evidence of alienation.[45] Against this background, emigration may be used occasionally to relieve tensions or to rid the state of some unwanted ethnic or national minority. However, permission to leave is usually disguised as expulsion or coupled with humiliating measures, so as to avoid appearing to grant to undesirables a privilege refused to the majority of nationals.

In ancient times, great walls were built to keep invaders out, but in the twentieth century, they have been built to keep people in. This development is at the root of a major dilemma for liberal states. While denouncing such policies as a violation of human rights, liberal states also deplore the intrusion on the international scene of burdensome refugee flows; hence, they tacitly accept such no-exit policies as a solution to a potential problem. This is highlighted by a paradoxical turn of events, whereby the receiving countries sometimes demand that the refugee-generating countries do a better job of preventing victims of repression from leaving.[46] Adopting a relatively open admissions policy is therefore the necessary complement to advocating freedom of exit.

Refugee Crises and the Emergence of an International Refugee Regime

The First European Crisis

With an estimated total of 9.5 million in 1926, the refugee crisis of the post–World War I years reached a magnitude unprecedented in European experience.[47] Although these numbers are roughly comparable to current counts for the developing world as a whole, when the population size of the relevant countries is taken into account, the European crisis stands out as relatively much greater. Fear of these huge flows contributed to a rush to erect protective barriers, but the specter of a world of closed borders in turn stimulated awareness that there were special international migrants who urgently needed protection and assistance.

The Western nations' generalization of restrictive immigration policies in the latter decades of the nineteenth century amounted to the imposition of a new international regime with respect to population movements in the world as a whole, because the countries that might otherwise have generated various types of outflows had no place to send their people. This remarkably uniform process, encompassing such diverse countries as the United States, Britain, and Germany, was the result of an interaction between two distinct dynamics. One was political and reflected efforts by elites to enhance national identity and solidarity in the face of increasing internal and international tensions, in effect the counterpart of the dynamic that fostered the persecution of minorities.[48] The other dynamic was economic and reflected the efforts by indigenous workers to reduce competition that undermined their living, and by welfare agencies to minimize costs.[49]

Restrictive measures were systematized during World War I in response to security concerns and, after the war, in response to revolution and economic depression. In relation to the overall trend, France emerged as a singular exception; as the most important liberal state with relatively open borders, it admitted nearly 1.5 million foreigners in the 1920s, of whom a large proportion was refugees.[50]

Beginning in 1875, the United States enacted increasingly severe prohibitions against immigration from Asia. A proposal to reduce also the new immigration from Europe, by imposing a literacy requirement, was passed by both houses of Congress as early as 1896,

only to be vetoed by the president. The restrictionists then fell back on lesser measures, such as increasing entry fees and imposing additional health and "moral" qualifications. However, at the insistence of congressional representatives from concerned constituencies, victims of religious persecution were generally exempted.[51] The closing of the immigration door thus led to a distinction between refugees and ordinary immigrants that had hitherto been absent from American institutional practice. The literacy requirement finally became law in 1917, when wartime hysteria provided the two-thirds congressional majority needed to override the president's veto. Victims of religious persecution were again exempt. Arrivals from Europe and Western Asia, whose number had fallen to a low of 25,000 by 1919, owing to wartime restrictions on exit and the unavailability of civilian shipping, climbed rapidly afterwards, reaching 677,000 in 1921. In that same year, the United States imposed its first quota on European immigration, with an annual cap of 300,000, or fewer than half the current level. This cap was lowered to 150,000 in 1924, with admissions to be allocated through a quota system based on national origins, designed to minimize the number of Eastern and Southern Europeans admitted. Immigrants from Asia were prohibited. altogether. Victims of religious persecution were still exempted from some entry requirements but not from the restrictive quota system, nor did the system provide any means to admit refugees on an emergency basis.

It is against this background that a more specialized regime pertaining to refugees emerged. The League of Nations made it possible to develop international institutions to this effect.[52] In the face of the huge outpouring of refugees from Russia, volunteer-service agencies that were trying to alleviate their immediate problems appealed to the League of Nations to establish a central office operating under its authority. Its ad hoc character is clearly indicated by the designation, "High Commissioner on behalf of the League in connection with the problems of Russian Refugees in Europe" (1921). Under the leadership of Fridtjof Nansen, however, the office also assisted displaced Greeks, Turks, and Bulgarians, by means of exchanges worked out with the League's encouragement.

Nansen and the League viewed these tasks as temporary, with the office to be abolished as soon as the people with whom it dealt were resettled or had returned to their homes. However, while the refugee flows were being absorbed, new ones were being generated, as Europe began to experience severe political instability. Nationalist authoritarian regimes became commonplace from the 1920s on, among both old and new states. The Fascist takeover of Italy in 1922 drove many into exile, as did subsequent waves of repression. But except for prominent political individuals, refugees were difficult to distinguish from the usual Italian emigrants.[53] Similar developments took place in Portugal and Spain at the end of the decade. The Nazi victory of 1933 in turn triggered two distinctive refugee streams, political opponents and Jews, with some overlap between the two. The Nazis started by expelling 10,000 to 20,000 recent immigrants from Eastern Europe, mostly to Poland, whose government also persecuted Jewish citizens.[54] German Jews were subjected to increasingly brutal and comprehensive discrimination, which in effect deprived them of the possibility of making a living. As intended, these measures led to departures, totaling about 150,000 by 1938. Another 126,500 fled Austria following the Anschluss. Nearly half a million Spaniards, both soldiers and civilians, escaped to France following the collapse of the Republicans in early 1939; of these, however, about 150,000 to 200,000 were soon repatriated.[55]

The problems posed by the resurgent refugee crisis were aggravated by the deepening worldwide economic depression, which brought another round of immigration restriction. Because of the problems the Jewish exodus from Germany posed to neighboring coun-

tries, the Assembly of the League decided in October 1933 to appoint another High Commissioner, "for Refugees coming out of Germany." This ad hoc measure brought out the political implications of the emerging international regime: The recognition of a group as refugees was tantamount to a formal charge by the international community that one of its members was engaging in persecution. As it was, "in order not to give offence to the German Government," the Assembly formally made the High Commissioner independent of the League, accountable to his own governing body, but Germany subsequently resigned from the League, and the High Commissioner was once again made responsible to the Assembly. In 1938, the Soviet Union in turn objected to any kind of League protection for its exiles.[56]

These rudimentary international institutions were not effective. The first High Commissioner for Refugees from Germany resigned "in the conviction that he was virtually powerless."[57] In 1938, as the crisis became worse, the Assembly decided to set up a single High Commissioner's office responsible for all League work on refugees, but the High Commissioner's limitations were evident from the unwillingness of member states to assume greater responsibilities in dealing with the crisis. Nor were the member states open to persuasion by anyone else, as indicated by the failure of the Evian Conference, convened by President Franklin D. Roosevelt in 1938 on the problem of refugees from Germany and Austria—that is, Jews—to come up with a solution to their plight. Its one contribution was the formation of the Intergovernmental Committee on Refugees, headed from 1939 onward by the High Commissioner himself.

Nevertheless, interwar developments were significant in that they distilled the concept of refugee from the European historical experience to date and made it concrete by creating a set of specialized agencies. These in turn were located in a more comprehensive institution that represented the concept of international community. This process inspired the notion that the international community, that is, the League's member states, collectively were obligated to a category of persons designated as refugees. It is important to note that the idea of refugee thereby gained some independence from the actions of particular states, as the issue raised by the appointment of the High Commissioner for Refugees from Germany indicates. Although the response was still tentative, it was a step toward the formation of more permanent international institutions for dealing with refugees. Another significant step was specifying the rights to which those so identified were entitled—travel documents, education, right to work in the receiving country, and so forth—as codified in a 1933 convention regarding the international status of refugees.[58]

The groups of refugees that came within the domain of successive High Commissioners generally were the classical types, but as already noted, they were considered on an ad hoc basis and "from above." Viewed from the vantage point of the present, the League regime was highly collectivist, responsive almost exclusively to the claims of states and groups (nationalities). It stopped short of devising a mechanism whereby any person might independently lay claim to being a refugee and thus obtain the benefits that the international community now offered to those who achieved that status.

However, under the pressure of subsequent events, a more universalistic regime was started in the late 1930s. Amidst the growing awareness of the high stakes involved, its general purpose was to establish criteria for the refugee groups, which led to an emphasis on political causes. A draft resolution prepared by the Institute of International Law for its 1936 session thus defined a refugee as "any person who, by reason of political events in his State of origin, has either left the territory of that State, whether voluntarily or under expulsion. . . ."[59] In the same vein, the principal contemporaneous study of refugees

stated that the refugee "is distinguished from the ordinary alien or migrant in that he has left his former territory because of political events there, not because of economic conditions or because of the economic attractions of another territory."[60] But these criteria evoked considerable resistance by state officials. As one observer reported,

> The customary arguments against accepting a general legal status for political refugees are that it might encourage countries to get rid of their unwanted people and that many might emigrate who would otherwise remain in their countries even under serious disabilities.[61]

Moreover, as was brought out in the preparatory work leading up to the establishment of the International Refugee Organization during World War II, the Institute of International Law's definition, "if adopted, might have meant multiplying the number of refugees *ad infinitum*. Some exact definition seemed essential of what is meant by 'political events'."[62]

The most obvious problem in this respect, still unresolved today, was that with a growing number of states adopting some form of authoritarian rule, much of the globe's population could be thought of as victims of "political events." Moreover, looking back from the perspective of a world in which self-government is the norm, it can be argued that the category of "victims of political events" could also apply to the masses of people then living under colonial rule. Those concerned with the development of refugee-oriented institutions therefore insisted on a definition that would deny refugee status to very large numbers, as this would both jeopardize the possibility of their obtaining special consideration from the international community and undermine established state authority. Accordingly, the author of a study published in 1953 under the sponsorship of the U.N. High Commissioner for Refugees points out that "even . . . if 'political events' can be distinguished from other social phenomena . . . the mere fact that a man has left his country solely because political events there were not to his liking does not suffice to confer on him the status of refugee and any ensuing advantages."[63]

This observation introduced and justified the definition that was actually adopted by the 1951 Convention Relating to the Status of Refugees. According to its author, it follows as a matter of course that "the political events which in the country of origin led to his departure *must be accompanied by persecution or the threat of persecution against himself or at least against a section of the population with which he identifies himself.*"[64]

The Second European Crisis

The 1951 convention was the critical event in the institutionalization of the post–World War II regime. It was the capstone of disparate efforts to deal on an ad hoc basis—much as had occurred after World War I—with a European refugee crisis that was even more overwhelming than the earlier one. According to the first comprehensive postwar survey, the total number of Europeans displaced in the six years of war, 1939 to 1945, was around thirty million. At the end of the war, of these, eleven million survivors were outside their country and in need of assistance.[65] At the same time, additional refugees were being generated by postliberation conflicts, such as the civil war in Greece between Communist partisans and the returning royal government, and clashes among countries of Eastern and Southern Europe that had resumed their elusive pursuit of ethnic homogeneity and geopolitically desirable boundaries.

Remarkably, most of these refugees were settled within a few months after the end of hostilities. In some cases there were population exchanges between neighboring countries, similar to earlier ones in the Balkans. But a distinctive element after World War II was the appearance of refugees from the Nazi and Fascist governments, who could hardly be thought of as "innocent victims." In some cases entire ethnic groups came to be viewed as "collaborators," such as the Yugoslavian Croats, who perceived the Nazis' "new order" as an opportunity to liberate themselves from Serbian domination and so supported the puppet government of Ante Pavelic. Many of these collaborators fled with the retreating Germans; unable to return, they were later joined by many other escaping Marshal Tito's retribution, which was hardly limited to proven collaborators. The question of innocence also arose with respect to the largest refugee flow, from Eastern Europe, of over twelve million people of German descent—some old settlers, others recently implanted by the Nazis—who retreated with the German forces or were expelled from Czechoslovakia, Poland, Hungary, Romania, and Yugoslavia. However, their political status did not become an international issue, because nearly all were taken in by the two Germanies then in the making.[66]

Another ambiguous case was the two million Soviet citizens who were outside their country at the end of the war, including prisoners of war, forced laborers, and anti-Soviet activists—mostly non-Russian ethnics from European Russia—who had fought on the German side. Despite vociferous protests, including many from ordinary citizens who had no wish to return under Josef Stalin's rule, the Allies agreed to Soviet demands for their return. Although the bulk of them were sent back very quickly, operations slowed down when it was learned that many were being dealt with harshly merely because of their having lived abroad, as if contact with the outside world were a source of political contamination.[67] In the light of this notorious episode, the assertion shortly afterwards as a principle of the new international regime—that a person's decision to leave "merely because of political events not to his liking" is not sufficient to confer refugee status—acquired a sinister connotation.

International efforts to deal with refugees began once again on an ad hoc basis, but with some advance planning and a more comprehensive scope, encompassing both material and legal needs. The original model was the "relief and refugee" administrations established by the British and Americans in the Middle East early in the war.[68] In 1943, the United States secured widespread international support for the organization of a comprehensive body along similar lines, the United Nations Relief and Rehabilitation Administration (UNRRA), which was to oversee most of the immediate relief and repatriation operations in postwar Europe. But its scope did not extend to the longer-term needs of those who could not be returned, and the agency was soon caught up in nascent Cold War tensions as its American sponsor tried to harness refugee assistance to foreign policy considerations. These controversies, as well as the eruption of new refugee problems outside Europe, discouraged the organization's comprehensiveness.

At the end of 1946, the International Refugee Organization (IRO) was established to deal with "the last million" in Europe, a task it was expected to complete by the end of 1951, after which the agency was scheduled to go out of existence. Within the new agency, the ideological cleavage that shaped the postwar international political system weighed against adoption of a universalistic conception of refugees:

Western countries sought to include large numbers of dissident and anti-Communist elements; Eastern countries tried to exclude those whom they believed were deadly

political enemies. Both sides agreed that the international community had no obligation to the many millions of Germans who remained unsettled in Europe in 1946. Beyond this, the IRO reflected a broad compromise between East and West, designating broad categories of persons to be assisted rather than offering an abstract definition to be used for all cases.[69]

But in other respects, the IRO was a major institutional innovation, shifting away from the collective approach that had marked previous international efforts toward a more individual one that was inherently more appropriate to a universalistic orientation. This was reflected principally in its operational structure, founded on the notion of applicants who were to be processed by a specialized staff of "eligibility officers" in order to ascertain whether they came within the organization's mandate.[70]

These procedures were carried over into the U.N. High Commissioner's Office for Refugees (UNHCR), established by the General Assembly in December 1949 as the successor to the IRO. Although the new organization's mandate was again limited, initially to a three-year period, many assumed that it would become a permanent agency.[71] The UNHCR's domain was somewhat more comprehensive than the IRO's, extending to all displaced Europeans not repatriated or permanently resettled, including the ambiguous categories noted earlier and excluding only common and war criminals; but it remained exclusively concerned with Europe.[72] Although there were a number of major refugee flows originating elsewhere while the UNHCR was being established, they were either ignored by the international community or dealt with through ad hoc institutional arrangements.

The first of these waves of refugees came from the Indian subcontinent after the partition of India in August 1947. As discussed in Chapter 5, the territorial division was decided on to relieve the rising tensions between the Hindu and Muslim communities. Because the two populations to some extent overlapped, the partition had created religious minorities in each of the two new states. With the outbreak of widespread hostilities, whose toll mounted to over half a million dead, about fourteen million people fled across what now had become international borders to what they considered their homeland. The fledgling governments of India and Pakistan were left to deal with a huge resettlement problem, involving extremely poor populations whose mass dwarfed that of Europe's refugees, with little assistance from the international community.

The first body of non-European refugees for whom the new international community did assume responsibility were the homeless and stateless Palestinians, on whose behalf the General Assembly created the United Nations Relief for Palestine Refugees (UNRPR) late in 1948. In December 1949 the UNRPR was replaced by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), still in existence today. The exodus from the districts that became the state of Israel in the months preceding and following the proclamation of independence in May 1948 numbered between 700,000 and 800,000, amounting to at least three-quarters of the Arab population. Triggered in late 1947 by the breakdown of British authority and rising communal violence, the movement broadened in April 1948, when Zionist military forces launched preemptive strikes against potentially hostile Arabs and retaliated against Arab attacks on Jewish settlements, and again on May 15 when Israel and its neighbors went to war. During this conflict, many were driven from their homes on grounds of security. After the armistice, which left Israel with a larger territory than provided for under the partition resolution, more were expelled or fled to avoid living under Israeli authority.[73] Over the next several

years, most Jews also were expelled or fled from Arab countries in the Middle East and North Africa; of these, about 750,000 resettled in Israel, the rest mainly in France.[74] Because of Israel's law of return or the possession of French citizenship (i.e., those refugees originating in Algeria) all of these people had a place to go to and so did not enter the ranks of international refugees.

Owing to the lack of concern for the plight of refugees on the Indian subcontinent, the exceptional attention accorded to the Palestinians can be attributed less to humanitarian considerations than to the emergence of the Palestine problem as a prominent issue on the United Nations' political agenda. The UNRPR and UNWRA were by-products of the intervention of the United Nations as a third party in the Palestine conflict following the relinquishment by a weakened Britain of its mandatory responsibilities in the wake of World War II. Much like the U.N.'s intervention itself, the UNWRA was largely an instrument of U.S. policy: The agency was designed to resolve the Middle East conflict by turning Palestinians into attractive economic assets in the eyes of Arab receiving states, so as to overcome their resistance to resettlement.[75] However, as discussed further in Chapter 9, the policy failed because of opposition from both the Arab states and the refugees themselves, who over time began to act on their own behalf. Conversely, because of its eminently political character, UNRWA remained peripheral to the postwar refugee organization, as did the United Nations Korean Reconstruction Agency established in 1950, in the wake of the "police action," which closed its doors in 1958.

The principal institutional development was the UNHCR. Despite its initial limitations, over time the agency assumed responsibility for a variety of groups in every region in the world, except for the Palestinians. From a more analytic perspective, its evolution represented significant steps toward the bureaucratization—in the Weberian sense—of international assistance to refugees. The most important of these steps was the formation of a professional staff that had definite objectives.[76] But this in turn made the issue of definition more pressing, as it was necessary to establish operational criteria to enable the staff to carry out their appointed tasks.

Not surprisingly, the issue of scope was "one of the most difficult to resolve."[77] It was agreed early on to remove protection of the "stateless" (left over from the Nansen days) from the High Commissioner's jurisdiction, leaving the office to deal exclusively with refugees. In regard to defining the latter, the choices were between enumerating the categories, as had always been done before, and formulating a broader definition. In keeping with models of bureaucratic development, experienced IRO staff argued in favor of the latter, because the enumerative approach had proved cumbersome to implement. But many of the member states objected to a universal definition on the grounds that it would mortgage the future, as it would mean that new groups of refugees who exhibited the specified characteristics would fall automatically in the embrace of the High Commissioner's office.[78] This debate distinguished between two projects: on the one hand, the statute itself, pertaining to international action and the establishment of an agency for this purpose, and, on the other hand, a convention of member states, directed toward national action and imposing binding obligations on the signatories.

The universalists triumphed on both fronts. According to the resolution adopted by the General Assembly on December 14, 1950, the High Commissioner's mandate extended, first, to persons already considered to be refugees under previous international agreements or under the IRO's constitution; second, to people living outside their country of origin as the result of events occurring before January 1, 1951, and unable or unwilling

to avail themselves of its protection "owing to a well-founded fear of being persecuted" or "for reasons other than personal convenience"; and finally and most important, to

> any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.[79]

Essentially the same definition was adopted by the "Convention Relating to the Status of Refugees" enacted in 1951. The most noteworthy change was the joining in the enumeration of "membership of a particular social group" to "political opinion." This was added by the Geneva conference at Sweden's initiative, apparently with no other motive than "to stop a possible gap" in the coverage afforded by the other, more specific categories.[80] However, the obligations undertaken by the signatories were restricted to persons who had become refugees before January 1, 1951, and pertained to Europeans only. The discrepancy between the domains of the UNHCR and of the convention prevailed until 1967, when a protocol was enacted to eliminate time and space limits from the convention.[81]

By capturing the classic types encompassed by the notion of refugee—that is, members of target groups and more active political dissenters—the convention's statute codified essential elements of the Western experience. But it was a major departure from historical precedent, in that the international community assumed for the first time some degree of responsibility for persons who qualified as refugees without any temporal or geographical limitations. The definition on which the statute was grounded became a widely accepted concept in contemporary international law as well as in—by way of the convention and the protocol, the domestic law of the signatories, whose number has grown to include nearly all states in the international community. At the same time, a number of states included in their constitution the right of asylum for political activists.[82]

As noted earlier, the selection of "persecution" as the key operational criterion was in keeping with the desire of the international community to make the status of refugee exceptional, so as to preclude overwhelming numbers. Observe, first, that this omits victims of egregious exploitation. Second, this definition is predicated on distinguishing between the victims of what might be called nefarious political routine, a huge category that includes most of the citizens of repressive states or societies, who form a large part of the world's population, and those who are singled out as targets of extraordinary malevolence by some agent.[83] Although the U.N.'s language does not specify who that agent might be, it was generally assumed from the outset to be the government, "either in that it initiated or encouraged the persecution, or that it could not or did not provide protection to its national from persecutory actions or threats by other elements within this society."[84]

By the same token, this definition suggested that the determinants of persecution were exclusively internal to the appropriate state. Reflecting the fact that international law is founded on the concept of sovereignty—that is, on the notion that the world is divided into a finite set of states with mutually exclusive jurisdiction over segments of territory and clusters of population—this definition contributed to the crystallization of an "internalist" vision of the refugee phenomenon. But such a conceptualization negates the fundamental point of the preceding analysis, namely, that persecution is related to broad historical processes in which complex internal and external forces interact.

The statute, the convention, and the protocol institutionalized elements of a more universalistic regime, but from the beginning they also exhibited features that diverged from universalistic norms. These divergences can be attributed mainly to the emergence of a bipolar world locked in cold war. Aside from the Greek Communists who fled to the Soviet Union after the civil war, from the late 1940s onward, nearly all new European refugees were escaping the harsh economic conditions and political repression accompanying the transformation of the Eastern European governments into Soviet-style regimes. Although these states went to extraordinary lengths to seal their borders, there were waves of departures before the task was completed as well as a massive relocation of people from East to West Germany by way of Berlin—owing to the peculiarities of the four-power occupation arrangements—amounting to some 3.5 million from 1951 until the Berlin Wall was built in 1961 to close this loophole. Movement was otherwise limited to a trickle of escapes, except for the sudden exodus of 200,000 following the crushing of the Hungarian uprising in 1956.[85]

Although the more prominent dissenters among them could make a case for asylum on grounds of persecution for reasons of political opinion, most others could not, as escape from routine oppression was not enough to qualify as a refugee. However, to the extent that the refugees could demonstrate that they were systematically discriminated against because of their class origins (e.g., with respect to educational opportunities and employment), a case for their meeting the convention's criteria could be made. For example, the UNHCR responded to the Hungarian emergency by tentatively according refugee status to anyone coming out, postponing individual determination of "persecution," if needed, to a later time. This was later invoked as a precedent for accepting prima facie evidence of refugee status for large groups in the developing world as well.[86]

The Western states individually also tended to favor people leaving the East. Some Western European authorities judged the convention's language as too narrow for this purpose but were reluctant to stretch it for fear of "devaluating" formal refugee status under the convention. This reluctance gave rise to the so-called B-status, which first developed in Scandinavian legal-administrative practice in the 1960s, under which residence permits were issued on "humanitarian grounds" and other benefits were kept just short of convention standards.[87]

Albeit a major financial supporter of the UNHCR from the outset, the United States shunned the U.N. definition as a guide for its own admissions. Having refused during the interwar period to make special provisions for refugees, the United States shifted to a more generous stance, partly in response to constituency pressures, but mostly as a weapon in the Cold War.[88] First, various measures were devised to stretch existing immigration laws in order to admit European displaced persons. Although the Immigration and Nationality Act of 1952 reenacted existing discriminatory restrictions and still failed to make any provisions for refugees, it gave the attorney general discretionary authority to parole any alien into the United States for reasons of emergency or if "deemed strictly in the public interest." This provision was used repeatedly to admit large numbers from Eastern European countries and, later on, from Cuba and Indochina.

The Refugee Relief Act of 1953 provided for taking in as "refugees" 189,000 persons who could not be accommodated under the small quotas for their respective countries; these categories included Eastern Europeans and German expellees, Dutch ex-colonials from Indonesia, and Greek and Italian victims of natural disasters. The act was identified in a National Security Council memorandum as a device to "encourage

defection of all USSR nationals and 'key' personnel from the satellite countries" in order to "inflict a psychological blow on Communism" and, "though less important, . . . material loss to the Soviet Union" insofar as the emigration pertained to professionals.[89] The Refugee–Escapee Act of 1957 made additional room for existing applicants from the same groups but also included a more general provision for admitting as refugees in the future those persons fleeing persecution in Communist or Middle Eastern countries.

In 1965 the United States for the first time reserved part of its annual entry quota for refugees, but the definition was revised only in 1980, and subsequent practice indicates that the old policy of attributing refugee status almost exclusively to people from Communist countries still prevails.[90]

Despite these limitations, the legal framework developed by the Western states proved adequate to deal with the population movements of the 1950s and the 1960s with which they were particularly concerned: Europeans from Communist countries and, later, non-European, Chinese, and Cubans. Beyond the humanitarian considerations, it is evident that this suited the political purposes of the Western Alliance at the height of the Cold War. As it was, given the restrictions on exit, the burden to the receivers was not very heavy, except in the case of Germany—which, in retrospect, derived considerable economic benefits from the huge number of workers that this entailed.

Challenges from the Developing World

By about 1960, however, major population movements originating in the developing world created mounting pressures to give them international assistance. The most glaring shortcoming of the international arrangements was the limitation of the convention's domain to pre-1951 Europe, a deficiency that was overcome in 1967. Although the UNHCR itself was not so limited, it faced even more profound problems arising from the very nature of the flows. To this, there was no single solution, because the situations encountered in the various regions differed considerably, as did the local responses to them. Because the flows themselves will be examined in subsequent chapters, these developments will be considered here only as they relate to changing notions of who is a refugee.

Despite the unruliness of its political development, Latin America has produced very few refugees. The protracted violence of the Mexican Revolution in the early decades of the twentieth century undoubtedly helped raise the rate of emigration to the United States above the level induced by economic factors alone, but this historical experience was largely forgotten. As the now-classic 1965 study of the Inter-American Commission on Human Rights notes:

> Throughout the history of Latin America there has . . . been a significant, if not large, number of Latin American nationals who have temporarily moved into exile for political reasons. . . . The political exiles of years past flowed rather easily into the neighbouring Latin countries where culture, tradition and language pose few barriers; furthermore, the political exiles have frequently been of the wealthier elements, and they have not become burdens on the economy of the absorbing state.[91]

However, this generosity by the region's states with respect to their exiles constituted a form of authoritarian collusion because, as Albert Hirschman has pointed out, the provision of easy "exit" helped reduce the intensity of "voice" within each.[92]

Accordingly, there was little responsiveness in the region to the broader concerns of the U.N. convention, and an unwillingness to assume the obligations it entailed. Instead, the traditional orientation was formalized into a common regional policy focusing on asylum seekers rather than refugees, with the criterion for recognition being political activism or, more properly, "political crime" *(delite politico).*[93] An elaborate system of inter-American law was developed to specify procedures for the individual *asilado,* conditions permitting extradition, inviolability of foreign missions, and the distinction between common crimes and political offenses.

However, the Latin American situation changed dramatically in the 1960s, with the appearance of large international population movements that claimed refugee status and whose social composition was much more diversified. The massive outflows from Cuba and, later, Chile, Nicaragua, El Salvador, and Guatemala severely strained existing legal codes and prompted a call by the Organization of American States (OAS) for more members to accept the somewhat broader obligations of the U.N. convention and to adopt its language in national legislation.[94]

In contrast, postwar developments in Asia replicated the crisis-ridden experience of Europe. Nevertheless, except for the Palestinians, the problem of refugees did not capture the attention of the international community, because most of them found havens in the region. Although few states had formal provisions for asylum—to the extent that those seeking admission were expelled or fleeing "conationals"—they were generally let in. As we shall see in Chapter 6, this was true also for most of those leaving China as a result of its revolution. However, in 1957, the U.N. General Assembly entrusted to the UNHCR the task of assisting large numbers of Chinese in Hong Kong, even though they did not fully satisfy the statutory definition because of complications inherent in the existence of two Chinas.[95] This assistance constituted a precedent that led to a steady expansion of the High Commissioner's domain on an ad hoc basis throughout the developing world. Other groups that were included were Algerians fleeing to Tunisia and Morocco to escape the effects of French counterguerrilla campaigns (1958–61), and Angolans who escaped under similar circumstances to what is now Zaire (1961). This was subsequently applied to other liberation struggles in southern Africa.

Legitimized around 1960 through the umbrella doctrine of "good offices," these practices broadened the institutional concept of refugee. Initiated largely by the UNHCR's specialist staff in response to new problems in the African setting, this development was in keeping with established propositions concerning the role of officials in fostering the growth of government more generally. As Goodwin-Gill reports, conditions of underdevelopment in Africa made individual assessments of refugee status impractical, and the staff also felt that although it might not be possible to establish a "well-founded fear" on an individual case-by-case basis, people should benefit from refugee status when there was no doubt that "political conditions" had compelled the flight of the entire group in question. As noted earlier, a precedent for this had been established for the Hungarian crisis of 1956. On a more political plane, Goodwin-Gill suggested that the approach "was almost certainly influenced by factors such as the desire to avoid the imputation on newly independent states which is carried by every determination that a well-founded fear of persecution exists."[96]

The broadened conceptualization was further formalized in 1969 in the Convention on Refugee Problems in Africa negotiated by the Organization of African Unity (OAU). Article I begins with a restatement of the established U.N. definition centering on persecution and then adds:

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.[97]

Reflecting the historical experience of Africa, much as the 1951 convention did for Europe, this formulation came into existence largely as an expression of political solidarity on behalf of the ongoing struggles against white rule in southern Africa, as well as retrospectively in Algeria, which drove large number of persons to seek refuge in other countries. But it also captured the emerging realities of a continent where instability and upheavals of various kinds cast masses of deprived people across international borders in order to stay alive and where man-made calamities interacted with natural catastrophes to threaten the survival of entire communities. The inclusion of foreign intervention and "events seriously disturbing public order" as grounds for according refugee status was tantamount to arguing that victims of such processes are similar to those of persecution and hence equally worthy of special consideration. It can also be understood as a collective claim by African states in regard to the international community. Moreover, as suggested by Goodwin-Gill's observation concerning the UNHCR's expanded role, the broadened definition was also self-serving, as it enabled African states to acknowledge people as refugees without imputing "persecution" to anyone, thus obfuscating the responsibility of the OAU's members in generating the flows.

In the early 1970s the UNHCR's mandate was extended further to include people in refugeelike situations if no other agency were available to provide relief, and it applied in at least one case even to people who stayed in their own country.[98] But the mandate's inadequacies became more problematic in the latter part of the decade, when it appeared that the developing world was producing more and more refugees and that a larger proportion of them would land on the international community's doorstep. Moreover, these flows were no longer confined to their region of origin but impinged on Western receivers at a time when the energy crisis followed by a severe economic downturn prompted a general belt tightening and a feeling that charity must begin at home. It was the conjunction of deteriorating circumstances in the developing world and among Western industrial societies that precipitated the century's third refugee crisis, which forms the subject of this book.

Conclusion: In Fear of Violence

An examination of the historical matrix of contemporary concepts and institutional practices shows that the basic features and relative stability of the current refugee situation can be attributed to a stalemate between contradictory tendencies. On the one hand, there has been a secular evolution from particularistic practices, reflecting the willingness of specific states to grant asylum to individuals and groups of special concern, to a more universalistic definition of refugees and a concomitant institutionalized apparatus for dealing with them, founded on the acknowledgment by a duly constituted international political community of a special obligation toward the categories of persons specified in that definition. At the same time, however, the states that compose this community

continue to exercise considerable discretion in implementing the definition and in inter-
preting their obligations to those acknowledged as refugees.

The contradiction itself reflects divergent global trends: on the one hand, a more
widespread adherence to a core of common humanitarian values and, on the other, the
increasing economic inequality and persistence of strategic competition among national
states. These features of global social organization also account for a comprehensive order
pertaining to the general international population movement, which provides the context
in which contemporary practices concerning refugees must be understood. Its most rel-
evant features are the maintenance by many states of prohibitions against exit, and the
generalization of severe restrictions against immigration, particularly among affluent
countries with liberal governments that attract the world's unfortunates. Within a shrink-
ing world subject to violent upheavals affecting large and very poor populations and
resulting in the appearance of all kinds of people on everyone's doorstep in search of
assistance, it becomes vital to distinguish refugees from international migrants.

Combining the responses to the twentieth-century crises, the current institutional
meaning of refugee is a composite of three categories founded on the causes of the
refugees' departure. The first two, constituting the U.N. definition, are a formalization of
the classic types. They include the refugee as an activist, engaging in some politically
significant activity that the state seeks to extinguish; and the refugee as a target, by
misfortune of belonging—often by accident of birth—to a social or cultural group that has
been singled out for the abuse of state power. The major change in the definition since its
inception in the 1950s is the emergence of a third category, the refugee as a mere victim.
This covers persons displaced by societal or international violence that is not necessarily
directed at them as individuals but makes life in their own country impossible. Although
recognized by the League of Nations after World War I, and again by U.N. agencies after
World War II, this category was deliberately not included in the 1950 statute, the 1951
convention, or the 1967 protocol. However, it was reintroduced as upheavals in the
developing world came to the attention of the international political community in the
1960s, and then was generalized in the "good offices" doctrine. At the same time, the
category was formally institutionalized at the interstate level in Africa, where it accounted
from the outset for the major part of refugee flows, as our regional analysis will show.

Population movements falling into these three categories are included in our study.
Because not all such people have been formally recognized as refugees by international
organizations or particular states, we shall sometimes refer to them as "recognized" or
"unrecognized" refugees. This does not mean that we are setting ourselves up as a court
of hearing to determine the status of individuals or groups; rather, more careful terms
minimize the dangers of terminological legitimization as noted in the introduction and are
thus a prerequisite of critical thinking about refugees and refugee policy. We shall also
propose a definition that arises from the three categories mentioned. But to be relevant to
political and ethical discourse about refugees, this definition must be theoretically coher-
ent, meet acceptable normative criteria, and provide a suitable foundation for operational
guidelines in making decisions.

Most discussions of what makes refugees distinctive have focused on a combination
of two different characteristics of their movement: It is involuntary, as opposed to vol-
untary, and is occasioned by political, as opposed to economic, causes. In practice, these
two are considered equivalent: We thus get a couplet, "voluntary economic = migrants"
and "involuntary political = refugees." But this conceptualization is problematic in a
number of ways.

With reference to the voluntary/involuntary dimension, Jacques Vernant suggested
that to qualify as a refugee rather than a migrant, a person must be "the victim of events
for which, at least as an individual, he cannot be held *responsible*."[99] This clearly rules
out, say, a common criminal fleeing abroad to escape punishment. Beyond this, the
concept of responsibility works reasonably well in the case of target groups, particularly
when the group in question is one to which people belong by accident of birth, as with
race or nationality. It is also applicable to uninvolved bystanders who are caught up in the
cross fire of civil war or similar situations—that is, the category we term *victims*.

This definition is more problematic, however, with respect to the third category,
dissenters. Unlike, say, Armenians in Turkey or Jews in Nazi Europe, Huguenots who
converted to Catholicism were allowed to live in the same way that all other French did.
And so if they rejected this alternative, they must have made a choice, and hence their
flight to escape the consequences of their decision cannot be said to be entirely "invol-
untary." Much the same might be said today, for example, of someone opposing the
established regime in Chile, Zaire, or Cuba. Indeed, it is precisely because dissent does
entail the exercise of personal choice that those who engage in it are admirable.[100]

Thus it can be seen that the determination of whether movement is voluntary or
involuntary must refer ultimately to some doctrine of rights. Indeed, it is understood in
international law that the U.N. definition of refugees "encompasses those who are threat-
ened with sanctions for struggling to protect their human rights" as delineated by a variety
of instruments, most prominently the Universal Declaration of Human Rights; and despite
some remaining ambiguities, this specification is adequate to our purposes.[101]

The voluntary/involuntary dimension also requires a consideration of the costs of
staying as against leaving. Although Vernant does not specify what kinds of "events" he
has in mind, it is evident that they must be of a grave sort. People who run for their lives
are exercising such a limited choice that we usually do not consider their movement
voluntary at all. Movement is most clearly involuntary when it is forced—that is, when
it occurs as a response to life-threatening violence, exercised by an agent or occurring as
a by-product of circumstances. *Violence* includes both clear and immediate physical
violence, and coercive circumstances that have similarly threatening effects. *Life* includes
both biological existence and social existence, and the basic material and organizational
conditions necessary to maintain them. The more immediate and intense the life-threat-
ening violence is, the more clearly a person is a refugee rather than a migrant. This
introduces the notion of a degree of need, and it follows that any categories established
on this basis are not dichotomous but located along a continuum.

The other dichotomy, economic versus political, is problematic as well. This was
already noted by Vernant, who remarks in his 1953 book:

> Today more than at any other period, it is difficult to distinguish between events which
> are political and those which are not. A man's economic situation is no longer looked
> on as a "natural" phenomenon, but as a responsibility of the State. The view is
> steadily gaining ground that the modern State is responsible for the living conditions
> of its nationals—a perfectly reasonable view given the part played by the State in the
> organization and direction of the national economy. . . . In a great many States any
> measure, whatever its nature, is a political event. In recent years, the States initiating
> strictly controlled economies have enforced drastic changes in the working and living
> conditions of many sections of their population, arbitrarily directing them to new
> occupations.[102]

But in fact the difficulty of distinguishing between political and economic migration-inducing events was hardly new, even then.

For example, in the case of the Russian Jews of the 1880s, not only were the economic and political causes of their migration inextricably mixed, but the economic ones also were themselves in part induced by policies designed to undermine the Jews' economic position. Another case in point is that of the Irish during the Great Hunger of the late 1840s.[103] As is well known, the ongoing Irish emigration escalated dramatically after 1846, following a catastrophic food shortage resulting from successive failures of the potato crop, due to a blight compounded by bad winters. Although these conditions were found also in other parts of Western Europe where rural populations relied on the potato as a major staple, the Irish situation was more life threatening because the disaster befell a society that, even in good years, was unable to meet its subsistence needs. Any analysis of why this was so must consider a broad complex of causes, including several centuries of British policy.

From the second half of the sixteenth century onward, successive English regimes decapitated Irish society of its elites and confiscated their lands for the benefit of immigrant colonists and absentee landlords. By the beginning of the nineteenth century, 95 percent of the land was owned by Protestants. In the wake of the Glorious Revolution, Catholics were deprived of their political rights, and British policies toward them paralleled the contemporaneous policies of Louis XIV toward the Huguenots.[104] Because the mercantilist system prevented investment by Protestant landlords in commercial agriculture or other productive undertakings that might compete with England, they derived their income essentially by exacting the maximum rent from subsistence-level tenants. The Irish adapted by producing very large families, enabling some members to engage in migrant labor for cash income and others to grow potatoes on very small plots. Although this was a "rational" solution at the level of the individual family, it worsened conditions for the collective whole, by stimulating a growing demand for land and, hence, steadily increasing rent. The Great Hunger of the 1840s was only the worst of numerous famines. In contrast with England and Scotland, Ireland had no system of public relief: In bad times the only alternative to starvation was emigration. Viewed in this light, the responses of the English landlords and British authorities to the famine itself amounted to an opportunistic deportation policy—as was indeed charged at the time not only by the Irish themselves but also by Americans who objected to the massive influx of immigrants, particularly undesirable because they were both poor and Catholic.

The movement of both the Jews and the Irish was caused by an inextricable mix of political and economic causes; it must be located close to the "involuntary" end of the continuum; and a good case can be made that at specific times they emigrated in order to survive—that the waves between 1846 and 1854 for the Irish, and 1882 to 1885 and 1905 to 1908 for the Jews, can be attributed to "life-threatening violence." But it should be noted that it was necessary for them to do so only because of the unavailability of adequate help *in situ*. If, say, the Irish community in the United States had sent large amounts of food to their unfortunate kinsmen or if the U.S. authorities had contributed such assistance and Britain had accepted it, as well as undertaken relief operations of its own, the life-threatening danger would have been averted, and emigration would have no longer been necessary for survival. With respect to the Jews, economic relief would not have been enough, but one can imagine conditions under which diplomatic pressures might have been successfully applied to the Russian government to cease its actively anti-Jewish practices and to restrain those engaging in pogroms.

In the end, then, the key issue from the perspective of concerned humanitarians is not only whether the movement is involuntary and essentially political but also whether the immediate, intense suffering of the victims can be relieved by helping them in their own country—through policies of their own government or combined with favorable external initiatives—or if relief is possible only by enabling them to move abroad—that is, by providing them with a refuge.[105] This final consideration suggests how theoretical and normative concerns can be integrated into a coherent framework for critical analysis.

The common element that merges the three categories into a coherent set and distinguishes them from others is violence. We shall therefore define refugees as persons whose presence abroad is attributable to a well-founded fear of violence, as might be established by impartial experts with adequate information. In cases of persecution covered by the statutory definition, the violence is initiated by some recognizable internal agent, such as the government, and directed against dissenters or a specified target group. The presence of the victims abroad may be the result of flight to avoid harm or the result of expulsion, itself a form of violence. But flight-inducing violence may also be an incidental consequence of external or internal conflict, or some combination of both, and affect groups that are not even parties to that conflict. Violence may also be inflicted indirectly, through imposed conditions that make normal life impossible.

When defined in this manner, refugees are also distinctive in that they form a category of unfortunates who can be assisted only abroad, unless conditions change in their country of origin. It is because of this that they have a strong claim to a very special form of assistance, including temporary or permanent asylum in the territory of states of which they are not members. Our theoretically grounded definition is thus consistent with ethical considerations, which dictate an approach to the problem of refugees founded on the distinctive and urgent needs of the people concerned.

It is also realistic, in that the operational criteria can be applied to administrative decisions concerning priorities for assistance and admission. For example, they make it possible to distinguish refugees from persons who move as a consequence of natural disaster. Most victims of malnutrition and slow starvation in the developing world should not be considered as refugees because most of them can be assisted *in situ* in their own countries. Given international sovereignty, however, it is often easier to change such conditions for the short term than to change the political economy that is at the root of much of it, or the deliberate political actions that cause flight.[106] People cast abroad by famine are refugees to the extent that the famine is itself a form of violence, as in the case of confiscatory economic measures or extremely unequal property systems maintained by brutal force, the inability to meet subsistence needs because of unsafe conditions, or the refusal of the state to accept international assistance.

One of the main conclusions of this book is that the causes of life-threatening conditions in the developing world stem from an interpenetration of national and transnational, or global, processes. But the world is organized as a set of mutually exclusive states that constitute paramount membership communities, on which individuals normally depend for protection against violence, and for the maintenance of conditions that enable them to survive materially. As people forced to move abroad in order to survive, either because their own state is the cause of their predicament or because it is unable to meet these basic requirements, such people are genuine international outcasts, stateless, in the deep meaning of the term, as suggested a generation ago by Arendt and recently restated by Sacknove.[107] That is the sense in which their predicament stems from distinctively political conditions.