have suffered sexual abuse, for example, are typically reluctant to speak about their experiences, especially to a male interviewer. Yet "very few countries have women involved in their refugee determination procedures." (Johnsson 1989, 98) Therefore, even women who have been sexually persecuted on grounds of ethnicity (that is, on a perfectly "legitimate" ground for seeking refugee status), generally will find it more difficult than their male peers to establish their claims. Women who have been the targets of military attacks face an additional problem. They are generally called upon to prove that they are victims of persecution rather than "crimes of opportunity of individual soldiers." This is no easy feat. The following case reported by Amnesty International is a strong illustration of this problem:

Catalina Mejia ... testified that during a search of her family's home by the military in 1983, a soldier ordered her outside at gunpoint, accused her and her family of being guerrillas (which they denied) and then raped her. During the next 18 months she was stopped twice at military checkpoints in other parts of El Salvador. At each checkpoint, she was singled out by soldiers, who accused her of being a guerilla ... She fled to the US in 1985.

... The immigration judge presiding at her deportation hearing denied Catalina Mejia's application for political asylum in August 1988 ... He concluded that Catalina Mejia had failed to establish "that she fears for her life or freedom if deported to El Salvador." One of the reasons given by the judge for this decision was that the rape of Catalina Mejia by the soldier was not an act of persecution but "was more because she was a female convenient to a brutal soldier acting only in his own self-interest." (In Martin 1992, 24)

Women who have been sexually abused because of their husband's activities have similar problems documenting the persecution. Amassing factual "evidence" is difficult to begin with; asking women, who are already traumatized by their experiences, to spell them out in great detail borders on the inhumane.

To be fair, some legal recourse exists for women to gain a minimum of protection and relief rights even if they are denied official refugee status in a country. For example, the United Nations has the option to extend "special humanitarian status" or "B-status" to refugee women who have been subjected to sexual violence (Johnsson 1989, 99). This status is typically given to refugees whom the UNHCR judges to be in desperate need of resettlement but who do not otherwise fit resettlement countries' criteria, e.g. official refugee status, literacy, and knowledge of the resettlement country's language (Martin 1992, 82). The U.N., however, rarely uses this option, presumably to avoid taking on a larger number of dependents than it can find national sponsors for. Battered refugee women find some protection under the aid umbrella of international relief organizations such as the International Federation of Red Cross and Red Crescent Societies (IFRC), the World Council of Churches, CARE, and others. These organizations do not discriminate between "official" and "unofficial" refugees in their distribution of material assistance. Still, they cannot offer protection against either forcible repatriation or sexual abuses by local officials or refugee camp guards. As mentioned above, refugees ultimately depend on the host state for their physical protection.

The brightest hope for sexually persecuted refugee women to find justice and relief does not come from governments or intergovernmental organizations (IGOs). Many state actors resist any legal reforms aimed at broadening refugee women's protection guarantees and most IGOs lack the necessary autonomy and financial independence to go against these states' will.

The most promising initiatives for a feminization of the international refugee regime come instead from a coalition of non-governmental organizations (NGOs) and citizens associations working to increase international awareness of refugee women's plight and perils. The 1983 Conference of International Socialist Women, for example, sparked the debate

about refugee women's rights to asylum based on sexual persecution. This debate subsequently caused the European Parliament to adopt its 1984 resolution on the subject. The Conference's concluding document specifically called upon "all governments and member parties to amend the Geneva Convention ... to include the victims of oppression and discrimination on the basis of sex as well as race and religion." (Camus-Jacques 1989, 147)

The International Non-Governmental Organizations Working Group has done important research on the needs and resources of refugee women that the UNHCR then used to gender-sensitize some of its policies. Individual NGOs have also done ground-breaking work in adapting their relief programs to the special needs of refugee women. In 1991, the League of Red Cross and Red Crescent Societies produced a working paper on refugee women that it subsequently sent out to all member societies. And most recently, an "Ad Hoc Women's Coalition Against War Crimes in the Former Yugoslavia" has been formed for the explicit purpose of pressuring the international legal system to bring to justice the people who are responsible for rape. According to Rhonda Copelon, a City University of New York professor of law who is working with the Coalition, efforts are focused on 1) trying to make rape a war crime under international law, considering it as a violation of the Fourth Geneva Convention (1949) and Second Additional Protocol (1977); 2) making it possible for rape victims to file complaints under the Convention Against Torture (1987); and 3) exploring the possibilities for using the 1948 Genocide Convention to prosecute rapists; conceivably, this Convention can be used "if rapes and forced pregnancies are shown to be part of a plan to eliminate a nation and if any nation brings [forward] such a complaint." (Lewin 1993)

No one knows how far these ideas will go, but drawing public attention to the plight of refugee women is at least a first step towards improving their situation. Certainly, the media attention given to the rapes in Bosnia-Herzegovina offers a unique opportunity for refugee women advocates to get their core concerns on the public agenda. Perhaps in the former Yugoslavia refugee women for once will not be at the "end of the line."

PERSPECTIVES

Although the rape incidents in Bosnia-Herzegovina present opportunities for increasing the world's awareness of the predicament of refugee women, the structural and logistical hurdles to reforming the international refugee regime are formidable. Awareness of refugee women's special needs and problems is helpful but may be insufficient to affect major institutional change.

Logistically, one problem is that many refugee relief organizations (especially NGOs) have limited human and financial resources. This clearly prevents them from undertaking major revisions of their material

and health care assistance programs. For example, an initiative to make food parcels more nutritionally balanced for women's needs might require relief planners to look for new supply systems, new packaging arrangements, and possibly new field staff (nutritionists). Certainly, it would presuppose the existence of reliable statistics on the demographic composition of the refugee camp served by a given relief agency. Such statistics are currently unavailable in a central database; therefore, individual relief agencies are forced to assess the situation on a camp-by-camp basis. Considering that camp population sizes can change dramatically over short periods of time, this is no small task (Camus-Jacques 1989, 145-147; and Martin 1992, 13-15).

Tailoring refugee health care services more closely to women's needs would entail costly changes as well. New health professionals, such as gynecologists, might have to be hired and, at a very minimum, current staff would need to be retrained. Camp security measures should also be strengthened to ensure the refugee women's safe journey to the clinics at any time of day. Similarly, dealing with the problem of mines in the vicinity of refugee camps could prove to be a costly operation; it would require humanitarian assistance providers to contract outside knowledge (e.g. from the military) since they lack experience with mine clearing. In the educational sector, finally, comprehensive program adjustments would be necessary to accommodate women's needs and lack of prior education. If refugee relief organizations are moving slowly to gender-sensitize their assistance programs, it is not only because of ignorance of women's needs or male conservatism. The dearth of funds for humanitarian relief is no doubt the greatest constraint upon refugee agencies' freedom of action.

The financial and logistical problems outlined above are ultimately solvable. Indeed, the International Red Cross' refugee assistance programs in Slovenia and Croatia are model examples of the kind of gender-sensitive humanitarian assistance that ought to become the trend of the future. The International Red Cross currently is implementing a comprehensive social welfare program in its refugee camps in the former Yugoslavia. The program features 1) women's participation in cooking and camp decision-making; 2) literacy education for women and children, if possible with teachers recruited from among the refugees; 3) women's health clinics, with female staff and gynecologists on duty; and 4) counseling and psychological services to help women who have suffered sexual or other forms of violent abuse. The Red Cross counselors will be predominantly female, locally recruited, and matched with their clients according to ethnic background (IFRC 1993, 1-3). Arguably, the Croatian and Slovenian situations are unique because the encamped refugees' basic needs have been met relatively easily and funding is abundant. Yet with greater coordination, pooling of resources, and a clear division of labor, the world's humanitarian assistance organizations could make tremendous progress

towards meeting refugee women's needs in other geographical regions as well. Increased financial magnanimity on the part of government donors also would make a significant difference.

Given the structure of the current international order, enhancing refugee women's protection under international law will be a far more difficult task than improving their material predicament. As the International NGO Working Group on Refugee Women has pointed out, one structural obstacle to the protection of refugee women's rights is that "countries which do not respect the human rights of their own populace and/or have weak legal standards and remedies, cannot be expected to give refugees a greater degree of protection than is provided to the populace at large." (International NGO Working Group 1989, 20) For refugee women residing in patriarchal and authoritarian societies, this is clearly a problem. Furthermore, countries that have not ratified the 1951 Convention Relating to the Status of Refugees cannot be expected to uphold its provisions. A number of Southeast Asian states, including such refugee-besieged countries as Thailand and Cambodia, fall into this category. Thus, even if the international community had effective ways of enforcing international law against member states, it would not help in these countries. That the international community in fact lacks these enforcement powers creates a final structural impediment to gaining justice for sexually persecuted women under international law. Indeed, this gets at the fundamental problem of creating a strong international refugee regime: as long as both international law and international politics are premised on the principle of state sovereignty, the prospects for a strong human *and* refugee rights regime are poor. Respect for the principle of state sovereignty not only precludes the international community from enforcing international human rights law against government perpetrators, it also deprives individuals and non-state actors of any direct influence on the reform and implementation of international legal standards that affect their lives. As long as states oppose the gender-sensitizing changes in current refugee law, sexually persecuted refugee women will have scant prospects of finding justice internationally.

In conclusion, the refugee assistance community is moving to create a more gender-sensitive refugee regime in the material and health care assistance sectors. The International Red Cross' Slovenian and Croatian projects are examples of this new approach. The community may be progressing incrementally and on an ad hoc basis, but at least refugee workers and relief planners are becoming more aware of women's special needs and of the programmatic changes that will be necessary to accommodate them. International NGOs have been leading the way and the UNHCR, the WHO, and the World Food Program (WFP) are slowly coming along as well, at least at the conceptual level.¹⁰ Moreover, some positive developments are raising international awareness of women's

protection needs. Conceivably, the efforts of civil society groups—the Ad Hoc Women's Coalition Against War Crimes in the Former Yugoslavia, the Refugee Policy Group in Washington, and the International NGO Working Group on Refugee Women—could force the issue of refugee women's rights onto national agendas. Perhaps the Bosnia rape cases could even serve to catalyze international action. The Canadian government's decision in February 1993 to grant a Saudi Arabian woman refugee status based on a claim of sexual persecution sets a hopeful precedent in this regard (Farnsworth 1993, A8).

Yet one should not be overly optimistic about the chances of amendment of the 1951 Refugee Convention. The issue of women's rights is simply too sensitive for the community of states to want to delve into at the moment. It raises questions of the universal versus cultural nature of human rights, and it could open a Pandora's box of women fleeing repressive societies, particularly in the Islamic world. In the end, the issue opens up to international scrutiny even Northern societies' records on women's rights. Can the United States, for example, agree to admit Bosnian victims of sexual persecution without simultaneously paying more attention to the personal security needs of American women? All this is not to say that the efforts of refugee and women's advocacy groups to win greater international protection for refugee women are quixotic; it is only a cautious reminder that the struggle will be uphill. Thanks to their work, the prospects for a more gender sensitive refugee assistance regime are far better. And for the majority of refugee women who have no chance of third country resettlement because of a shortage of resettlement spots, this may be the most important short-term goal.

Notes

- ¹ See also Leon Gordenker: *Refugees in International Politics*, New York: Columbia University Press, 1978, p. 63.
- ² For a historical overview of U.S. policy toward Cuban refugees, see Gilbert Loescher and John Scanlan, "Human Rights, Power Politics, and the International Refugee Regime: The Case of U.S. Treatment of Caribbean Basin Refugees," World Order Studies Program Occasional Paper No. 14, Center of International Studies, Princeton University, 1985.
- ³ For an excellent discussion of the social and economic dynamics of the refugee problematique in postwar Western Europe, see Michael R. Marrus: *The Unwanted: European Refugees in the Twentieth Century*, Oxford: Oxford University Press, 1985, pp. 3-13 and 296-373. See also Daniele Joly and Robin Cohen: *Europe and Its Refugees*, Aldershot, England: Avebury Press, 1989, esp. pp. 1-18.
- ⁴ An Anti-Piracy Program was initiated in 1982 by the Thai government with financial support from the international community (\$2.4 million were provided by the UNHCR in accordance with the Anti-Piracy Act passed that

same year). The Program made considerable progress towards controlling the number of sea attacks on Vietnamese boat people, yet it did not eliminate the problem. As Susan Forbes Martin noted, the Thai government's improved enforcement measures reduced the percentage of boats attacked yet it also induced pirates to "intensify their attacks, killing more people so as to leave no survivors who could testify against them," (Martin 1992, 17). As late as November of 1986, the French newspaper *Le Monde* carried a short notice reporting that a boat had been rescued by Malaysian fishermen: four Vietnamese women were missing, abducted by pirates. (*Le Monde*, 7 November 1986).

- 5 The official titles of the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 are as follows (in sequential order):
 - "Convention for the Amendment of the Conditions of the Wounded and Sick in Armed Forces in the Field;"
 - "Convention for the Amendment of the Conditions for the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea;"
 - "Convention Relating to the Treatment of Prisoners of War;"
 - "Convention Relating to the Treatment of Civilian Persons in Times of War;"
 - "Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts;"
 - "Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts."
- 6 See Birgitta Wetterdal, "Final Report of A Mission to Croatia, 23.01 - 4.2 1993," International Federation of Red Cross and Red Crescent Societies, internal report, pp. 1-5. See also the *Weekly News*, 11 March 1993, published by the International Federation of the Red Cross. On the WHO, see Edward Girardet, "WHO to Begin Rape Counseling in the Former Yugoslavia, " *Crosslines: Global Report on Development, Humanitarian Affairs, and the Environment* (forthcoming).
- 7 As one refugee camp official stated, "Women are in every sense refugees at the end of the charity line, where they wait endlessly for food, for water, for medicines, for whatever basic needs have to be met." (From The World Council of Churches: *Refugees*, January 1984, p. 1. Cited in Genevieve Camus-Jacques, "Refugee Women: The Forgotten Majority." In Gilbert Loescher and Laila Monahan, *Refugees and International Relations*, p. 148. Oxford: Oxford University Press, 1989).
- 8 Information provided by the *Christian Science Monitor's* former Southwest Asia correspondent, Edward Girardet, during informal conversations with the author. See also Edward Girardet: *Afghanistan: The Soviet War*, Kent, U.K.: Croom Helm Ltd., 1985, pp. 202-232.
- 9 Susan Forbes Martin cites documentation from the Dutch Ministry of Social Affairs and Labour on young girls being killed for having lost their virginity prior to marriage (whether by their own will or by rape). See Martin 1992, 23.

¹⁰ According to Birgitta Wetterdal, who went on a Red Cross sponsored fact-finding mission to the former Yugoslavia in February 1993, most of the big intergovernmental organizations are still at the stage of assessing refugee women's needs. This is compared to the nongovernmental organizations, like the Red Cross and Save the Children, which are in the project implementation stage and are providing physical and psychological support for refugee women who have suffered war and rape-related traumas during their flight. See Birgitta Wetterdal, "Final Report of a Mission to Croatia", International Federation of Red Cross and Red Crescent Societies, internal report. *op. cit.*, 1-2.

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