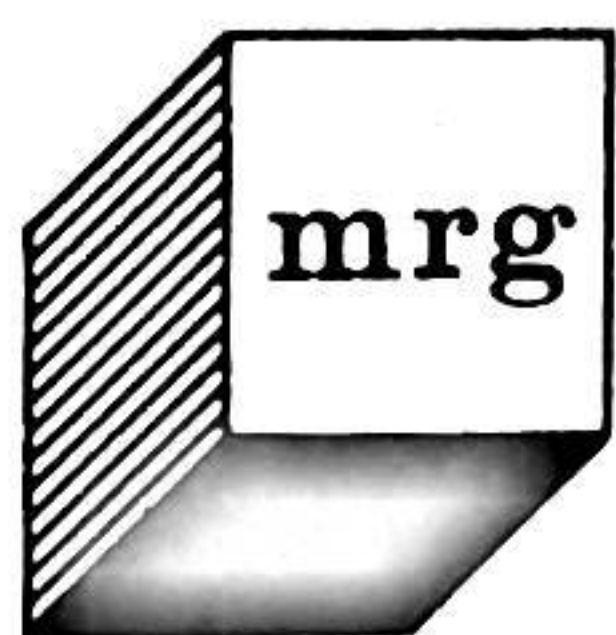


THE REFUGEE DILEMMA:

International Recognition and Acceptance



'The outlook appears to be a cumulative nightmare'
— *The Times*



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**MINORITY
RIGHTS
GROUP**

The **MINORITY RIGHTS GROUP LTD.** is an international research and information unit registered in Britain as an educational trust under the Charities Act of 1960. Its principal aims are —

- To secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicising the facts as widely as possible, to educate and alert public opinion throughout the world.
- To help prevent, through publicity about violations of human rights, such problems from developing into dangerous and destructive conflicts which, when polarised, are very difficult to resolve; and
- To foster, by its research findings, international understanding of the factors which create prejudiced treatment and group tensions, thus helping to promote the growth of a world conscience regarding human rights.

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THE REFUGEE DILEMMA:

International Recognition and Acceptance

by Frances D'Souza

CONTENTS

Foreword by Prince Sadruddin Aga Khan	3
Map	4
1. Introduction	5
2. Historical Perspective	5
3. Who is a Refugee? – The Attempts at an International Definition	7
4. The Spirit and Practice of International Conventions	8
5. UNHCR Recommendations to Governments	10
6. Official Recognition of Refugee Status	10
7. Procedures for the Acceptance and Resettlement of Refugees	11
8. Examples of Implementation at the National Level	12
9. Recommendations and Conclusions	14
10. 1981 – A New Phase	16
References	17
Appendices: I Estimated numbers and geographical distribution of refugees, 1981	18
II Signatories to the 1951 Convention	18
III Accessions and Ratifications	19
IV Resettlement of refugees from S.E. Asia	19
V Financial Contributions to UNHCR	19
Select Bibliography	20

*Cover photo:
Refugees from Kampuchea/Aranyaprathet camp Thailand*

From the Universal Declaration
of Human Rights,
adopted by the General Assembly
of the United Nations
on 10th December 1948:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

FOREWORD

by Prince **SADRUDDIN AGA KHAN** (*UN High Commissioner for Refugees 1965-77*)

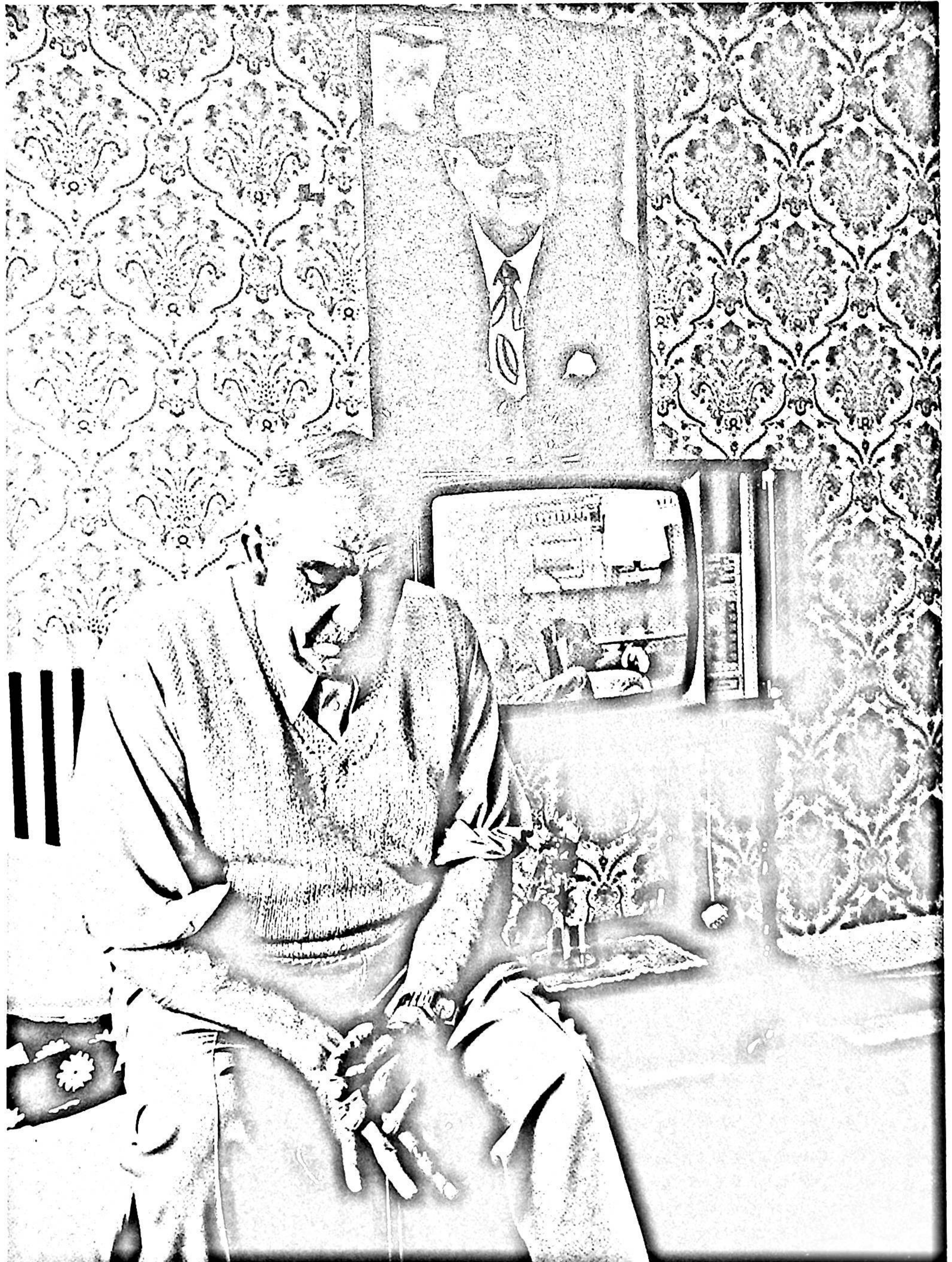
Mahatma Gandhi once said that a civilization can be judged by the treatment afforded to its minorities. One way to judge governments is by the manner in which they treat refugees who have sought asylum on their soil. It is appropriate therefore that the Minority Rights Group should put out this informative report on the plight of the uprooted. Their number is growing and the problem is nearly unmanageable in certain parts of the globe: only through international cooperation can we hope to relieve this mounting suffering and the political and social tensions which it inevitably brings in its wake.

How can host countries in Africa, Asia or Latin America be expected to keep their doors open without adequate guarantees that material assistance and resettlement opportunities will be provided by other nations? Some governments have claimed

that the world's indifference forced them to restrict the granting of asylum. They even used this excuse to send back refugees to certain death as in south-east Asia last year.

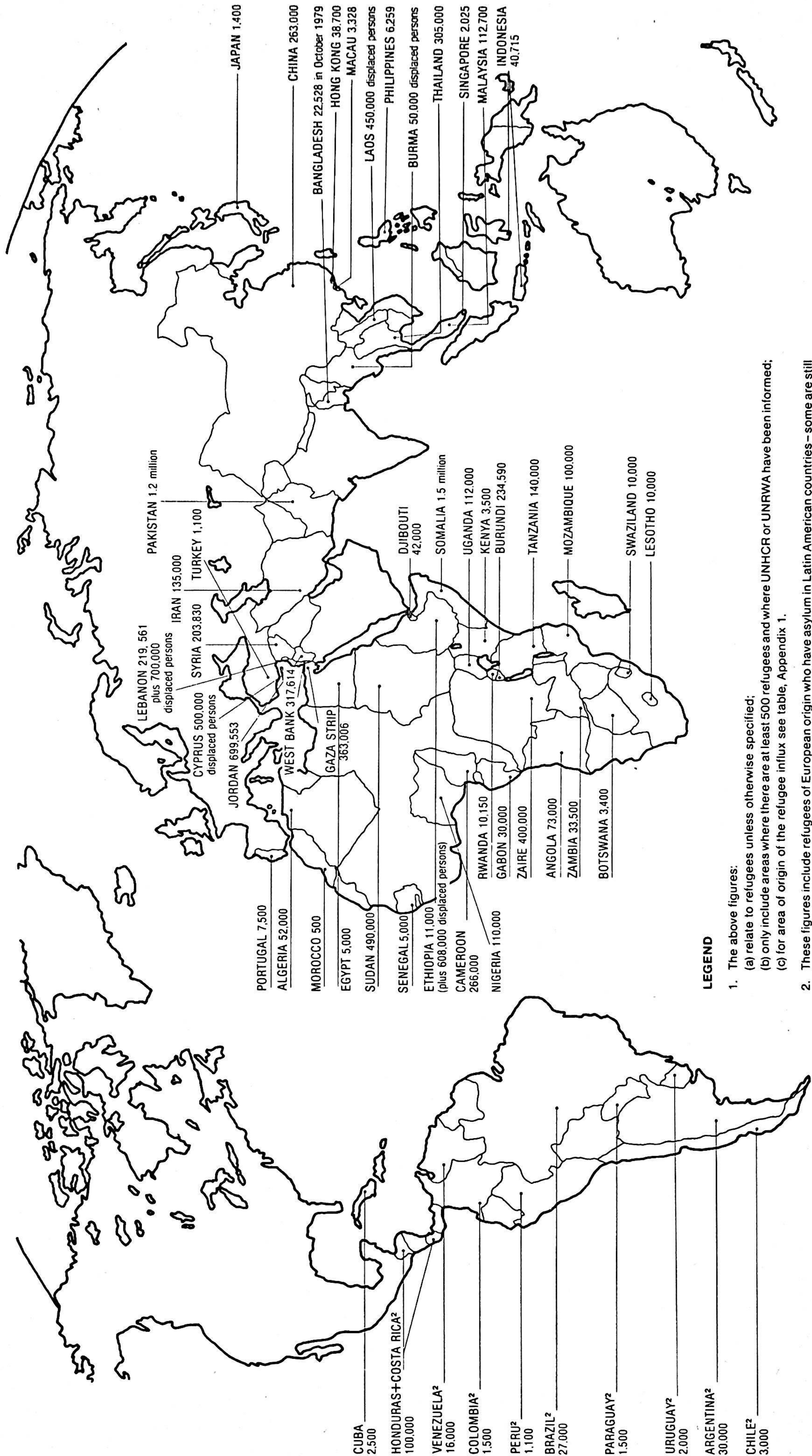
Non-governmental organizations enjoy a measure of independence which I used to envy when I was High Commissioner for refugees: the UN is too often hamstrung by the sacrosanct principle of non-intervention in the internal affairs of sovereign member-states. This is particularly frustrating when human rights are at stake.

As we face a new decade any objective and frank analysis of the contemporary refugee situation is a welcome addition to our understanding of this tragic testimony of man's inhumanity to man. More importantly let us hope that it will contribute to bringing the problem closer to a just and lasting solution.



The difficulties of adapting to a new life are often more acute for the older generation (Refugees from Chile)

ESTIMATE OF NUMBERS' AND GEOGRAPHICAL DISTRIBUTION OF REFUGEES - as at March 1981
 (not including those permanently resettled with the exception of Latin America - see legend)



LEGEND

- The above figures:
 - relate to refugees unless otherwise specified;
 - only include areas where there are at least 500 refugees and where UNHCR or UNRWA have been informed;
 - for area of origin of the refugee influx see table, Appendix 1.
- These figures include refugees of European origin who have asylum in Latin American countries - some are still in receipt of assistance from UNHCR.

'If I should revert to a theme, it is to the universality of our problems and the universality of the effort that is demanded of us. I have heard the words "burden-sharing" wherever I have travelled. They should never serve as an alibi, for any of us, to do less than we can. Above all, we must resist the tendency to think that there are facile, general solutions'

— Poul Hartling, UN High Commissioner for Refugees, October 1978.

1. INTRODUCTION

The last year of the 1970s will go down in history, if for nothing else, as a year of refugees. Two decades after World Refugee Year, the official estimate of refugees throughout the world had reached a figure of 10 million people*; but unofficial estimates, by well-informed organisations which recognise the essential characteristics of a refugee, amounted to nearer 14-18 million¹ (see map). The geographical distribution of these men, women and children — and even of whole populations fleeing from fear and deprivation — is fluctuating almost continually; but it is an ominous development for the future that semi-permanent concentrations of refugees have in recent years increasingly built up in parts of southeast Asia, the Middle East and the Horn of Africa (see Appendix 1). Africa alone now contains some four million refugees, largely forgotten by the world's public consciousness. The future outlook appears to be a cumulative nightmare. At the end of 1979, although plans were being made to return 200,000 refugees to Zimbabwe, over 400,000 new ones had arrived in Pakistan from Afghanistan. In January 1980 the UN High Commissioner for Refugees reported that his budget, fixed at the unprecedented figure of \$234m. only three months earlier, now because of new emergencies, needed to be doubled.

The exodus of people leaving Vietnam after the end of the American military involvement had by 1979 increased to a scale which could no longer be ignored, forcing a reluctant world to take notice and — eventually — some overdue action. The flood elicited responses ranging over noble (if at times contradictory) moralising; re-cremations regarding both liability and responsibility; soul-searching analogies with past holocausts; some dramatic reportage of human misery; a prestigious emergency UN meeting, and a few practical recommendations — but, given the scale of need, relatively little thought or planning for any longer-term solutions by the international community. Above all, the public plight of the Boat People and Kampuchians highlighted the contradictions which exist between the abstract international definition of a refugee and the practical interpretations which governments implement within the framework of their domestic procedures.

This report examines these contradictions (with particular reference to procedures in the United Kingdom), and attempts to render more intelligible the Conventions, Protocols, Amendments, rules and recommendations which govern the fate of those refugees seeking asylum — a corollary of the right to life.

That refugees are recognised as a 'problem' implies that somewhere in the hearts of the traditionally humanitarian nations of the world, a supra-national responsibility is perceived. But it is not clear what factors — political, historic, socio-economic, or the pressures of public opinion (whether based on traditional generosity or transient emotions) — encourage nations to accept refugees or to assume any special responsibility. Granting asylum to refugees is intended to be both a friendly (in the political sense) and humanitarian act, but the political bias often underlying such action is an important component of the conduct of nations. Never has this been demonstrated more tragically than in the case of the Kampuchians who, until hundreds of thousands had crossed the national border into Thailand, were denied protection by the international community; their population — devastated by more than one war — awaited governments' decisions concerning political allegiances and protocols for the distribution of relief.

* If displaced persons are also included, the official world figure is nearer to 12 million (see map and Appendix 1).

¹see page 17 for references

Beyond the short-term deprivations and degradations of becoming a refugee, and of sometimes being exploited by middlemen, lies the (possibly lifelong) traumatic reality of never belonging: of being permanently dispossessed of homeland and rights. The practical effects of what this entails is under-researched; recent findings, however, indicate that fear, depression, and the loneliness of having no roots — often being cut off from relatives, friends, community support, culture, and means of livelihood — can have profound effects which are sometimes only apparent in refugees and their children long after resettlement². Meanwhile the number of refugees, according to the United Nations High Commissioner for Refugees, is at present increasing at an average rate of 2,000 per day³.

Although the primary responsibility for refugees lies with the persecutors or conquerors who cause their plight, it is necessary to ask whose humanitarian responsibility do they become and how far does (or should) acceptance of that responsibility go? How adequate — and how equitably applied — are the available resources for relief, admission and resettlement? What are the conditions necessary for achieving the recognition of official refugee status (as defined by the 1951 UN Convention) and what exactly are the consequent benefits? And, most important of all, how can both policy and practice be improved?

2. HISTORICAL PERSPECTIVE

Refugees, broadly defined as those people who move to seek sanctuary and protection, have existed since historical records began. Massive population movements have changed the demographic maps of the world during every century. The main causes then were as familiar as they are today: war; intolerance and persecution of ethnic, religious or political minorities. Solutions were, in the past, informal and often unpublicised; today, as national frontiers have become ever more sharply defined and guarded, refugees have been designated and developed into a problem requiring increasingly formal remedies, classification, and legislation. The growing emphasis on national, cultural and political homogeneity since the first World War has created more refugees than ever before and at the same time has served to restrict their movements. Other contributory factors include political instability (for example in Africa, Latin America and South-east Asia); population growth and the pressures that this can generate; and even the development of social welfare in some richer nations. Refugees, both as minorities and as individuals, are no longer merely those physically uprooted; they are, in both a national and international context, euphemistically identified as being — and creating — 'problems'.

Movement of individuals or families between neighbouring and distant groups has characterised non-industrialised societies throughout the world. † Previously, these traditions have frequently paid little attention to the boundaries of sovereign states. Tensions and concomitant restrictive legislation have arisen when, amongst other factors, national tenets have come to predominate over those of the migrant poor. Whereas the oppression and expulsion of political or religious minorities (see, *inter alia* the Minority Rights Group's Reports nos. 6, 11, 14, 16, 20, 24 and 32) have been a recurrent theme in history, asylum did not in the past necessarily require formal permission as it does today. In addition, escape routes have effectively been barred through the development of fixed and closed state frontiers — and consequently a political matrix or at least complexion has been forced upon most refugee legislation.

It is worth considering the key factors which motivate people to uproot themselves and their families to face an unknowable future. (Of course, some potential refugees are not permitted to leave their country and thus never become actual refugees; others suffer internal deportation, like the Crimean Tartars in the Soviet Union.) Even a cursory glance at the precedents for the major refugee movements during and since 1918 clearly reveals that most people take such drastic steps when they — subjectively or objectively — believe they are denied their basic right to maintain a former way of life; because economic, religious or ethnic practices have been

† In Africa today, as in the past, fleeing across national boundaries to escape retribution is common in many societies and can be a formal requirement of local justice.

summarily forbidden; because they belong to a victimised political minority; or because they or their close family members have been deprived of citizenship and the right to work and support themselves. A person becomes a refugee because not to do so is likely to mean death from violence, or, at the very least, in order to escape a level of insecurity that is intolerable even to those who may be inured to poverty or persecution.

The numbers are so great and the conditions which create refugees so prevalent, that the resulting difficulties can often seem insoluble. However, a closer examination of the history of refugee movements, both before and since the second World War, suggests otherwise. The available records show that between 1945 and the early 1970s there have been perhaps 60-100 million refugees in the world⁴ — a period highlighted by those displaced in Europe by the second World War and its aftermath; the partition of India; the division of Germany; the Palestinians' diaspora; the flight of Cubans; the consequences of the Indo-Pakistan War, and the birth of Bangladesh. 1971 was marked by the exodus of over 9 million inhabitants from East Pakistan to India. The emergence of nationalism in Africa created in all several million refugees, together with the Biafran, Ethiopian and Sudanese wars; while more recently refugees from oppressive regimes in Latin America have grown steadily, and even greater numbers have fled from war and persecution in South-east Asia.

Although the immediate reasons for flight — and indeed the circumstances and opportunities for resettlement — vary, it is interesting to examine which refugee groups have been granted asylum most readily and by which countries. This will provide a framework within which the present refugee 'crisis', and the adequacy of the response to it, can be more properly assessed.

(a) The Immediate Post Second World War Experience 1945-60: During the early postwar years, the majority of war refugees in Europe were able to return to their countries once hostilities had ceased. Populations moved back to areas previously occupied by German forces, and peoples in Eastern and Central Europe were exchanged: for example, in 1946 Hungary and Czechoslovakia agreed on a voluntary exchange of their respective ethnic minorities. It is, however, undoubtedly true that not all exchanges were voluntary; many thousands of Soviet citizens were forcibly repatriated and the majority were sent to Stalin's slave camps; the Croats handed over to Tito were murdered, almost to a man. Between 1945 and 1961, 3¼ million refugees from East Germany were granted political asylum in West Germany*. Subsequently, religious fighting in India and the eventual emergence of Pakistan in 1947 created millions of refugees, who, like their counterparts in the later Bangladesh war, became the responsibility of the national governments and to some extent of relief agencies when the fighting stopped. In the Middle East, once the State of Israel had been established almost all the Jewish refugees still unsettled in Europe were absorbed, and subsequently Jewish refugees from Arab states, the British colony of Aden and elsewhere, went either to Israel or settled in the United States or Latin America. Palestinians in camps, however, continue to occupy the uniquely recognised position of permanent refugees under the special protection of the international community (under the aegis of the United Nations Relief and Works Association — UNRWA).

Events following the Hungarian Revolution of 1956 illustrate just how effective, efficient and rapid the international community has proved it can be in resettling refugees (just as in 1917-20 nearly 1.5 million political refugees from Russia had been accepted mainly in Europe — as well as nearly half a million Armenian and 1.25 million Greek refugees from Turkey.) Some 200,000 Hungarians fled into neighbouring European countries after the uprising. By 1958, over 170,000 had been resettled in countries mostly of their choice, including Australia, Canada, and the US, with some 20,000 going to the UK, and approximately 18,000 returning to Hungary⁵. Similarly over half a million Cuban refugees were welcomed and registered by the United States authorities in a spectacularly efficient 'freedom flight' airlift programme between 1965-73⁶. Sympathy for those unwilling to tolerate a communist regime was an even more strongly felt concern in the 1950s than it is today. (The U.S. Refugee Act (Sec. 203(a)7) specifically makes provision for a yearly quota of refugees from communist dominated

countries. Under the quota system, would-be refugees from non-communist states *must be* victims of political, racial or religious persecution.) Nevertheless, the fact that the majority of refugees in both the Cuban and Hungarian cases were white, educated, often professionally skilled and culturally from a Euro-Western background were obvious inducements to the developed Western countries where they eventually settled.

During the 1950s and 1960s, hundreds of thousands of emigrés were created by the emerging independence of former European colonial possessions in Africa and Asia. British subjects from all over the world — including many Asians from Kenya and Uganda — migrated to the UK; a considerable quantity of French citizens from North Africa and Indo-China poured into France; Dutch repatriates together with the Amboinese from Indonesia fled to Holland; while many Italians from Libya, Eritrea and Ethiopia moved to Italy.

(b) The Changing Pattern — 1960 Onwards: In the face of this evidence of integrating such large numbers of people, it is scarcely possible to contend that there is no international capacity for absorption; clearly there is, and it has proved impressively effective and successful in the relief and rehabilitation of refugees when the political will is present. But what seems to emerge is that the relatively informal efficiency also occasioned more restrictive legislation in an attempt to stem the flow to those nations which had previously operated a more or less 'open door' policy to genuine refugees — or, at the least, had accepted fully their responsibility for immigrants from former colonies. A background of economic expansion or restraint also appears to be a crucial factor. For example, prior to the United Kingdom's 1962 Commonwealth Immigrants Act there was clearly a need for cheap labour during Britain's expansionist period; by contrast, the 1971 Immigration Act — which recognises, in the rules of administrative procedures, six types of citizenship — formed a response to changing political and economic conditions †.

The fundamental attitude of many governments became to keep any appreciable number of new people out, and the granting of asylum became a last possible resort. But which people are to be kept out and why? Those countries such as Australia and New Zealand which, until recently, have encouraged immigration often exclude the refugee who may not fulfil the strict health, language and professional (or other skill) requirements. Other nations — for example Canada, Switzerland, Austria and in Scandinavia — commendably make special provision for the acceptance of the sick and mentally and physically handicapped refugees.

(c) The British Experience: Whereas in the 19th century Britain was a haven for refugees of all politics, the complex rules governing asylum today in the UK — so opaque or obscure that they are often ill understood even by those officials whose responsibility it is to implement them — result in unknown numbers of refugees finding themselves trapped; they are not able to return to their own countries, nor to receive asylum elsewhere, neither do they come under international protection⁸. The case files of agencies such as the United Kingdom Immigrants Advisory Service (UKIAS) are full of closely documented instances, at once absurd and tragic, of individuals who are flown across the world from one port of entry to another, and who are accepted nowhere unless and until they arrive in a detention centre to await bureaucratic decision ‡. But Britain took the initiative in declaring 1959-60 World Refugee Year; and in the 1979 crisis over Vietnamese refugees, the British government was a leading voice in creating the July 1979 Geneva meeting which aimed to stop the flow of ethnic Chinese and others from Vietnam, as well as to discuss the shared responsibility of the developing nations — and especially also of the Soviet bloc.

Much of the transient concern and the more emotional statements of principle have abated. But, meanwhile, many refugees still remain in camps in Hong Kong and are likely to increase greatly in

† Note, however, that Wasserstein⁷ demonstrates, from Cabinet Minutes and other documented sources, the changing attitude of the British government towards Jewish refugees from the early 1940s onwards. The increasingly negative attitude was summed up by the note of one senior Foreign Office official who declared that he regarded the sinking of a ship carrying Jewish refugees to freedom as an 'opportune disaster'.

‡ For example, 30 stateless Uganda Asians in an Austrian refugee transit camp have been seeking asylum for the past 6 years.

* A further 17,000 have been 'bought' by the Federal Republic of Germany for \$600 million from the German Democratic Republic since 1962.

the future* unless more permanent solutions and efficient procedures are agreed upon and — more importantly — put into effect.

Refugees are, predominantly, created by wars and other major civil disturbances. The dilemma is how governments, which are not immediately responsible for their condition, can cope effectively with the human consequences. Basically, they are faced with the predicament of how best to reconcile international humanitarian obligations to refugees with domestic obligations for the well-being of their own nationals (and electors). However, it is clear that some refugees are in more urgent need of protection and asylum than others. What are the procedures, political biases and mechanisms at both national and international level, available to ensure that the concern first formalised in the 1930s† following the massive refugee problem created by the first World War, continues to be translated into effective action?

3. WHO IS A REFUGEE? — THE ATTEMPTS AT AN INTERNATIONAL DEFINITION

(I) Refugees as a Long-Term Problem

The Western stereotyped image of a refugee probably includes the following characteristics: poor, ill-educated, and under-nourished. The common view (often derived from media pictures or charities' advertisements) is one of pathetic individuals, their children and a few belongings on their backs, fleeing with fear and bewilderment in their eyes. This picture is often all too familiar and true, but political emigrés and more recently the Boat People have to some extent challenged the stereotype‡. Now the world is confronted with well-educated and relatively wealthy refugees — 'fee-paying emigrants' as a Malaysian government official described the Boat People, and others who are 'voting with their feet'.

The word 'refugee' has an immediacy suggesting an emergency status or at least a short-term problem. However, the historical indications are that, almost inevitably, a proportion of refugees will become semi-permanent exiles§. The most extreme and unique case of the long-term ill-consequence of political upheaval is represented by the Palestinian refugees, who now number over 1.8 million (700,000 in Jordan, 363,000 in the Gaza strip, 318,000 on the West Bank, 219,000 in Lebanon and 204,000 in Syria). In addition, the recent fighting in southern Lebanon has created new problems by driving 250,000 people from their homes. Olof Rydbeck, the new Commissioner General of the UN Relief and Works Agency for Palestinian Refugees in the Near East, states that the agency ended 1979 with a deficit of over \$50 million. (In 1979 the USA gave \$52m., Libya \$4m., and Saudi Arabia \$1.2m.; whereas Algeria and the Soviet Union, vocal supporters of Palestinian rights, have never contributed.)

Although the resettlement rate of Vietnamese refugees from Hong Kong is relatively high, much less world attention would have been directed to these people had they not taken to boats; the prior price for world concern and action was the drowning of many thousands. (The various estimates of those who perished range from 20,000 to 250,000¹¹.)

The numbers of refugees fleeing war in the Horn of Africa have not benefited, to the same extent, from media attention. For example, it is estimated that at present up to 1.5 million refugees from Ethiopia are concentrated in urban and rural areas of Somalia. This represents over one quarter of the population of Somalia and the burden to the government may become intolerable. It is unlikely that these refugees will be able to return to their own countries in the foreseeable future. Meanwhile, relief organisations are providing

* The moratorium on the expulsion of ethnic Chinese and others from Vietnam was due to come to an end in January 1980. Observers believe that there are up to 1.5 million ethnic Chinese remaining in Vietnam.

† The Intergovernmental Committee communicated the resolutions on International Assistance to Refugees reached at the Evian Conference in July 1938 to the League of Nations for formal adoption.

‡ Professor Stein⁹ points out that this stereotype is historically wrong; the well-educated and relatively wealthy refugee has often been the norm.

§ Hirschon and Thakurdesai¹⁰ report that the families of Greek refugees who came from Asia Minor in 1922 still, today, maintain a sense of separate identity partly due to the fact that the majority continue to occupy prefabricated temporary housing supplied by relief organisations in the twenties.

food, medicine and rudimentary health care and education systems. However, the longer term responsibility for resettlement remains that of the host government which, in an already poor country, has to balance concern for the newcomers with a greater responsibility towards the ills of its own people. Over one third of the world's total refugees are in black Africa, but whereas \$105m. of the UNHCR budget for 1980 will be spent on 1 million refugees in South-east Asia, only \$70 m. is earmarked for the 4 million in Africa.

More than 50 per cent of all refugees are children and young people of school age; four-fifths come from developing countries. Most refugees are created by political and other emergencies which cannot be predicted: an uncomfortable fact of which planning must take account.

(II) Definitions and Conventions Relating to Refugees

The first United Nations High Commissioner for Refugees, Dr. van Heuven Goedhart, was appointed in 1950 and he and his staff drafted the 1951 United Nations Convention relating to the Status of Refugees. The terms of the Convention referred *only* to those events occurring in Europe prior to 1 January 1951. A refugee was defined as follows:

'Any 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 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'.

The Convention also recognises that those persons having more than one nationality could also apply for refugee status.

The United Nations Convention relating to the Status of Refugees, initially signed by 13 countries (see Appendix II) was itself the outcome of previous definitions and quasi-legal agreements by various organisations, including the League of Nations and bodies such as the International Refugee Organisation (IRO) and the Intergovernmental Committee for European Migration (ICEM). The IRO was set up in 1946 to take over the work of resettlement, care and maintenance of refugees from the United Nations Relief and Rehabilitation Administration (UNRRA) and the Intergovernmental Committee for Refugees (IGCR). ICEM, instituted in 1951, continued the IRO work of promoting migration, including that of refugees, from Europe. (In 1979 ICEM moved 248,000 people — the highest yearly figure in its history. Of that total 54,280 were Russians, of whom 17,489 went to Israel and 33,914 to the United States.)

The Protocol of 1967 amended the Convention by removing both the time and geographical limitations. Effectively this meant that henceforth *all* refugees, and not just those resulting from the second World War, automatically came within the protection afforded by the 1951 Convention.

The 1951 UN Convention and 1967 Protocol remain the principal international instruments and accession has been recommended by various regional organisations including the Council of Europe, the Organisation of American States and the Organisation of African Unity (OAU)¹². This latter body drafted additional recommendations and procedures for dealing with the growing problem of refugees in Africa. The 1969 OAU Convention was, and is, intended to supplement existing procedures relating to refugees. However, additional articles emphasise the non-discrimination clauses whereby no refugee shall be refused recognition because of religious, racial or political affiliations. Those individuals who may be fleeing from war or civil disturbance or escaping violence of any kind in Africa are also recognised as refugees. Thus while the 1951 Convention rules that fear of persecution is the necessary and sufficient condition for refugee status, the emphasis is on political persecution. Furthermore the 1969 OAU Convention incorporates the central provision of the 1967 UN Declaration on Territorial Asylum. By widening the concept of persecution from the essentially political persecution implied in the 1951 Convention, by including reference to asylum, and, finally, by making explicit the mechanism of voluntary repatriation, the 1969 OAU Convention makes more liberal and innovative provisions for refugees in Africa¹³. The High Commissioner for Refugees has subsequently pointed out that his office is similarly willing to consider

persons who could be refugees within the meaning of the UNHCR Statute *as well as* the Convention and Protocol' (author's italics)¹⁴.

Sub-clauses of the UN and OAU Conventions, various subsequent articles, amendments and recommendations as to procedures for the determination of refugee status fill many a shelf in UN and government offices. It would seem at first glance as though every conceivable contingency has long been taken care of and that any victim of persecution of almost any kind is covered by the terms of the Conventions. The spirit of the Conventions can be summarised as follows: that every person is entitled to freedom from persecution and that he or she will receive recognition and assistance from the international community in order to effect that freedom. The second crucial outcome of the 1951 Convention is the corollary that no person should or can be forcibly repatriated (*refoulement*) to his own country, the source of his fear of persecution. The major and outstanding constraints within the terms of both Conventions are that an individual *must* have crossed a national boundary in order to achieve official recognition as a refugee and that his fears of persecution be *well-founded*. Finally, in neither the 1951 UN Convention nor the 1967 Protocol is there specific reference to territorial asylum, which remains a concept rather than a recommendation embodied in the text of either document. (Detailed legislation in many Latin American nations clearly rules that asylum is a privilege granted by the state and is not the right of the individual to claim it.¹⁵) The delay between signing and subsequent ratification of any Convention is often considerable and, indeed, a Signatory State may never become a Contracting one*. The original, precisely drafted texts may become modified (as was the case with the 1951 Convention) to gain wider adoption and in so doing also become more vague and flexible in order to attain the formal accessions required for any international Convention to become operative.

United Nations Conventions and Protocols are intended to be legally binding within the territory of the Contracting State. The position of Conventions in international law is that Contracting States are obliged to bring their domestic provisions into accordance with their international obligations. This can mean either that new laws have to be introduced, old laws changed or existing laws be sufficient to enact the Conventions and Protocols. The United Nations can and does request formal statements from Contracting States as to their procedures for implementing Conventions. By contrast, UN Declarations such as the Universal Declaration of Human Rights (1948) and, more pertinently, the Declaration on Territorial Asylum (1967) have no such legal force.

Additionally, Member States, although party to a given Convention may introduce their own *reservations* to certain articles which are thus not legally binding. A country may not ratify a Convention but may be party to a subsequent Protocol. For example, the United States of America has only ratified the 1967 Protocol pertaining to refugees and *not* the 1951 Convention. Amongst western European countries, only Monaco has not ratified the Protocol, though it is party to the Convention.¹⁶ All parties to the European Convention on Human Rights, except Spain, have ratified both the 1951 Convention and the 1967 Protocol. Once ratified, however, the Convention requires that Contracting States '... shall communicate to the Secretary General of the United Nations, the laws and regulations which they may adopt to ensure the application.'¹⁷

At the time the UNHCR was started, the 'cold war' was at its height, and both the High Commission and the Convention reflected a background of the many refugees then coming from Eastern Europe to the West. The Soviet bloc countries have since consistently ignored — though not obstructed — the UNHCR and its budgetary requirements. China, however, is now an active member of the UNHCR's executive and is both contributing funds and has offered to receive a large quota of refugees from Vietnam.

4. THE SPIRIT AND PRACTICE OF INTERNATIONAL CONVENTIONS

The latitude in implementing the 1951 Convention is considerable. Added to the consequent confusion, is the obvious difficulty in achieving international agreement as to the meaning of the phrase

* For example, only 19 out of 32 Member States have formally ratified the 1969 OAU Convention.

'well founded fear of persecution', and, possibly most important of all, there is the related problem of the right to asylum.

The determination of refugee status however is not simple. There are two distinct refugee categories:

- (i) those who are part of a mass movement provoked by invasion or oppression, and
- (ii) individuals who claim to have escaped persecution in their own country.

The former group are usually rapidly recognised as refugees but individuals in the latter category may have great difficulty in justifying that their fear of persecution is well-founded and in achieving recognition of their refugee position. There has been some discussion as to whether the Vietnamese Boat People qualified as refugees within the terms of the 1951 Convention. Initially it was thought that the ethnic Chinese in Vietnam were economic rather than ethnic or political emigrés: one refugee is reported to have said 'In Hong Kong we can live a life of luxury without hard work'¹⁸. Assyrians fleeing Iraq since 1974 in many cases have been unable to prove that they are victims of persecution¹⁹.

It is quite possible for a country to have impeccable legislation incorporating the directives of the Convention and Protocol and yet refuse admission to the most obvious victims of persecution. Case studies indicate that although *refoulement* is not a normal procedure, it is, in some countries, dependent on the port of entry official's personal understanding of refugee status and his subjective judgement of how well-founded the individual's fears are. It is clear that this understanding is often imperfect, largely because the phrase 'well-founded fear of persecution' is, itself, ill-defined. There is no single interpretation but generally the definition refers to persons whose life and liberty are in danger and whose need for protection from persecution existed prior to their escape †. It is easier to designate those who are excluded from Convention status — for example, those who have been convicted of crimes against peace or humanity or those guilty of war crimes ‡. At the other end of the spectrum, there are undoubtedly severely poor people who are forced to move to urban areas for jobs, but are not 'refugees'.

The United Nations High Commissioner for Refugees, non-governmental and voluntary agencies who have or assume responsibility for refugees, as well as individual national government departments, recognise and act as far as they can for many other categories of refugees. These categories include stateless persons, exiles, migrant workers unable to return to their countries of origin because of civil disturbances or fear of persecution, and political dissidents. Such categories of people have in practice similar benefits to Convention refugees with some important exceptions.

When the UNHCR was established in 1950, its mandate was to call upon governments to provide protection for refugees 'not excluding those in the most destitute categories'. The competence of the High Commissioner extends to those who are outside the country of nationality, or if they have no nationality, the country of former habitual residence and who require protection. The mandate is wider than allowed in the Convention, but once again there is the clear indication that unless a person has removed himself from his country he cannot come within the potential protection that UNHCR and other bodies might afford him. In fact, under special circumstances UNHCR can and does go beyond the mandate. For example, agreements with governments to deal with returnees have been made, and UNHCR has been invited to supervise or otherwise aid nationals who in every sense, except that they are inside their own countries, are refugees. The High Commissioner has extended his 'good offices' to displaced populations in southern Sudan, Angola, Cyprus and Lebanon. A recent example is the programme of rehabilitation for refugees returning to Uganda. More remarkably, UNHCR, through the local office, helped imprisoned Chileans to escape their country and thus become eligible for refugee status and consequent assistance. Because of the greater breadth of UNHCR's mandate, together with the delay in ratification of

† A Muslim girl pregnant before marriage escaped from the culturally and legally accepted punishment of death. Since, however, this sanction was the norm she did not 'fit' into the category of well-founded fear of persecution and, in fact, had considerable difficulty in gaining asylum within the provisions of refugee Conventions²⁰.

‡ Remarkably the *non-refoulement* principle in the UK is guaranteed under the Fugitive Offenders Act (1967) to persons against whom a *prima facie* case is established that an extradition crime has been committed.

Conventions and Protocol, and individual reservations made, both Convention and mandate refugees can co-exist in a given country within a given time*.

(a) Stateless Persons: A separate Convention concerning Stateless Persons was ratified by those countries party to the 1951 Convention in 1954†. A Stateless Person may, for example, be a victim of territorial re-alignment and not necessarily qualify under the 'well-founded fear of persecution' clause of the 1951 Convention. (Those residents of Uganda expelled by Amin who had neither British nor Ugandan passports were Stateless Persons but also qualified as refugees.) There is yet a further group of refugees, the subject of much legal and political discussions: the *de facto* refugees who are similar in every respect to *de jure* refugees, but are excluded from the latter category by reason of not having crossed a national border, or are rejected as being eligible for Convention status by the host country in which they reside. In this group are those who still have their national passports, for example emigrés from some Latin American countries or Greek nationals from and in Cyprus; exiles; 'crypto refugees' — a term used by many agencies to describe refugees 'hidden' in other alien categories such as foreign students unwilling to return due to the fear of political persecution; and draft evaders, conscientious objectors‡ and deserters. For these individuals, their status only becomes apparent when they need to renew a passport or work permit or when they are summoned to return to their country of origin. Many of these people, though eligible, may be reluctant to apply for Convention status as it may affect the safety of relatives in the country of origin, or they may fear future discrimination because of the refugee classification, or, in the event that the application is unsuccessful, added retribution on return to the country of origin. Many would-be refugees also apparently fear 'denationalisation' as passports have to be deposited when an application is made. This last fear is persistent, widespread but unfounded. A refugee normally retains his nationality until he is deprived of it by his native country or when he voluntarily applies for citizenship in his country of asylum²¹.

(b) Convention Refugees: The key protection afforded a Convention refugee in international law is the right to seek asylum and the guarantee that he shall not be forcibly repatriated. However, the expulsion of aliens is equally a sovereign right of States. In practice, therefore, the rights of a Convention refugee only apply once he or she has been granted asylum permanently. Temporary asylum does not usually entitle a refugee to the full social and economic benefits embodied in the main provisions (set out below) of the 1951 UN Convention:

- (i) Treatment as accorded to nationals of the Contracting State;
- (ii) Treatment as accorded to nationals of the State of habitual residence of the refugee;
- (iii) The most favourable treatment accorded to nationals of a foreign country;
- (iv) Treatment as favourable as possible and in any event not less favourable than that accorded generally to aliens in the same circumstances²².

The Convention rules that travel documents should be issued, that the individual has the right to move within the country and to travel abroad (implying, of course, that upon return to his country of asylum there will be no question as to his right of entry), and that he be eligible to work and earn a living wage, or if necessary receive payment from the State for himself and his family, that his children be educated and eligible for educational grants, and if necessary that he and other adult members of this family have access to counselling services and language instruction. Finally, after a certain period, the Convention refugee is eligible to apply for citizenship and this should be granted both to him and his family. The Convention also provides that the individual has access to the courts of law and when outside the country of asylum he be treated as a national of the host country.

* Italy, for example, although acceding to both the 1951 UN Convention and 1967 Protocol, recognises refugees *only* within the geographical limitation of Europe.

† There is a further UN Convention on the Reduction of Statelessness adopted by the General Assembly in 1961.

‡ A United Nations Resolution on the *Status of Persons Refusing Service in Military or Police Forces used to Enforce Apartheid*, recognises the special position of these people.

(c) De Facto Refugees: The *de facto* refugee group explicitly excludes, by international consensus, illegal migrants, or migrant workers in search of better living standards. But the growing populations of migrant workers from less developed countries to nations of comparative wealth often constitute yet another anomalous crypto-refugee category. For example, Turkish Christians who have well-founded fear of persecution if they return may have more difficulty in gaining recognition as refugees because of their migrant worker status²³.

De facto refugees may have certain legal and social disabilities when compared to Convention refugees, depending on the laws and procedures of the host country. For example, there are certain restrictions on employment and access to benefits such as language classes or vocational training often crucial in gaining jobs, and problems are encountered at secondary and higher levels of education. For example, a scholarship may require a recommendation from the country of origin, usually not forthcoming§. Most pertinently, *de facto* refugees are not always fully protected from *refoulement*.

A UNHCR spokesman has pointed out that refugee rights are no more than the human rights widely recognised in the world today. The European Commission of Human Rights has used Article 3 (prohibition of inhuman or degrading treatment) as a means of protecting refugees from deportation or *refoulement* and governments have generally accepted (except Switzerland) this extension of the Convention. Perhaps the Convention reflects more particularly the attitude of the world in 1950 when it was drafted, and the European bias implicit in the terms of the Convention which may no longer apply.

But there still seem to be two clear benefits in certain countries in being a Convention as opposed to a *de facto* refugee. One is the right to subsidised education, and the other — far more important, but astonishingly tortuous — is the question of protection under the non-repatriation clause. It is only in rare cases that Convention status is conferred *prior* to arrival at a port of entry, as it was for example on the Boat People. Normally the status is conferred after asylum and thus forcible repatriation *can* occur with refugees who are eligible for the Convention status. The discrepancy between the spirit and practice of international rulings on refugees is clearly illustrated here. Theoretically any person who fulfils the criteria of the Convention *is* a refugee. In practice, he or she can only benefit from that status once it has been recognised by a potential country of asylum. This anomaly often leads to the 'refugee in orbit' syndrome. The individual who presents himself at a port of entry is refused admission and put on a flight back to his port of exit which may not be his country of origin, where once again he is refused entry and shuttled away again. In one exceptional case concerning an individual from the Sudan, the 'orbit' lasted from 26 February to 18 May 1979 when refugee status was eventually granted by the UK Home Office²⁵.

There is another bitter twist concerning the spirit of the Convention and the practice; the rule of first country of asylum implies that refugee status shall cease to be held if the individual has been offered or has received protection in *any* other country other than his own. Thus Malaysian government officials refused entry to Vietnamese refugees on the grounds that the latter had reached the Malayan¶ peninsula via mainland China, and that within the terms of the Convention, China, as the first country of asylum, should keep them. Even more Kafkaesque and ironic are those cases where individuals are imprisoned in one country awaiting further official enquiries and then refused entry to the country of choice by virtue of having 'enjoyed' asylum elsewhere. There are serious dangers for the refugee who spends 'too long' in transit. The concomitant legal contradiction is that no country party to the Convention is obliged to comply with the terms of the Convention unless and until asylum has been granted. Finally, any nation can denounce the Convention (Article 44) at a year's notice at which time it becomes null and

§ An Iranian student, unable to obtain an official record of scholastic achievement was, therefore, unable to take up the offer of a British university scholarship in October 1979 and at the same time was unable to gain a work permit²⁴.

¶ It should be noted that since Malaya is not party to any Conventions concerning refugees, there is no legal obligation whatsoever to accept those who attempt to enter illegally.

void*. It is, therefore, of the utmost importance to examine the procedures recommended by UNHCR for the determination of refugee status and, in turn, the policy and machinery within countries for the same process.

5. UNHCR RECOMMENDATIONS TO GOVERNMENTS

Briefly, the UNHCR recommendations²⁷ to governments suggest the following basic requirements: that the competent official (i.e. at the port of entry) receive clear instruction for dealing with cases which might come within the terms of relevant international instruments, and, in particular, that the official act in accordance with the principle of *non-refoulement*; that there be a clearly identified single and central authority to which all potential cases could be referred; that the applicant be given all the necessary assistance, such as interpreters to present his case; that if recognised as a refugee, he should be so informed and given certification to this effect and that if not recognised he should be given reasonable time to submit an appeal. Finally, in all cases, it is recommended that the individual be allowed to remain in the country where he presents himself pending a fuller enquiry — i.e. in no case where there is the slightest possibility of refugee status, should he be repatriated or sent to a former transit country.

How far these recommendations are put into practice is difficult to know. An experienced UK agency worker pointed out that attempts to ensure their application are inevitably frustrated since those repatriated are, by definition, not in the case files. It is only the relatively lucky refugees who are informed of their right to seek help from a specialised agency, and there is at least one example of an individual (eventually recognised by the British government as a Convention refugee) who was advised by immigration officials not to contact any refugee agency as it would prejudice his case²⁸.

The importance of determining refugee status has not escaped UNHCR, whose Executive Committee provides a set of carefully worded recommendations which do not, however, have legal status. For all the reasons mentioned so far, claiming refugee status is a hazardous business, fraught with uncertainty, bureaucratic delay and the general resistance often encountered by the individual. In most cases a would-be Convention refugee is confronted by officials at the port of entry. At this stage, if he or she is well-versed in international law and Convention terms, and is competent in the language of the potential country of asylum and able to present his case cogently and persuasively, he may well be successful in gaining temporary asylum while his case is considered. But how many refugees of this kind are there — possibly one in a thousand? More typically, the refugee is questioned by officials who may know little of the political, ethnic or other circumstances surrounding his departure from the country of origin; nor is it reasonable to expect that immigration officers be fully acquainted with the vagaries of persecution and degrees of danger in countries from which news is rarely reported.

The provisions of the Convention do not cover this crucial stage, and if refugee status is refused, the individual may have no right of appeal†. Agency files also contain many cases where genuine refugees, in ignorance of a given country's procedures, have prejudiced their case by stating that they are tourists or students. A subsequent application for asylum may be weakened by having entered the country under false pretences.

It appears that refugees are more readily officially recognised if they are part of a massive movement, concentrated in space and time, well advertised by the media; if they are poor, hungry and victims of tangible personal pain and/or injury. The individual dissident seeking political asylum from the Soviet bloc is viewed sympathetically and nearly always attracts media attention especially should he or she be artistically accomplished. Political asylum seekers from other regimes, however, are often less newsworthy and *ipso*

* The Dominican Republic denounced the 1928 Convention on Asylum and the 1933 Convention on Political Asylum. Haiti in addition to denouncing the above two Conventions also denounced the 1954 Convention on Diplomatic Asylum and the 1954 Convention on Territorial Asylum²⁶.

† There is considerable variation as to the right of appeal. In Canada, France, Belgium and the USA depending on the circumstances, there is opportunity for appeal while remaining '*sur place*'. In the UK, however, right of appeal for both refugees and immigrants must be lodged *outside* British territory (and in practice the appeal results are usually negative).

facto are in greater need of protection from the international community. Some categories of refugees are more rapidly recognised officially for many reasons, perhaps the two most common being the pressure of media or public opinion and a perceived political responsibility.

6. OFFICIAL RECOGNITION OF REFUGEE STATUS

On the evidence of actions rather than expressed policy, the true attitude of governments must be gauged from the fact that extremely few individuals are granted the asylum implicit in the United Nations Convention and Protocols. But there are some interesting exceptions; for instance, it is reported that the International Committee of the Red Cross in 1978 made contingency plans for 100,000 white Rhodesians when civil war was threatened, to facilitate their freedom of movement and promote easier and more rapid acceptance especially by Commonwealth countries. ('It is the first contingency plan prepared for a white refugee exodus anywhere in the world in many years'²⁹. Australia and New Zealand apparently disclosed a willingness to open their doors to the white Rhodesian influx.)

Reactions to the Vietnamese 'boat people' have been more typical. The British government expressed a fear shared by all potential host nations when procrastinating on a decision to offer asylum to those survivors picked up in the South China Sea by British ships. The dilemma faced by the British government in the very early stages of the boat people's exodus was whether or not those rescued should be offered asylum in the UK, or deposited at seaports of other countries who, in turn, would either accept or forcibly repatriate them. More extreme was the suspicion expressed at high levels in ASEAN countries that the exodus from Vietnam was in reality a subversive Communist policy calculated to de-stabilise the pro-Western nations of east and south-east Asia‡. Rumours circulated in the Western press concerning a Machiavellian plot to wreck the West's economy by inflicting upon it hundreds of thousands of asylum-seekers; the cost was compared to paying a modern equivalent of Danegeld. The solutions canvassed included persuading or even compelling the refugees to live on specially designated islands. Graham Greene wrote on the 'strange moral position' taken by Western governments: on the one hand they protest that the USSR will not allow emigration and at the same time Vietnam is castigated for allowing the Boat People to go³⁰.

In order to avoid setting a precedent, and the attendant obligations, the majority of refugees are treated as immigrants and are thus subjected to the lengthy and cumbersome procedures surrounding immigrant status. It has been suggested that of the 14,500 Boat People granted asylum by the United Kingdom, fewer perhaps might eventually be accepted. Each individual would be vetted as a security risk and the genuineness of his or her desire to settle in Britain would be examined. Health factors, the whereabouts of relatives and language proficiency would all be taken into account and Home Office officials would by these means (i.e. processing refugees as immigrants) be able to reduce the UK caseload.

It is obviously sensible to ensure that those refugees accepted have a good chance of integrating economically and socially either within an existing community of similar ethnic origins or into the British populations as a whole. These procedures, however, are in some sense contrary to the spirit of the Convention, in that selection is based on perceived effect on the host country rather than the degree of need of the individual refugee. A recent case³¹ illustrates the kind of trading that can occur. A family granted asylum as recognised refugees was precluded from entering the host country (Australia) when it was found that one member of the family was mentally retarded. Australia, like many other Contracting States has rigid health standards. The moral is that refugees are grudgingly granted asylum if they prove acceptable within the standards of a given developed country.

‡ There is an interesting contrast between the attitude adopted towards the Vietnamese Boat People and that towards the equally large number of Chinese fleeing into Hong Kong from China. It is estimated that besides 1,500 legal immigrants each week, some 600 illegal ones are caught and returned each day while approximately a further 1,000 are not detected. Several thousand others have been drowned. Should these be counted as refugees? Many of their reasons for leaving are similar to those of Chinese from Vietnam. The Chinese Vice Premier Deng is reported to have said that there are some 10 million more Chinese waiting to leave.

There may be grounds for misgivings concerning the *ad hoc* selection boards on the crowded island of Hong Kong. Since the Convention deals only with those who present themselves at a port of entry, there is no obligation to those in camps in other nations. Who will be left with no offers of asylum — and why? Differing health standards, for example, can cause long delays for the refugee who though completely cured has had tuberculosis or for whom there is a family history of this disease. Australia is particularly strict in not recognising certificates of health issued by authorities other than its own.

Even those nations (e.g. West Germany, Belgium, France) which recognise the distinction between immigrants and refugees and have special standing procedures, are only exceptionally prepared to admit the sick, old and unskilled; this in itself reveals a strong element of selection and, again, a breach of the spirit of the Convention. A lay observer could be forgiven for concluding that the acceptance of an individual as a refugee is the last possible resort and will only occur if there is sufficient public pressure as well as suffering on the part of the refugee himself. But government spokesmen throughout the developed world argue eloquently that they must guard the interests of their own population, their delicately poised economies must be sustained, and economic growth through productivity and control of social benefits must have priority. (The Boat People in Hong Kong provide a relatively cheap, undemanding and docile labour force and for this reason were not entirely unwelcome at the beginning of the exodus from Vietnam.) Above all, democratic governments have to ensure that the electorate is satisfied. If this is the case, then inevitably refugees will continue to be viewed and spoken of as dehumanised 'problems' rather than as families and individuals.

7. PROCEDURES FOR THE ACCEPTANCE AND RESETTLEMENT OF REFUGEES.

In spite of all the reluctance — stemming variously from the view of refugees as constituting security risks, to the opinion held by some diplomats and officials that to accept Vietnamese refugees too readily or efficiently could well encourage other nations to expel their unwanted ethnic minorities (e.g. Tamils from Sri Lanka, or the Kurds from Iran and Iraq) onto the developed world — responsibility in varying degrees is assumed by many different organisations, official and unofficial.

(i) Role of Contracting States: Clearly Contracting States and, indeed, some which are not party to the Convention, do accept refugees but generally speaking only if there is considerable pressure to do so. That pressure frequently comes from the public and the media, but it comes more directly, if less openly, from the UNHCR and voluntary agencies.

(ii) Role of UNHCR: UNHCR's mandate is specifically and carefully worded to emphasise its role of engaging the assistance of governments to accept refugees. Its powers of intervention are clearly limited publicly and officially, but the High Commissioner and his senior staff unceasingly negotiate the cause of refugees with governments of both member and non-member states. This role of negotiation and persuasion is a powerful one and can be remarkably effective, especially since a UNHCR presence is often acceptable to countries having large numbers of refugees, perhaps because this presence implies at least the possibility of large amounts of funding for relief and rehabilitation programmes. Conversely, the presence of voluntary agency staff who fulfil a more operational role in implementing programmes is not always as welcome and they are some times viewed as potential informers or critics. Though in Kampuchea the situation was exactly reversed, such was the case during the mass influx of Burmese refugees into Bangladesh in 1978.

Since UNHCR is not an operational agency in the sense that it permanently employs medical and other experts to deal with relief programmes, it necessarily contracts out this side of refugee assistance, channelling funds to governments, voluntary and other agencies, especially those which already have a presence in the target country. The major problems confronting any agency in a refugee crisis are *access* and *control*. UNHCR has earned the respect of other UN agencies for doing an effective job, and is extending its role of diplomacy, negotiation, pressure and fund-raising commensurate with the increasing numbers of refugees (see

Table 1: THE GROWTH OF UNHCR

	1951	1979/80
<i>Estimate of refugees:</i>	1¼ million*	10 millions
<i>Main tasks:</i>	Protection	Protection; material and humanitarian assistance.
<i>Budget</i>	US \$300 thousand	US \$300 million
<i>Staff numbers</i>	33	1,000

* At this time the UNHCR's mandate extended only to those refugees and displaced persons resulting from events occurring in Europe before January 1st 1951.

Table 1). It is emphasised time and again by UNHCR both in the Statute, in subsequent documents from that office, and in the speeches and reports of successive High Commissioners' that the agency is an organisation and not a country; the responsibility for resettlement of refugees and durable solutions to their plight is in the hands of governments. UNHCR cannot grant asylum, cannot provide resettlement and even at times does not have access to information about the circumstances of refugee populations. Its role is one of advice, negotiation and fund raising, but because it is international in scope, and has funds at its disposal, and because of its long experience in formulating and developing refugee law, it can and does do much to provide solutions.

A consideration of the nature of UNHCR's presence in various countries illustrates this participation in attempting solutions. As of 1980, 78 countries are party to the 1951 Convention, of which 72 have ratified the 1967 Protocol and 2 countries are party to the Protocol only (United States of America and Swaziland). Six states are parties to the Convention only (Colombia, Jamaica, Kenya, Madagascar, Monaco, Peru), 34 African countries have ratified the 1951 Convention; also 33 African countries are party to the 1967 Protocol and 19 to the 1969 Organisation of African Unity Convention governing the specific aspects of refugee problems in Africa (see Appendix III). Amongst all these states the internal machinery for implementing the Convention and Protocol ranges widely in relation to UNHCR. The UNHCR representative may be entirely responsible for determining refugee status and providing recommendations to the government on how it should consequently act (Belgium), or he may be accorded the role of what could be described as a 'troubleshooter' (United Kingdom). In between these two positions, the local representative may fulfil an advisory role, maintaining liaison with government departments and voluntary agencies. Those refugees who have been successful in their application for refugee status must then seek to qualify for admission under national legislation. Ideally the UNHCR will help at this stage, but can only do so if called upon or the local representative has some inkling that there is a problem. If the granting of refugee status is made difficult by immigration rules there is little opportunity for the individual to intervene.

(iii) Voluntary Agencies: UNHCR relies heavily on voluntary agency support, ' . . . perhaps the most sustained and devoted service to the cause of refugees has been provided by voluntary agencies. Often the scope of their programme and the strength of their financial resources exceed those of UNHCR'³². The activities undertaken by voluntary agencies, some of which are government funded, are extensive and apply principally to the third, fourth and fifth stages of the refugee's journey:

- (i) Persecution and fear;
- (ii) Flight;
- (iii) Temporary asylum, for example, when populations are crowded into camps;
- (iv) Processing;
- (v) Resettlement in the country of asylum.

There is close liaison between governments or UNHCR and the voluntary agencies during the often appalling circumstances of the third stage. For example, some 40,000 Vietnamese refugees arrived in the space of 6 weeks on Pulau Bidong — an island 3 km. off the east coast of the Malay Peninsula. UNHCR requested that Oxfam help them survey the sanitation, drinking water and fire hazards on this near-barren, deserted outcrop and propose rapid,

effective and economic solutions. Within three weeks the survey had been carried out and proposals put forward taking due account of the current sensitivities of mainland Malaya³³. Hundreds of such schemes to relieve the misery and potential death of thousands suddenly crowded together are carried out by relief organisations funded through appeals in their countries of origin or through intergovernmental organisations and governments.

Assistance in the form of language classes, counselling and guidance of refugees towards employment and educational possibilities, is necessarily a less dramatic and more drawn-out process, but is still crucial. The majority of countries which accept refugees delegate this responsibility to voluntary agencies. In the United States, for example, the sponsorship of refugee families is organised through Church and community-based agencies, members of which may supply an individual with a house and all domestic requirements within a few days³⁴. In those countries having an extensive and active parish network, voluntary agency work is seen at its most effective.

There are also specialised agencies which deal as far as they can with the last two stages of a refugee's journey. Prominent examples in the UK are those such as World University Service and International University Exchange Fund, which deal with the acquisition and granting of scholarships (see Tables 2 and 3). This enables potential students to continue their education in their own or other countries. Increasingly, these agencies have concentrated on assisting individuals who are eligible for university education to flee from repressive regimes by negotiating their case with government officials, assuming responsibility for the students during the term of their scholarship, and finally supporting applications for refugee status if faced with deportation to retributive countries. Several hundred Latin Americans (mainly Chileans and Argentinians) and black South Africans have been helped to escape via these schemes. But it is apparent from discussions with agency staff members and from even a brief glance at their files, that each case is hard won.

Table 2: WORLD UNIVERSITY SERVICE (WUS) (UK) SCHOLARSHIP PROGRAMMES IN THE UK

Awardholders	as at 1 July 1978	1 January 1979
Chilean	434	452
Ugandan	100	185
Ethiopian	38	50

Table 3: INTERNATIONAL UNIVERSITY EXCHANGE FUND (IUEF) SCHOLARSHIPS 1977/78

African Refugees on IUEF Scholarships		
Studying in Africa	1,829	(942 in Southern Africa)
Studying in Europe	257	(214 in the United Kingdom)
Studying in Asia	5	
Total number of scholarships:	2,091	
Latin Americans on IUEF Scholarships		
Studying in Europe	137	(73 from Chile; 28 from Argentina)
Studying in Latin America	336	
Total number of scholarships:	473	

Figures from IUEF Annual Report 1977-78.

8. EXAMPLES OF IMPLEMENTATION AT THE NATIONAL LEVEL

(i) United Kingdom

The British Home Office argues forcefully that sufficient rules incorporating both the spirit and clauses of the 1951 Convention and 1967 Protocol already exist; legalisation is, however, in the form of Rules which have no legal force in British courts of law. Furthermore it is officially suggested that precisely because of the

lack of formal procedures (i.e. because the rules are *not* laws) there is more flexibility in favour of the asylum seeker. Refugee status, it is claimed, is granted to anyone who requests it and who qualifies. Sympathetic politicians (well-known to the refugee agencies) are, however, bombarded with requests to intervene when would-be refugees are threatened with repatriation, a process which undermines the validity of this claim. Many critics of the system hold that the flexibility acts more often than not against the individual and that the secrecy surrounding instructions to immigration officers precludes any real assessment of the benefits of such a system. The critics would prefer a system which conformed more closely with the UNHCR recommendations and provided for an independent organisation to be responsible for determining the status of the asylum seeker.

In 18 of the states party to the 1951 Convention refugee status is the subject of a formal determination by an independent body, but there is often a discrepancy between the law and its practice. On the other hand, there is evidence to suggest that *ad hoc* machinery for determining refugee status *can* be extremely effective. The difficulty in providing a basis for comparison — crucial, if improvements are to be sought — is that case examples of individual anomalies are, understandably, not easy to come by. However, from the limited information available, it would appear that in those countries which encourage close involvement of UNHCR representatives there is reduced chance of an asylum applicant being pushed into a less favourable category, and certainly less delay in the determination of status. Where there is an automatic referral system the asylum seeker is automatically protected from forcible repatriation by the interviewing immigration officer. The United Kingdom has resisted such a system; the then Home Secretary, Mr. Merlyn Rees, in a letter to the Standing Conference on Refugees stated that it was not necessary to introduce legislation to incorporate the Convention into United Kingdom law, nor, he believed, was there a need for a new body to replace ministerial responsibility for the determination of refugee status*.

As a result of legislation which was set up following the Wilson Report³⁵ an effectively impossible situation exists in the procedures for appeals. Those who seek asylum at the port of entry in Britain without having first gained clearance are *denied* the right of appeal against a negative decision, since a right of appeal can only be exercised *outside* the country of potential asylum. The final legal nicety is that if the right is exercised it *must* fail according to the rule whereby an appeal has to be lodged from within the UK since there is no entitlement for those abroad³⁶. The two rulings cancel each other and provide a sound argument for separate refugee procedures. As is the case with most critiques the anomalies and contradictions are more widely circulated than the number of successful applications for Convention refugee status. However, far too much is left to administrative practice and those applying for refugee status cannot know clearly what conditions have to be satisfied nor can they know if the rules have been properly applied.

The Africa Committee of the Standing Conference on Refugees presented at the Arusha Conference on the Situation of Refugees in Africa (May 1979) twelve case studies³⁷ showing the situation of African refugees 'as seen by the refugees themselves'. These highlighted the fact that, in these cases at least, the process of applying for and gaining political asylum in the United Kingdom can be a lengthy and difficult one, even if at the end of it asylum is granted. It is the considered opinion of many of the agencies that these cases represent only the tip of the iceberg. The following example is of particular interest in that it involves an obviously articulate and well-versed asylum-seeker who nevertheless fought for a year to gain asylum under the 1951 Convention

A white South African married (in 1977) to a 'coloured' woman sought asylum in the United Kingdom because of their country's 'Immorality' laws concerning marriage between whites and non-whites. The wife had been imprisoned under the Internal Security Act for her charitable work in assisting the families of detainees, and her husband was due to receive call-up papers for military service on the Namibian border. The family planned their exit with great care, sending their son ahead with strict instructions as to what he should tell the Immigration Authorities on arrival. Due to the intervention of an influential British politician the Immigration Authorities were prevented from returning the boy to South Africa. The parents crossed the border into Botswana and applied for political asylum in Britain, their son meanwhile having rejoined them.

* The proposals of the present government argue for an even greater restriction on immigration and thus also on the acceptance of refugees (as has already happened towards Latin American refugees).

After three months the application was refused on the grounds that asylum had already been granted in Botswana, which was not, in fact, the case. The husband was resourceful enough and had sufficient contacts in the UK to obtain, eventually, a work permit for one year. The formal marriage had taken place in Botswana and his wife and child were eligible to join him. The family left for Germany to stay with friends pending final negotiations. Once the husband arrived in the UK he faced an 11 month struggle to achieve work, benefits and housing. Both husband and wife were angered by the lack of assistance, communication and rationality in the system; at one stage the husband resorted to impersonating his own employer in order to obtain a work permit. Although granted the right to stay in the UK, only with great difficulty did he eventually receive the legal corollary, a work permit and the means of subsistence.

This family was fortunate, but both husband and wife expressed their concern as to how blacks from South Africa would be able to overcome such hurdles. 'Not only is the attitude of the authorities frequently racist but, equally serious, if you are a black from Rhodesia or South Africa for example, your traditional view is that the authorities carry the truncheons . . . they are therefore far more timid in their approach. We by contrast saw refugee status, housing and employment as our rights and we were not going to stop fighting until we have got them'³⁸.

This case raises a further, as yet unresolved, defect in British procedures for dealing with refugees, particularly those who may be considered undesirable by reason of their colour and/or ethnic origin. The chance remark of an immigration official is eloquent testimony to the racist attitude: 'Our assessment starts when we see someone shuffling towards us as if they had never worn shoes before'³⁹. The position in the UK vis-a-vis Rhodesians is perhaps now academic. However, a summary of the rulings during UDI illustrates the contradictions which can occur when procedures are not coherent. In 1968 the UN Security Council declared Rhodesian passports illegal and Rhodesians continued to be regarded as British subjects, under the 1971 Immigration Act. According to British legislation Commonwealth citizens have the 'right of abode' if they can claim patriality, i.e. they can show that either a parent or grandparent was born or naturalised in the UK or who registered in Britain as a UK citizen. It is obvious that the majority of black Rhodesians could not claim patriality and therefore required an entry clearance; meaning that in each case they had to convince the authorities that they were eligible for entry to the UK. Black Rhodesians were prevented from claiming Convention refugee status because they remained Commonwealth citizens. But for them, nationality was, in fact, a meaningless term.

(ii) West Germany, Belgium and France

Arrangements for refugees are not in any way coordinated within the EEC. The procedures in individual member States, however clearly defined, can lead to a certain rigidity which again often goes against the individual. The *Federal Republic of Germany* has strict guidelines for port of entry officials requiring them to refer any case, where there is the slightest possibility of refugee status, to a separate body: the Federal Office for the Recognition of Foreign Refugees.

The drawback seems to be that the achievement of Convention status is the chief means by which non-nationals acquire citizenship (perhaps an argument for greater flexibility of the system). Furthermore, the Federal Office is inundated with requests, many from abroad rather than from applicants '*sur place*' and the determination of Convention refugee status can take up to 5 years. Because of the time involved, many asylum seekers — especially those abroad and at most risk — are forced to apply elsewhere. The procedures too are open to abuse. Because the determination takes so long and meanwhile work permits and social benefits are available, many go to Germany, claim refugee status and use the intervening years as migrant workers. In 1978 the government deported 2,048 Pakistani asylum seekers who were not judged to be genuine refugees⁴⁰. By contrast the Bavarian government in 1979 deported 9 asylum seekers, action which was ruled illegal because it was contrary to the requirement that decisions on political asylum should be made only by the appropriate federal office⁴¹.

The major and unique role played by the UNHCR representative in *Belgium* is advantageous in that the spirit rather than the letter of the Convention can be applied. Some observers feel, however, that the sole decision as to who is and who is not a refugee should not lie with one body alone.

France amongst the European parties to the Convention is traditionally liberal in accepting refugees not only from its own former colonies but from all areas of the world without consider-

ation of ethnicity, colour or religion. The responsible central authority, L'Office Français de Protection des Réfugiés, determines refugee status, but any refusal of of asylum *must* be referred to the Minister of the Interior and can be based *only* on grounds of National Security or Public Order. Moreover the asylum seeker has a right to appeal against a negative decision and at this stage the body responsible — the Commission des Recours — includes the UNHCR representative. Finally, the statutory time limit for the determination of refugee status is 4 months. After which, if the individual has not received notification of the decision, his right to remain prevails.

(iii) The Netherlands

The Netherlands, whilst having independent procedures for refugees has been recently criticised for its actions towards Turkish Christians, as evidence of a serious breach of its own domestic legislation as well as of the UN 1951 Convention. Normally asylum seekers having well-founded fear of persecution are granted 'A' status which ensures asylum and other benefits. Additionally, the Dutch government recognises those who for strong humanitarian reasons are *de facto* refugees receiving 'B' status — which is more rarely granted and by no means guarantees residence. (In 1978 only 1 'B' status refugee in 5 was issued with a residence permit.) From the late 1960s onwards, many thousands of Turkish Christians entered Holland as migrant workers. However, due to an economic crisis, the government in 1978 ruled that in future this group would have to produce sufficient evidence of persecution in order to gain entry visas — in effect, they were now required to claim 'A' status. But the Dutch authorities then refused to recognise the Turkish Christians as anything other than potential migrant labourers and on these grounds refused them entry. The Minister of Justice ruled that claims of pogroms, rape, kidnap and other persecution were 'manifestly unfounded' and immediate expulsion was thus justifiable, waiving the standard privilege of suspending deportation pending an appeal against a negative decision. In February 1979 the same Minister stated that those Turkish Christians seeking 'B' status (i.e. refuge on humanitarian grounds) must have endured 'personal suffering of a particularly painful nature' to be considered for admission — thus making the criteria for 'B' status more severe than for Convention status⁴².

The changing policy of the Dutch government is a reaction to many serious constraints within Holland itself, but the case of the Turkish Christians illustrates two important issues: the flexibility allowed by the wording of the UN 1951 Convention, and the development of increasingly hard attitudes to the world's asylum seekers — a function, it seems, not only of economic constraints but of the expanding numbers of people in the world seeking a place of refuge.

(iv) Scandinavia

Like Holland, the Scandinavian countries are typically thought of as having a liberal policy towards refugees, personified by Nansen. This notion gained particular strength during the 1960s and early 1970s when United States' draft evaders, war-resisters and deserters moved to Scandinavia, especially Sweden. The UNHCR has no local representatives in Scandinavia, although Norway, Sweden and Denmark contribute generously to UNHCR funds and have a long tradition of humanitarian aid for oppressed people throughout the world. National budgets, for example, include special allocations for disadvantaged peoples in southern Africa. (see Appendix V)

However, all three countries have in fact very strict immigration policies. Both residence and work permits are required prior to entry and there are quota systems for refugees. Legislation provides a refugee budget which, generally speaking, limits the numbers of quota refugees, spontaneous refugees (i.e. those who present themselves at ports of entry), and special emergency cases recommended by UNHCR in other countries or by the Head Office in Geneva.

The influx of spontaneous refugees is steadily reduced and resident refugees (i.e. those having Convention status) can be moved between the three countries and Germany. The granting of asylum can take up to 18 months and during this time the individual is not allowed to work or have access to free language classes (except in Norway), has poor housing, minimal financial assistance and can be retained in custody. Increasingly the rule of 'first country of asylum' is enforced. An individual may be pushed from border to

border within Scandinavia and since refugee status is not declared be liable to *refoulement*.

(v) The Americas

The United States of America has ratified the 1967 Protocol but not the 1951 Convention. However the American Convention on Human Rights 1969 includes and goes beyond the terms of the 1951 refugee Convention. The Preamble to the American Convention article states that '... the essential rights of Man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a Convention reinforcing or complementing the protection provided by the domestic law of the American States'. Article 22 reaffirms that '... every person has a right to seek and be granted asylum in a foreign territory', and '... in no case may an alien be deported or returned to a country regardless of whether or not it is his country of origin if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions'⁴³.

The asylum seeker nevertheless comes within the competence of the Immigration and Naturalisation Service and not all decisions taken by the Director of this body are subject to appeal. The role of the UNHCR office in the US is not unlike that in the UK. The office may be called upon in an advisory capacity but negative decisions by the Director of Immigration are referred to the State Department and not necessarily to the UNHCR representative.

Although the US is among the most generous of nations in accepting refugees (see Appendix IV) the procedures for the implementation of the American Human Rights Convention do not appear to be sufficiently distinguished from immigration procedures to ensure refugees the basic right of non-repatriation. Also, whilst many nations allow family reunion (the United Kingdom follows a broader definition of family to include siblings), the US does not allow for automatic entry of even close family members of recognised refugees.

Although the United States has a quota system it can and regularly does go beyond that quota. For example, by December 1979, more than 500,000 Indo-Chinese have been resettled. Moreover the selection procedures by US authorities appear to compare favourably with, for instance, those of Australia, New Zealand or Canada.

However, a recent (June 1979) investigation made by the International Human Rights Law Group in the US appears to expose once again the anomalies which can arise when refugees are dealt with under the provisions of immigration laws. The International Human Rights Law Group on behalf of its client, the National Council of Churches, accused the US government of violating its duties as a member of the Organisation of American States (OAS) regarding some 8,000 Haitian asylum seekers⁴⁴. This particular case is difficult to judge within the framework of Conventions relating to refugees. It is, for example, clear that many of the Haitian boat people were motivated more by economics than fear of persecution. Furthermore the economic and political conditions in Haiti are generally poor but there is insufficient evidence that a *particular* minority is being persecuted. Therefore it could be argued that the United States cannot assume responsibility for those countries such as Haiti, the population of which suffer general poverty and repression.

Ten Latin American countries have ratified both the Convention and Protocol and Latin America '... enjoys the longest tradition of the practice of asylum, and has the most highly developed legal framework in international law relating to asylum'⁴⁵. Today, however, many Latin American countries show perhaps the greatest discrepancy between theory and practice in the world. In Argentina alone there are some 15,000 missing persons⁴⁶, and perhaps 10% of Uruguay's population have fled political persecution in recent years. The legalities concerning diplomatic, territorial and political asylum, *non-refoulement*, extradition, human rights, expulsion and rights of appeal are complicated, lengthy and often violated. Year by year, cases multiply of missing persons found (often years later) in the prisons of neighbouring countries, of families forcibly split, of children lost, of missing persons never found. Neither the traditional mobility across state boundaries, nor the generous legal provisions which should guarantee such freedom can match the forces of persecution⁴⁷. Although escapees could well

claim refugee status, the wider problem in Latin America concerns that of human rights.

9. RECOMMENDATIONS AND CONCLUSIONS

'I feel it must be reiterated at the outset . . . that it is ultimately in the power of governments, not of UNHCR, to create the fundamental conditions in which existing problems can be resolved and fresh problems avoided.'

— Poul Hartling, December 1978

'What is needed is a renewal of political efforts to find solutions to refugee-related problems . . . and we must ensure that the solutions we offer as short-term remedies are not compounding or evading the basic issues'

— Frederick Cuny, December 1979

The recommendations for dealing with the dilemma of refugees fall into three major categories: those improvements suggested in the wording of the Conventions in order to make them more relevant to the changing patterns of refugees in today's world; the changes sought, sometimes radical, in the national procedures for determining refugee status and granting asylum; and, finally, recommendations for improving the resettlement provisions for refugees once in their host countries.

As yet, however, no organisation has suggested methods for dealing with what appear to be the major issues in the refugee dilemma. These are the development of effective international procedures for reducing or limiting the causes of the refugee problem and, secondly evoking a greater generosity in accepting refugees from those nations which do not normally pursue such humanitarian principles*. At the risk of bringing a degree of frivolity to such an immense human problem, a recent Charlie Brown episode succinctly summarises the inequality:

Charlie Brown: We are here in order to help other people.

Lucy: What are the other people here for then?

Furthermore, how far can a study of the past demonstrate the cause and effect of certain Western economic policies towards developing countries? It has been argued that the abrupt ending of food aid to Vietnam in 1975 was a significant factor in the economic conditions of that country, eventually resulting in the exodus of the Boat People. Finally, wars not only create refugees but also make their acceptance by other countries, especially neighbouring countries, more difficult, because asylum is then seen not as a friendly but as a belligerent or partisan act. Mr. Angkanarak, leader of the Thai Delegation at the ICEM council special session in May 1979 said 'We are drowning under an humanitarian ocean. If we help refugees we get blamed from the neighbouring countries; and, if we do not, we get blamed from the international community'.

It should be possible to develop an independent organisation, comparable to Amnesty International and solely devoted to the specialist but long overdue task of research into refugee problems. Such a supranational body having fewer political constraints than a United Nations agency and a less operational approach than most voluntary agencies, could do much to stimulate and inform world opinion on the causes and plight of refugees and, hopefully, engender improvements in the responses of both world leaders and public opinion.

The recommendations proposed by both UNHCR and those voluntary agencies whose job it is to negotiate individual cases all emphasise the need for a clearly defined independent body to whom referral must be made. This is most heavily emphasised in countries where refugee matters are subsumed under immigration procedures. It is argued that even if immigration officers are given adequate and clear written instructions (which are apparently under review in the UK) on how to deal with possible refugee cases, political events (e.g. as in Iran, Chile, Nicaragua, Afghanistan) can render such instruction obsolete overnight. There is particular concern expressed by the agencies that without an independent referral body, there is a serious and continuing risk that individuals will be put 'into orbit' without protection on their travels, or that they may be returned to countries *from which* they will be repatriated. It should also be said that such a body could deal equally effectively with those asylum

* Japan, for example, although generous in its contributions to UNHCR programmes, accepted only 9 Vietnamese refugees.

seekers who have no claim whatsoever to refugee status. Without such a rigorous system it is even more likely that each refugee will have to suffer the debilitating confusion of bureaucracy at a time when he or she is very vulnerable. Added to the undoubted trauma of becoming a refugee, bitterness and depression often follow from which it can take many months if not years to recover. A recent report on the severe loneliness of East German refugees in West Germany suggests that, even with a shared language and culture, the refugee has major adjustment problems. These problems are intensified for refugees having completely diverse cultural origins. In addition to the upheaval of moving to a foreign country is the *deraciné* depression caused by the loss of one's country and identity, often the misery of having been detained prior to escape, the splitting up and frequently the loss of one's family. Achieving refugee status may not be ideal and can appear a mere technicality to those fortunate enough never to have suffered. To a refugee, however, it is the only security he can hope for. It is thus vital that the determination of refugee status should not be subjected to long bureaucratic delays⁴⁸.

British procedures are particularly unsatisfactory in that refugees do not receive special treatment. For example, while those already in the country have the right to appeal against a deportation order, those who arrive seeking asylum do not have this right 'unless they leave the country — something an asylum seeker is normally unable to do'⁴⁹. Above all the UK does not necessarily request or accept advice of any outside body; the principle of ministerial discretion is paramount. The appeal record in Britain is also poor. The questions asked of an asylum seeker on arrival are usually framed in the light of immigration procedures and the report of that first interview is not usually available for correction by the individual, although it forms the basis of any subsequent appeal. Because of the tenuous basis for appeals and the ruling that an appeal against a negative decision cannot be 'sur place' but must be from abroad the appeal itself becomes adversary rather than investigatory. In spite of the fact that 9 other European countries have incorporated the Convention and Protocol agreements, there is no compulsion for Britain to do so, if, as the government argues, existing rules sufficiently cover the *meaning* of the international instruments.

A further major discrepancy between the meaning of refugee Conventions and Protocol and implementation internationally, lies in the concept of first country of asylum. A suggested revision is that there should be international agreement on the intended country of *final destination* being considered the first country of asylum⁵⁰.

The Pan African Conference on Refugees (held at Arusha in Tanzania in May 1979) recognised the growing nature of the problems facing refugees in Africa and provided recommendations which will be presented to the OAU Council of Ministers for consideration. The recommendations included the plea for scrupulous observance of the principle of *non-refoulement* and the concept of temporary asylum. A call was made for further study on how best to share the burden, which many independent African nations face, of coping with increasing numbers of refugees and for continued research into the resettlement of rural refugees, and finally in the promotion of refugee and humanitarian law. The Conference expressed concern that those refugees detained or imprisoned are not subject to ordinary administrative or judicial remedies.

The Annual General Meeting of the ICMC and the Executive Committee of the UNHCR in October 1979 both reported on the delays in resettling refugees at present in camps in Hong Kong (see Appendix I). The bureaucracy surrounding selection apparently stems once again from the fact that the refugees are processed under immigration procedures; for example, the question of resettling refugees in countries where close relatives already exist is sensible but in some cases this is directly against the expressed wishes of the individuals concerned*.

Some improvements in the efficiency with which refugees at the final stage of their journey are dealt with, could be achieved relatively easily, by reducing the bureaucracy and if there were less petty insistence on innumerable forms and other paper work. Dr. Winkler⁵¹ argues for more organised and consistent educational programmes within the camps for those who may be resident for anything up to three years. She also points out that an unnecessary

amount of duplication of effort tends to limit the effectiveness of any programme whether it be one of vocational training or medical care.

The voluntary agencies too, at times show an unfortunate lack of cooperation, particularly in sharing information; and there is a case for a small international team whose sole job would be to rapidly process offers of asylum and to organise the interim care and management of refugee camps. In one Thai refugee camp of 30,000 there are at present no less than 28 different agencies, in some cases expensively and ineffectively duplicating health and nutrition programmes²⁵.

Overall there is a pressing need to gather information on all the stages of a refugee's journey. Research results should be disseminated widely through reports, working seminars and teaching. The mistakes of past programmes should and can be used to mitigate future problems.

In conclusion, the principal recommendations can be summarised as follows:

- (i) that the wording of the Convention be redrafted to include the predicament of refugees on the High Seas as well as at frontiers;
- (ii) that the wording of the Convention should also include some reference to territorial asylum;
- (iii) that there should be a common policy between nations (especially between EEC countries) on the acceptance of refugees — so as to avoid the refugee 'in orbit' predicament;
- (iv) that an international information network on refugees be set up;
- (v) that there be further effort within the context of an international forum to promote ratification of Conventions relating to refugees.

The following recommendations apply principally to the United Kingdom:

- (i) that there be a separate advisory body to which all potential refugee cases be referred;
- (ii) that the individual have the right to appeal against a negative decision 'sur place';
- (iii) that the procedural rules which at present govern the fate of a refugee be incorporated into British domestic law.

The difficulties facing a refugee are not entirely over once legal recognition has been achieved and the following recommendations apply especially to refugees in Africa:

- (i) that there be provisions made for education of refugees whether they be concentrated in camps or widely dispersed in the host country. In particular it is suggested that the refugee be informed of his rights;
- (ii) that the bureaucratic procedures for processing refugees be reduced by the use of a small body of staff with specialist expertise;
- (iii) that scholarship and similar further education programmes be extended possibly through a central fund.

Finally there are three further general recommendations aimed at broadening understanding and information about refugees, by:

- (i) the promotion of Human Rights education at secondary school level;
- (ii) the development of an international network for the systematic evaluation of procedures and programmes;
- (iii) further research into the causes, needs and resettlement processes of refugees which should, as a matter of priority, be initiated.

Refugees are a 'man made' disaster and the contradictions in procedures summarised in this report represent a challenge to governments, public opinion and the international community to match expressions of sympathy with further action. The obvious need is to establish more permanent solutions through the setting-up of internationally accepted practices, the details of which should be in the public domain. At times when economic crises and perhaps insecurity about national identity have given new alibis for xenophobia, the great intellectual, economic and cultural contributions which refugees have, throughout history, made to their new countries, have too often been forgotten or ignored. The greater the public education and awareness the less likely it will be that individual governments whether in the East or in the West will continue to defend the existing imperfect procedures. Due to the media, there is perhaps more interest and knowledge of refugees today than in the past 15 years, and there is thus an opportunity now that reforms in procedures can at last be made. However minimal these improvements might appear to the non-refugee, for the refugee's own vulnerable predicament they can be vital.

* Some refugees apparently agreed to accept offers of asylum from the Republic of Ireland thinking that it was an African nation. Others have specifically requested that they be resettled in California and have refused offers from Ireland and the New Hebrides — refusals that have angered some agency personnel in Hong Kong.

10. 1981 - A NEW PHASE

At the time that the first edition of this report was published, there was both general despair and extensive media exposure of the problem of refugees. The media attention has lessened somewhat, partly because other disasters have taken their place, but also because - to some extent - the refugee problem in many parts of the world has become more stable.

The refugee crisis is by no means over as events in Afghanistan, Central America and East Africa attest. However, for the time being the intense pressure for asylum in the West has abated. During the last year both repatriation (for example in Zimbabwe, Nicaragua and to some extent Ethiopia and Uganda) and resettlement programmes have been highly successful (see Appendices I and IV).

There have been many and varied developments, too, amongst the international community which assumes responsibility for refugees, such as well-publicised international meetings; the setting up of a policy and planning unit, as well as an emergency section, within the United Nations High Commissioner for Refugees Head Office in Geneva; innumerable books, reports and articles ranging from a serious historical review, to journalistic assessments of what was done, by whom and how well. In addition to the millions of words that have been written and the equally large number of dollars which have been raised and spent, there have been very thoughtful attempts to address some of the long-standing and major problems in dealing effectively with refugee populations, which include the setting up of briefing and training courses for refugee workers and careful evaluation of the efficacy of programmes set up either in refugee camps or by voluntary agencies involved in resettlement. At this stage, it is difficult to see which of these initiatives will remain as permanent contributions and which will quickly die away only to be resuscitated at enormous expense come the next refugee crisis.

It is, of course, to be hoped that the really valuable work that has been done in the last year or so will be maintained at a level sufficient to keep the international 'practitioner community' informed as to both potential refugee crises, as well as the best possible ways of dealing with them once they have occurred.

One of the effects of the world conscience about refugees having been examined so publicly and for so long, is perhaps that host countries are ever more reluctant to be seen to be violating the principles, particularly of non-voluntary repatriation, which are

embodied in the United Nations Conventions. It is, of course, equally true that many countries have been quick to notice the benefit of obtaining United Nations funds, essentially for development programmes, but often dressed up in the guise of refugee programmes. There is, for example, some very serious question as to the actual numbers of Eritrean and Ethiopian refugees in Sudan - the figure claimed of upwards of half a million has not been possible to verify and, indeed, observers on the ground are at the moment suggesting that the numbers of relatively recently arrived refugees amount to no more than 200,000.

This kind of manipulation of figures for both economic and political reasons undoubtedly puts the Office of the UNHCR in a difficult and embarrassing position, since they - by virtue of their overtly non-political status - are unable, except through private and diplomatic persuasion, to announce their own estimation of figures, and once official figures produced by the host country itself have been published, then the level of funding must necessarily match the inflation. This problem and others similar to it, whereby there is a discrepancy between facts and official statistics, is one which must be continually addressed and, in the end, solved. To do otherwise is to discredit the whole field of international assistance and in the long run it will, of course, be the individual refugee who suffers through this lack of international credibility.

There have, too, been some changes in refugee legislation, particularly in the main recipient countries of the West. For example, the British government, through its introduction of the Nationality Bill has in fact restricted an already narrow opportunity for the individual asylum seeker to be successful in his claim for territorial asylum. Furthermore, the Bill, if enacted, runs the risk of creating a new class of stateless persons. In the United States, however, the situation is slightly different in that Senator Kennedy's Refugee Bill has now become law. The new act accomplishes three primary objectives, which are to broaden the concept of refugees such that it is now compatible with that embodied in the United Nations Protocol relating to the status of refugees; the setting up of permanent and systematic procedures for the admission of refugees who are of special humanitarian concern to the United States; and thirdly it provides comprehensive and uniform guidelines for effective resettlement.

It is to be hoped that such innovations as have occurred in the last year will be refined and tested, to the ultimate benefit of both refugees and the peoples of those countries which act as hosts.

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APPENDIX I

ESTIMATE OF NUMBERS AND GEOGRAPHICAL DISTRIBUTION OF REFUGEES¹ (not including those permanently resettled).

Country or area of refuge	Number of refugees	Date of information	Area of Origin
Algeria	52,000	April 1981	Latin America, Africa
Angola	54,900	April 1981	Zaire, Namibia
Argentina ¹	30,000 (23,000 of European origin)	April 1981	Europe, Latin America
Bangladesh	55,000	April 1981	Burma
Botswana	3,400	July 1979	Southern Africa, Zimbabwe, Angola, Namibia
Brazil ²	27,000 (majority of European origin)	April 1981	Latin America, Europe
Burundi	50,000	April 1981	Rwanda
Cameroon, United Republic of	266,000	April 1981	Equatorial Guinea
Chile ²	3,000 (2,500 of European origin)	April 1981	Europe, Latin America
China ³	263,000	April 1981	Vietnam
Colombia	2,000	April 1981	Latin America
Cuba	3,000	April 1981	Latin America
Djibouti	42,000	April 1981	Ethiopia
Egypt	5,000	April 1981	Europe, America, Africa
Ethiopia (plus 608,000 displaced persons)	11,000	April 1981	Sudan
Gabon	115,000	April 1981	Equatorial Guinea
Gaza Strip	363,006	April 1981	Palestine
Honduras and Costa Rica	100,000	April 1981	Nicaragua
Hong Kong	38,700	April 1981	Indo-China
Indonesia	9,990	April 1981	Indo-China
Iran	135,000	April 1981	Afghanistan, Iraq
Japan	1,400	April 1981	Indo-China
Jordan	699,553	April 1981	Palestine
Kenya	3,500	April 1981	Uganda, Ethiopia
Lebanon	219,561	April 1981	Palestine
Macau	4,700	April 1981	Indo-China
Malaysia	12,700	April 1981	Indo-China
Morocco	500	April 1981	Europe, Africa
Mozambique	60,000 (in camps)	April 1981	Zimbabwe
Pakistan	1.2 million	April 1981	Afghanistan
Paraguay ²	1,500	April 1981	Europe, Latin America
Peru ²	1,600 (900 of European origin)	April 1981	Europe, Chile
Philippines	12,700	April 1981	Indo-China
Portugal	7,500	April 1981	Africa, Latin America
Rwanda	7,500	April 1981	Burundi
Senegal	5,000	April 1981	Africa
Singapore	2,025	Sept. 1979	Indo-China
Somalia	1.4 million	April 1981	Ethiopia
Sudan	400,000	April 1981	Ethiopia, Uganda, Chad, Zaire
Swaziland	5,000	April 1981	Southern Africa
Syria	203,830	April 1981	Palestine
Tanzania, United Republic of	155,000	April 1981	Burundi, Rwanda, Uganda, Southern Africa
Thailand	305,300	April 1981	Indo-China
Uganda	112,000	April 1981	Rwanda, Zaire
Uruguay ²	2,000	April 1981	Europe, Latin America
Venezuela ²	16,000 (majority of European origin)	April 1981	Europe, Latin America
West Bank (of River Jordan)	317,614	July 1981	Palestine
West and Central Africa	30,000	April 1979	Africa
Zaire	301,800	April 1981	Angola, Burundi, Rwanda
Zambia	51,000	April 1981	Angola, Zimbabwe, Ethiopia, Namibia, Zaire, Uganda, Southern Africa

Notes

1. These figures only include areas where there are at least 500 refugees and where UNHCR or UNRWA have been informed.
2. These figures include refugees of European origin who have asylum in Latin American countries — some are still in receipt of assistance from UNHCR.
3. The People's Republic of China is in the process of resettling these refugees within the country.

Displaced persons assisted by UNHCR

Area	Number	Date of Information
Burma	50,000	April 1979
Cyprus	500,000	April 1979
Ethiopia	608,000	July 1979
Lebanon	700,000	April 1979
Lao People's Democratic Republic	450,000	April 1979
Vietnam, Socialist Republic of	3,500,000	April 1979

Sources: ICVA News
Time Magazine
 UNHCR News
 UNHCR Refugee Updates
 UNHCR Reports
The Guardian, The Times

APPENDIX II

INITIAL SIGNATORIES TO THE 1951 U.N. CONVENTION RELATING TO THE STATUS OF REFUGEES

28 July 1951

Austria
 Belgium
 Colombia
 Denmark
 Luxembourg
 Netherlands
 Norway
 Sweden
 Switzerland (signing for Lichtenstein)
 United Kingdom
 Yugoslavia

Dates of ratification/accession to the Convention by 13 countries

4 December	1952	Denmark*
23 March	1953	Norway*
22 July	1953	Belgium*
23 July	1953	Luxembourg*
1 December	1953	Federal Republic of Germany
22 January	1954	Australia
11 March	1954	United Kingdom*
18 May	1954	Monaco
23 June	1954	France
1 October	1954	Israel
26 October	1954	Sweden*
1 November	1954	Austria*
21 January	1955	Switzerland*

Sources: (i) L. Holborn (1975) 'Refugees: A Problem of Our Time: The Work of the UNHCR 1951-72'.
 (ii) Keesing's Contemporary Archives.

* Initial signatory

APPENDIX III

ACCESSIONS AND RATIFICATIONS TO THE FOLLOWING INTERGOVERNMENTAL LEGAL INSTRUMENTS (as of end of 1980)

	Total No. of States party to:	African States party to:
1951 Convention relating to the Status of Refugees	78	34
1967 Protocol relating to the Status of Refugees	72	33
1969 OAU Convention governing the specific aspects of refugee problems in Africa	19	19

APPENDIX IV

RESETTLEMENT OF REFUGEES MAINLY FROM SOUTH EAST ASIA 1975-1980

Country of permanent Asylum	Number
United States of America	595,200
China	263,000
Canada	74,000
France	68,000
Australia	44,000
West Germany	28,000
United Kingdom	23,800
Sweden	6,100
Switzerland	5,300
Austria	3,700
Norway	2,300
TOTAL	1,113,400

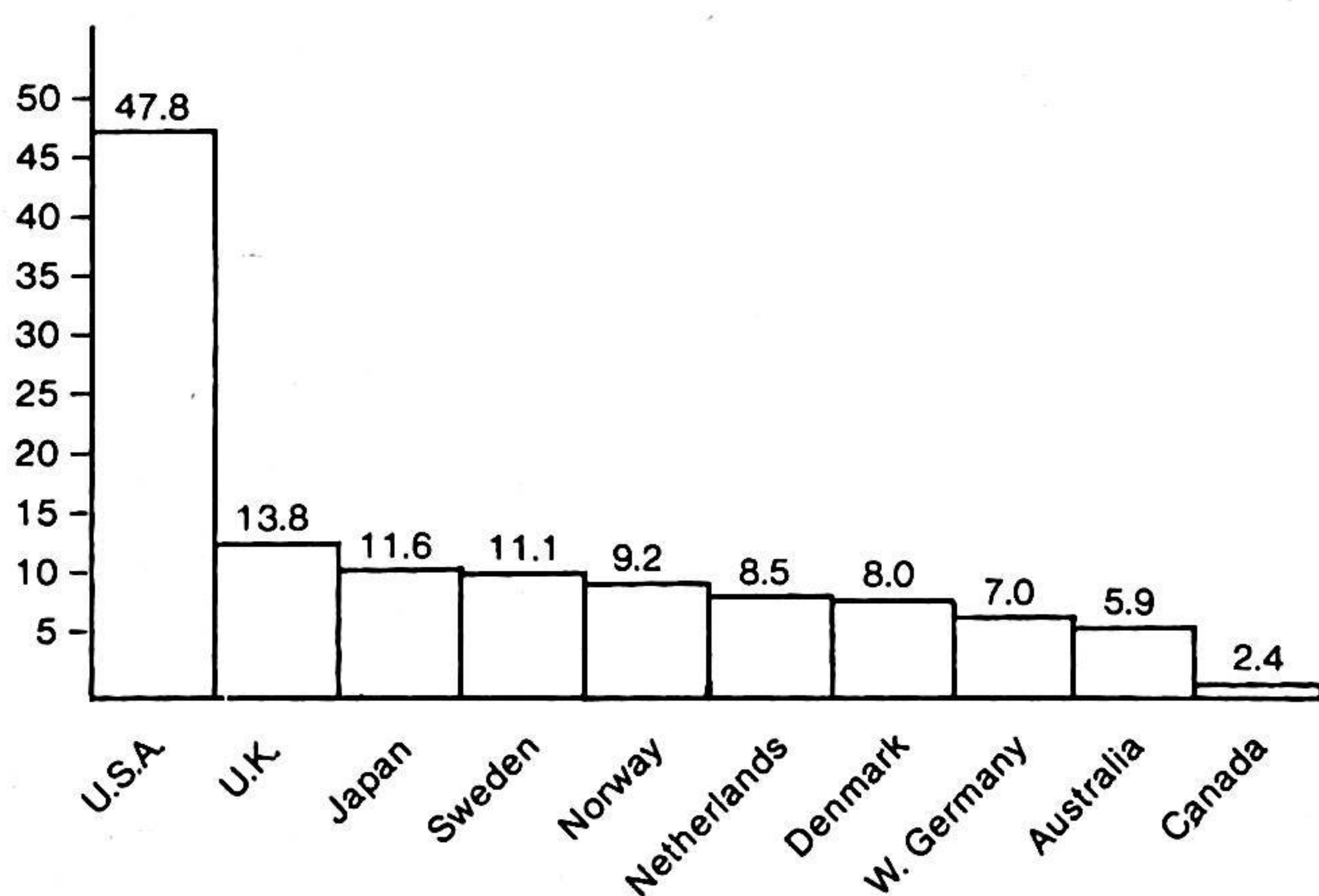
Source: UNHCR Reports 1979-81.

APPENDIX V

THE TOP TEN GOVERNMENT FINANCIAL CONTRIBUTORS TO UNHCR SPECIAL AND GENERAL PROGRAMMES

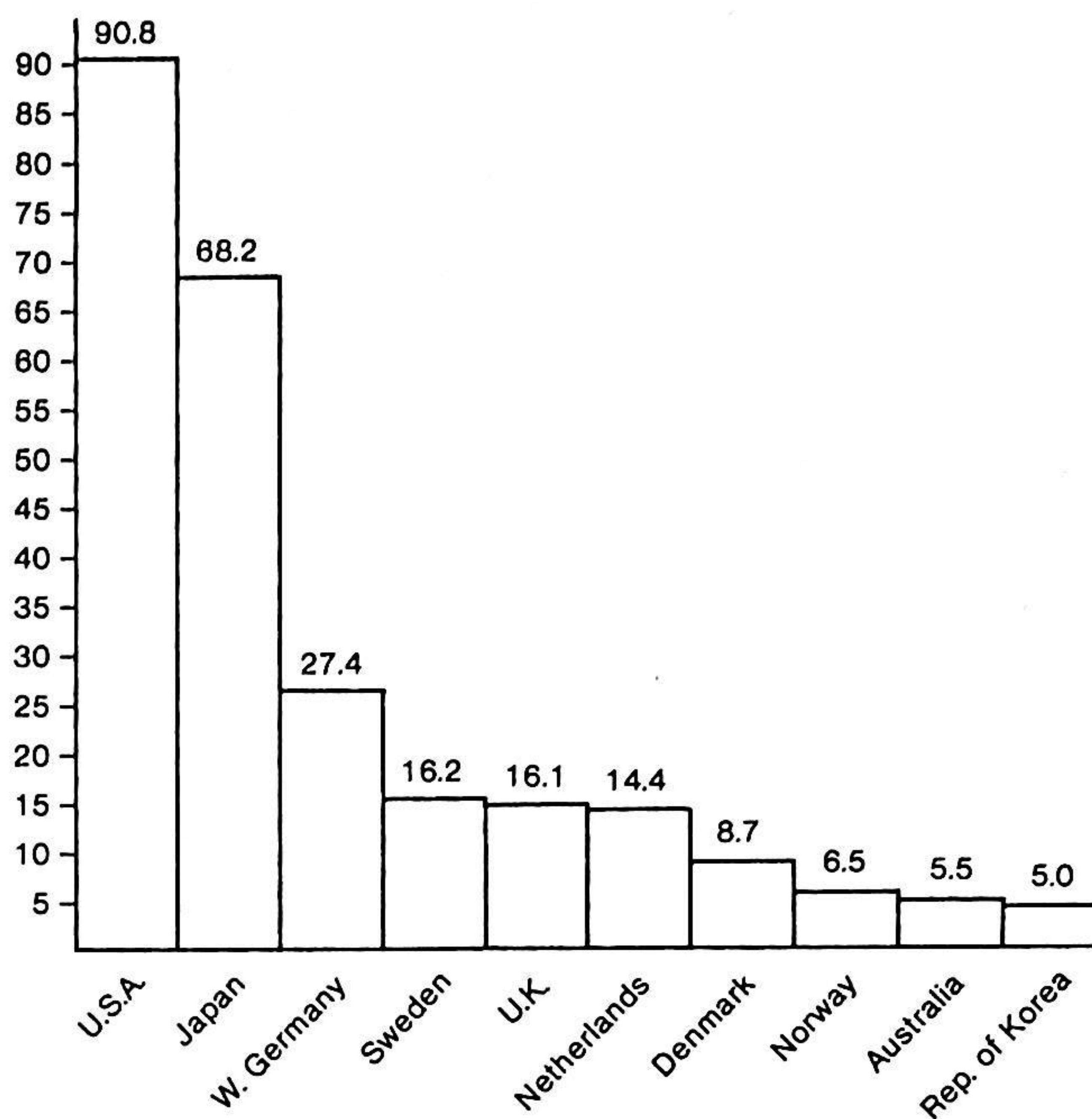
1978 : 1 January - 31 December (12 months)

Millions of \$ (US)



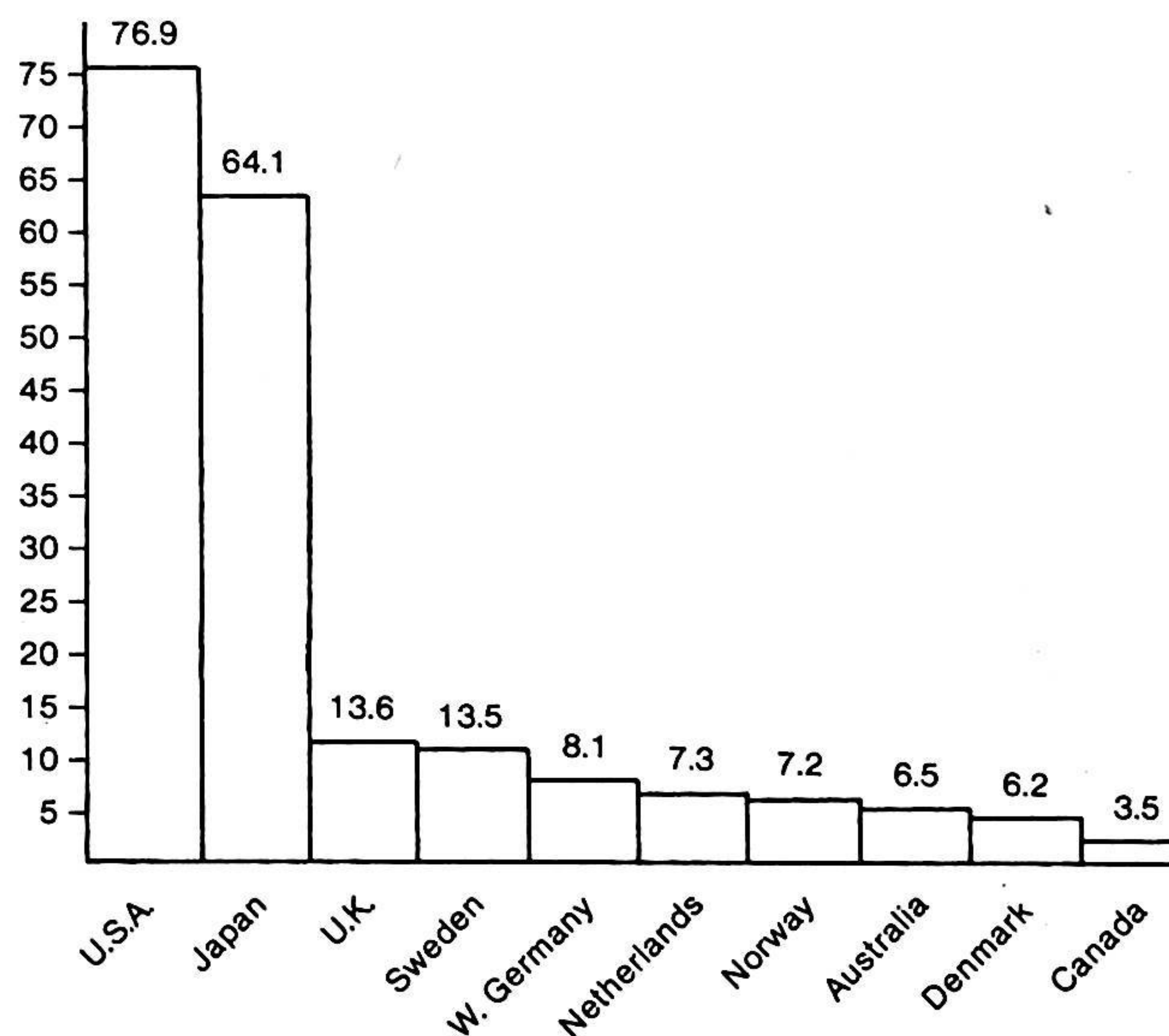
1979 : 1 January - 31 December (12 months)

Millions of \$ (US)



1980 : 1 January - 31 March (3 months)

Millions of \$ (US)



Legend: Note the massive increase in UNHCR budget between 1978/79; contributions for the first three months of 1980 exceed that of the previous 12 months by 56 millions. Finally, not all countries party to the 1951 Convention contribute cash or other assistance.

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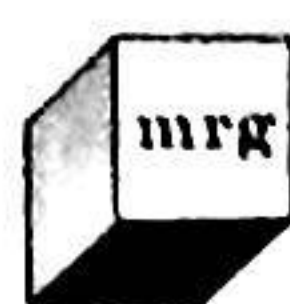
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