CHAPTER II

REGIMES IN INTERNATIONAL RELATIONS

This chapter attempts to understand international order and international cooperation through an interpretation of international regime-formation by way of rational-choice analysis. The endeavour is to find out why self-interested actors in world politics seek to establish international regimes, through mutual agreement, under certain circumstances. The working of regimes in international relations has been critically reviewed and analysed, while discussing different theories of regime. The effectiveness of regimes in influencing the behaviour of state and non-state actors in a particular issue-area has also been explored.

The various issues relating to the importance and efficacy of regimes in promoting international cooperation, their role in reducing the transaction costs of cooperation by way of reduced uncertainty, in promoting balanced agreements, in facilitating further international cooperation through issue-linkages and incremental learning, and the evolution of an international refugee regime have been examined, with the help of salient examples and illustrations to elucidate the discussion.

Cooperation in any issue area of international relations, be it environment, terrorism, drug-trafficking, human rights, nuclear proliferation, economic cooperation, international security or refugee issue, is often mediated through regimes. Regimes not only facilitate and generate cooperation, but often cooperation leads to the emergence of new regimes or consolidation of previously existing regimes. In other words, patterned behaviour, reflecting calculations of interest, leads to the creation of regimes, and regimes reinforce patterned behaviour.

In a world of sovereign states, the basic function of regimes is to coordinate state behaviour to achieve desired outcomes in particular issue areas (Aggarwal 1981: 5). Such coordination is attractive under several circumstances. Stein (1983: 115-140) and Keohane (1980: 131-162) posit that regimes can have an impact when Pareto-optimal outcomes could not be achieved through uncoordinated individual
calculations of self-interest. The prisoners’ dilemma is the classic game-theoretic example. Stein also argues that regimes may have an autonomous effect on outcomes when purely autonomous behaviour could lead to disastrous results for both parties. The game of chicken is another game-theoretic analogue. Haas (1980: 357-402), however, suggests that regimes may have significant impact in a highly complex world in which ad hoc and individualistic calculations of interest could not possibly provide the necessary level of coordination.

Regimes, not an overarching central authority, have had a disciplining influence in international relations, thus, vicariously playing the role of the latter. This further enhances the importance of regimes and necessitates their study more seriously in order to bring out their importance and effectiveness in international relations. Over the years, international regimes have emerged as a major focus of empirical research and theoretical debate within international relations. The interest in regimes sprang from the dissatisfaction with dominant conceptions of international order, authority and organisation. The sharp contrast between the competitive, zero-sum 'anarchy' of inter-state relations, and the 'authority' of domestic politics seemed overdrawn in explaining cooperative behaviour among the members of the Comity of Nations. Policy dilemmas, created by the growth of interdependence since the World War II, generated new forms of coordination and organisation that fit uneasily in a realist framework.

**Regimes reduce transaction costs by reducing uncertainty**

Empirical evidences suggest that regimes can reduce transaction costs for states that are negotiating collaborative agreements. For example, European Community (EC) was seen as a major international actor in the General Agreement on Trade and Tariff (GATT) negotiations because it lowered transaction costs by reducing the number of actors involved. Haas, notes that the “Med Plan also served to reduce transaction costs between governments by holding annual inter-governmental meetings and more frequent expert meetings” (Haas 1990: 184-185). Regimes mitigate the effects of international anarchy for states by aiding in the decentralised enforcement of agreements. They can also change the pattern of transaction costs of cooperation by reducing ‘incentives to violate regime principles’ (Keohane 1986: 90). Thus, regimes
are supposed to reduce states’ uncertainty, their fears that others will defect and in turn their own propensity to do so.

International regimes, and the institutions and procedures that develop in conjunction with them, perform the function of reducing uncertainty and risk by linking discrete issues to one another and by improving the quantity and quality of information available to participants. Linking issues is an important way to deal with potential deception. Deception is less profitable in a continuing ‘game’, involving many issues, in which the cheater’s behaviour is closely monitored by others and in which those actors retaliate for deception with actions in other areas, than in a ‘single-shot’ game. The larger the number of issues in a regime, or linked to it, the less important each issue is in proportion to the whole, the less serious is the problem of deception likely to be. Another means of reducing problems of uncertainty is to increase the quantity and quality of communication, thus alleviating the information problems that create risk and uncertainty in the first place.

International regimes are designed to mitigate the effects, on individual states, of uncertainty deriving from rapid and often unpredictable changes in world politics. Yet, they create another kind of uncertainty, about whether other governments will keep their commitments. In one sense, this is simply the question of dependence. Dependence on an international regime may expose one to risks, just as dependence on any given state may. Governments always need to compare the risks they run by being outside a regime with the risks they run by being within one. If the price of achieving short-term stability by constructing a regime is increasing one’s dependence on the future decisions of others, that price may be too high.

Regimes can make agreement easier if they provide frameworks for establishing legal liability (even if they are not perfect), improve the quantity and quality of information available to actors, or reduce other transaction costs, such as costs of organisation, or of making side-payments. In so far as international regimes can correct institutional defects in world politics along any of these three dimensions (liability, information, transaction costs), they may become efficient devices for the achievement of state purposes.
Greater Information Sharing

Analysis of the demand for international regimes, based on questions of information and transactions costs, suggests the possibility that international institutions could help to compensate for eroding hegemony. International regimes could not only reduce the organisation and other transaction costs associated with international negotiations, they could also make bargains easier by providing information. In considering the unwillingness of the EC to cooperate within the framework of GATT, Joseph Grieco explains that as “result of the rules, all would enjoy some level of absolute gains in terms of increased information about one another’s subsidies, but non-EC states would receive greater information about EC programmes than the reverse” (Grieco 1990: 218-219).

Initially, members of the United Nations Environment Programme (UNEP) provided information that fostered cooperation. By publicising the problem of marine pollution, UNEP helped persuade Mediterranean governments of the importance of accepting the new goal of environmental protection, and even making nominal economic sacrifices to accomplish it. With the Med Plan developing its own information functions, “states did come to appreciate the value of information and diplomatic channels established by the Med Plan, and cooperated in areas in which such benefits were made available” (Haas 1990: 183).

Promoting negotiation of balanced agreements

Regimes have been found to be effective in promoting the negotiation of balanced agreements, and hence cooperation, in new areas through issue linkage and side-payments made available by them. This type of facilitation is evident in Haas’s study. The UN, through its UNEP, made side-payments to states that would have to pay high costs in the Med Plan to get them to agree to start the regime. Through its principle of geographic distribution of rewards, the UNEP helped states find a balanced agreement as the basis for the Med Plan. Regimes in one issue area may, thus, promote cooperation elsewhere by allowing states to link issues in their search for a balanced distribution of the costs and benefits of cooperation.
Constraint-choice analysis emphasizes constraints on choice and effects of system characteristics on collective outcomes that provide an appropriate way to address the question of regime formation. According to constraint-choice analysis international regimes should not be seen as quasi-governments – imperfect attempts to institutionalise centralised authority relationships in world politics.

Analysis of international regime formation, within a constraint-choice framework, requires specification of the nature of the context within which actors make choices and the functions of the institutions whose patterns of growth and decay are being explained. Two features of the international context are particularly important: world politics lacks authoritative governmental institutions (Bull 1977: 13), and is characterized by pervasive uncertainty. Within this setting, a major function of international regimes is to facilitate the making of mutually beneficial agreements among governments, so that the structural condition of anarchy does not lead to a complete war of all against all. The actors here operate within, what Waltz has called, a ‘self help system’, in which they can not call on higher authority to resolve difficulties or provide protection (Waltz 1979: 12).

In some respects, regimes resemble ‘quasi-agreements’ (Fellner 1949: 15). In both contracts and quasi-agreements, there may be specific rules having to do with prices, quantities, delivery dates etc. For contracts, some of these rules may be legally enforceable. The most important functions of these arrangements, however, are not to preclude further negotiations, but to establish stable mutual expectations about others’ patterns of behaviour and to develop working relationships that will allow the parties to adapt their practices to new situations. Rules of international regimes are frequently changed, bent, or broken to meet the exigencies of the moment.

Cost-Benefit Analysis

Regimes are also like contracts, when these involve actors with long-term objectives, who seek to structure their relationships in stable and mutually beneficial ways (Lowry 1979: 276). States are expected to join those regimes in which they foresee the benefits of membership outweighing the costs. Regimes are also expected to develop where the costs of making ad hoc agreements on particular substantive
matters are higher than the sum of the costs of making such agreements within a regime framework and the costs of establishing that framework.

An important element shared by most international regimes is, what Jervis called, ‘reciprocation’ (Jervis 1982: 360), while expanding on ‘security regimes’, the belief that if one helps others or fails to hurt them, even at some opportunity cost to oneself, they will reciprocate when the tables are turned. By security regimes, he means those principles, rules and norms that permit nations to be restrained in their behaviour in the belief that others will reciprocate. This concept implies not only norms and expectations that facilitate cooperation, but a form of cooperation that is more than the following of short-run self-interest.

Many of the policies that are designed to increase a state’s security, automatically and inadvertently, decrease the security of others. Security regimes are, thus, both valuable and difficult to achieve – valuable, because individualistic actions are not only costly but dangerous; difficult to achieve, because the fear that the other is violating or will violate the common understanding is a potent incentive for each state to strike out on its own even if it would prefer the regime to prosper.

The Concert of Europe: A Security Regime

An analysis of the best example of a security regime – the Concert of Europe that prevailed from 1815 to 1823 and, in attenuated form, until the Crimean War – provides a complementary perspective to this theoretical discussion. In these years, the great powers behaved in ways that sharply diverged from normal ‘power politics’. They did not seek to maximise their individual power positions; they did not always take advantage of others’ temporary weaknesses and vulnerabilities; they actually made more concessions than they needed to, and they did not prepare for war or quickly threaten to use force when others were recalcitrant.

The Concert was supported by the shared stake that the major powers had in avoiding war. They had immediately lived through an enormously destructive series of wars and were acutely aware of the costs of armed conflict, which not only destroyed men and wealth, but also undermined the social fabric. Conservatives
feared that wars would lead to revolution, while liberals associated war and preparations for it with autocracy. All were convinced that high levels of conflict would only destroy their security, rather than enhance it. Each state, then, had a stake in seeing that none underwent a revolution. As a result, the destabilisation of other governments, an unpleasant, but not an unusual tool of statecraft, was ruled out and states were not likely to desert the Concert as they feared that embarking on an isolated course of action might lead to unrest (Schroeder 1968: 174). Under the Concert, reasonableness was expected and making concessions did not lead others to think that the state concerned was weak and would retreat in the future. This drastically lowered the risks and costs of cooperative behaviour.

The demand for a security regime is decreased by the apparent stability of the strategic balance. The dangers of Russian expansion and nuclear war were constrained by the political posturing in such a way that drastic changes were not seen as needed. Two kinds of people dissented from this judgement – those who feared that the Soviets were gaining usable military superiority and those who feared some sort of accidental war. The former, most of whom saw only limited scope for Soviet-American cooperation, far outnumbered the latter. Indeed, it may be doubted whether there would ever be strong political pressures in favour of a regime unless there is dramatic evidence that individualistic security policies are leading to disaster. In the Concert of Europe, this became a norm specific to the regime, a standard of behaviour providing that statesmen should avoid maximising their interests in the short term for the sake of expected long-term gains (Jervis 1982: 357).

Investigation of the sources of specific agreements reveal that they are not made, in general, on an ad hoc basis, nor do they follow a random pattern. Instead, they are ‘nested’ within more comprehensive agreements, covering more issues. An agreement among the United States (US), Japan and the EC in the multi-lateral trade negotiations to reduce a particular tariff is affected by the rules, norms, principles and procedures of the regime. The trade regime, in turn, is nested within a set of other arrangements – including those for monetary relations, energy, foreign investments, aid to developing countries and other issues – that together constitute a complex and inter-linked pattern of relations among the advanced market economy countries.
These, in turn, are related to military-security relations among the major states (Aggarwal 1981: 24).

Understanding the value of governmental openness for making mutually beneficial agreements helps to account for the often-observed fact that effective international regime, such as the GATT in its heyday, or the Bretton Woods international monetary regime (Patterson 1966: 53), are often associated with a great deal of informal contact and communication among officials. These trans-governmental relationships increase opportunities for cooperation in world politics by providing policy makers with high quality information about what their counterparts are likely to do. So far as they are valued by policy makers, they help to generate demand for international regimes that should be, in part, a function of the effectiveness of the regimes themselves in providing high quality information to policy makers. The success of the institutions associated with a regime in providing such information will itself be a source of regime persistence.

Three Inferences

Consequent to the hypothesis made above, three inferences can be made. Firstly, regimes accompanied by highly regularised procedures and rules will provide more information to participants than less regularised regimes and will, therefore, on information grounds, be in greater demand. Thus, considerations of high quality information will help counteract the normal tendencies of states to create vague rules and poorly specified procedures as a way of preventing conflict or maintaining freedom of action where interests differ. Secondly, regimes that develop norms internalised by participants, in particular, norms of honesty and straightforwardness, will be in greater demand and valued more than regimes that fail to develop such norms. Thirdly, regimes that are accompanied by open governmental arrangements and are characterised by extensive trans-governmental relations will be in greater demand and valued more than regimes whose relationships are limited to traditional state-to-state ties. The extent to which institutionalised cooperation has been developed will be an important determinant, along with power-structural conditions and issue density, of the extent and strength of international regimes.
Typically, an international regime is established to regularise behaviour, not only among the members, but also between them and outsiders. This is a side-benefit of stable international monetary regimes involving convertible currencies (Kindleberger 1978: 116). It was an explicit purpose of the non-proliferation regime of the 1970s, in particular the 'suppliers' club', designed to keep nuclear material and knowledge from diffusing rapidly to potential nuclear powers. Military alliances can be viewed as an extreme case of attempts at environmental control, in which the crucial benefits of collaboration stem not from the direct results of cooperation, but from their effects on the behaviour of outsiders. Alliances seek to induce particular states of minds in non-members, to deter or to intimidate.

Whether US-Soviet security relationship is an example of a regime?

A few interesting attempts have been made to apply the concept of international regimes to the US-Soviet relationship (Mandelbaum 1981: 11). It is believed that a regime of primitive rules (for example, no direct conflict between the superpowers, non-use of nuclear weapons, and respect for spheres of influence) has helped explain the absence of a nuclear war. But the rules are more tacit than explicit. Their existence is inferred from the absence of war, which is, in turn, attributed to the existence of such rules. Thus, this concept risks tautology by using the same evidence to establish both the cause and the effect of the regime.

Robert Jervis has attacked such efforts to categorise the US-Soviet security relationship as a regime. If cooperation can be explained on the basis of short-run self-interest, such as avoiding the disproportionate costs of a nuclear war, then regimes become a redundant explanation. In Jervis's view, "the links between states' restraint and their self-interest are too direct and unproblematic to invoke the concept" (Jervis 1982: 359). The rules and practices of prudence that characterise the US-Soviet relationship are both too vague and too directly related to their obvious short-run self-interest to merit being categorised as rules of a regime. Moreover, he argues that participating nations' preference for status quo is a necessary condition for a security regime, and that the US's and Soviet Union's different perspectives in the ideological interpretation of events make the independent restraining force of rules highly improbable. Though Jervis argues that it is difficult to describe the overall
nature of the US-Soviet security relationship as a security regime, he is stopped short. The two countries largely agreed upon broad and specific injunctions in a number of sub-issues within the security relationship, and one can argue that a jointly recognised regime did exist in such areas.

Structural factors and ideological differences led the two countries to compete politically, but the awareness of nuclear destructiveness made them avoid war with each other. One can even identify, as described earlier, certain basic rules of prudence (no direct fighting, no nuclear use, communication during crisis and so forth). Both the US and Soviet Union gradually redefined their interests, away from their early positions, in the post-war negotiations and their expectations gradually converged around the existing principles. The Berlin Crisis (1958-61) raised nuclear fears, which reinforced the importance of adherence to these principles. Subsequently, the specific agreements laid out the rules and the institutional framework for discussing the issues in a manner that fits the description of a partial security regime. The rules and institutions helped constrain the short-range self-interest of the US and the Soviet Union in Europe. Despite the vagaries and vicissitudes of the overall political relationship, both sides closely adhered to cooperation on access to Berlin, the neutrality of Austria, and the de facto division of Germany.

Over a long period of time, the Strategic Arms Limitation Talks (SALT) and the Strategic Arms Reduction Treaty (START) agreements formed a partial security regime that was based on the acceptance of parity, recognition of mutual vulnerability, and agreement to limit both offence and defence (Rice 1986). These principles and norms were supplemented by specific rules in an institutional framework, called the Standing Consultative Commission (SCC), for discussing issues of compliance. Both sides redefined their short-run interest by adhering to rules (such as not interfering with the national technical means of verification) and by dismantling nuclear systems that exceeded treaty constraints.

Regime Role in Incremental Learning

International regimes probably play a greater role in incremental learning than in discontinuous learning because they establish standard operating procedures,
constrain certain ideologies and reward others, and provide opportunities for contacts and bargaining among leaders. Nonetheless, even with discontinuous learning, the institutions may crystallise the learning of a particular period or group, and contact within regimes may foster organisational learning by creating or reinforcing institutional memory. Regimes can affect learning and state behaviour in several ways. The principles and norms of the regime may be internalised by states or by important groups within states. This process raises the costs of defecting from cooperative solutions and makes it more important to establish a reputation for reciprocity. Secondly, regimes may provide information, which alters the way key participants in the state understand their interests, or they may see cause and effect relationships that were not understood previously.

**Incentives for regime development**

Regimes can be used to pursue particularistic and parochial interests, and more widely shared objectives. They do not necessarily increase overall levels of welfare. Even when they do, conflicts among units will continue. States will attempt to force the burdens of adapting to change onto one another. Nevertheless, as long as the situations involved are not constant-sum, actors will have incentives to coordinate their behaviour, implicitly or explicitly, in order to achieve greater collective benefits, without reducing the utility of any unit. When such incentives exist, when sufficient inter-dependence exists, and when ad hoc agreements are insufficient, opportunities will arise for the development of international regimes.

**The Theory of Hegemonic Stability**

Relationships of power and dependence in world politics are deemed to be important determinants of the characteristics of international regimes. The theory of hegemonic stability offers the most parsimonious and widely employed explanation of regime dynamics. It links regime creation and maintenance to a dominant power’s existence and the weakening of regimes to a waning hegemon. Ironically, the theory’s early proponents were interested primarily in the world economy’s stability and openness and did not mention the role of rules or regimes (Kindleberger 1973: 16). In *Power and Interdependence*, Keohane and Nye linked regime dynamics to waxing and
waning state power. They argued that since power is not wholly fungible under conditions of complex interdependence, linkage across issue areas is not likely to be effective. They proposed a more disaggregated 'issue-structural' model, predicting that 'stronger states in the system will dominate the weaker ones and determine the rules of the game (Keohane and Nye 1977: 78).

Regimes influence state behaviour

Regimes affect state behaviour in two ways. One, emphasised in functionalist and game-theoretic approaches, is that regimes have altered the situation or setting in which states interact so that cooperation becomes more likely. The literature on iterated Prisoner's Dilemma claims that altering the institutional environment – by lengthening the shadow of the future, limiting the number of players, increasing the transparency of state action, and altering the payoff structure – can increase the incentives to cooperate. Functionalist theories emphasise that regimes reduce the transaction costs associated with bilateral contracting.

An even stronger claim for regimes is that they can alter actors' interests or preferences, which are generally held constant in functional and game theoretic formulations. Cognitivists claim that regimes may change the basic definition of reality. Through the 1970s, for example, the United Nations Conference on Trade and Development (UNCTAD) provided the institutional locus for a new Third World critique of the existing international economic order. The UNCTAD virtually served as a secretariat for the Group of 77 developing countries. It provided studies and documentation that were crucial in defining the countries' individual positions in international forums (Rothstein 1989: 34-35).

A fit between regime rules and national behaviour may not occur for three reasons. Firstly, the norms, characterising the regime, may not be formulated to be authoritatively binding. Some regimes, such as those governing human rights, allow self-selected national exemptions or represent only broad collective aspirations; they are, in effect, born weak. Secondly, according to opportunism, states may negotiate regimes with the intention of breaking them or knowingly exploit others' compliance in order to extract higher payoffs. A final possibility, which is more common and
politically interesting, is what Robert Putnam calls the ‘involuntary defection’ (Putnam 1986: 13). This happens when a party reaching or supporting an international agreement is unable to sustain commitments because of domestic political constraints. For example, the rise of ‘new protectionism’ in the advanced industrial states suggests the pervasiveness of this phenomenon. Taking the form of quantitative restrictions in particular products, aimed at particular exporting countries, these orderly marketing agreements and voluntary export restraints clearly violate the World Trade Organization (WTO) norms. Yet, they are driven by efforts to diffuse political pressures, while simultaneously limiting the extent of protection, both by product and by trading partner.

In these globalized times, growing interdependence means that groups at the domestic level increasingly have ‘regime interests’. Welfare is tied not only to particular policy decisions, but to other states’ compliance with regime norms, the way in which international cooperation is institutionalised, and the access regimes provide for private actors.

Politics among States

There are struggles to create, build upon, transform, or destroy networks of relations that support and reflect judgements on matters of dispute over the correct naming and evaluation of things, applicable arguments and standards of judgements, and objectives and mechanism (Shapiro et al. 1988: 381). Actors will employ various strategies to exercise power within or against such networks, including developing alternative analyses, invoking discourses against their holders, linking issues, creating or hindering the creation of alternative networks, and labelling themselves and their opponents. Successful regimes will be linked to significant networks and will suppress, absorb, or marginalise their rivals for control of a set of actors.

Once a regime exists, at least four overall groups of actors may be found in these struggles, depending on their status with respect to that regime. First are actors who accept and cooperate willingly with it. Their disputes may be technical or over relative positions. Although, they accept both the hegemonic discourse and its apparatus, their disputes could unintentionally erode the regime. If the discourse and
its associated devices prove incapable of coping with the issue area simply in technical terms, this will produce pressures for new discourses or devices and for attempts either to change the regime or to save it through new efforts. Second are true free riders (as distinct from actors merely so labelled by opponents), who want others to support the regime, but do not help maintain it themselves. These may erode the regime, reduce its capability, or produce disputes over burden sharing, but wise parasites do not destroy their hosts. These two groups are community members who accept the legitimacy of the order.

Third are deviants and rebels, who challenge the order on the basis of subjugated or alternative knowledge and alternative networks of relations, but who are contained within the regime’s community and, thus, are pressured to follow its dictates. They differ from true free-riders in that they want to break up or break from the order. Regime supporters may attempt to convert, punish, or isolate them. Fourth are outsiders and other communities organised in other public spaces. These may strain a regime by providing alternative associations for actors (if they can break free) or competing constructions that can destroy or alter the regime. They are also targets for regime expansion.

As a regime grows and absorbs more actors or issues, its deviance content might initially increase, requiring greater efforts to enforce rules until the actors are normalised. Conversely, as a regime shrinks, its level of deviance should first rise and then fall as the actors or issues of difficulties are shed. Since the same actors might be members of different but overlapping regimes, they can pursue differing policies toward these, either because of domestic policy incoherence or because they are constrained deviants in one regime but staunch supporters in another. The use of specific strategies, within a regime or against it, from the outside can also be identified and examined.

**Issue linkages and regime stability**

Whether regimes in growth or retreat can achieve stable conjunctions of issues and actors and, indeed, whether a regime can achieve stability at all, are open questions. Haas’s typology of issue linkages and their implications for regime stability can be
useful at this point (Haas 1980: 370-375; 385-386). His concept of substantive issue linkage could be challenged as merely indicating a hegemonic discourse. Where it dominates, however, disputes among the first group of actors above are the most important in the regime. There are still deviants because it is impossible to talk of deviance without a strong norm and because norms can generate deviance.

There can also be free riding. In tactical and fragmented issue linkages, however, the coherence of the regime declines, disputes become more basic, and our ability to use the language of legitimacy declines as well. The essence of the situation becomes an increasing contestability of regime fundamentals. According to Ruggie’s early regime formulation (Ruggie 1975: 569-570), if certain constructions of the collective situation are only compatible with certain collective responses, not only could coherence problems between regime discourses and implementing devices be anticipated, but also additional leverage on the implications of rival discourses and constructions of a collective situation could be obtained.

Another analysis treats regimes as loci of greater or lesser, but inevitable, tension in which actors struggle to define the regime and the space it orders. Actors supporting a dominating discourse seek to extend or, at least, defend its grasp through the conversion of others and suppression of rival knowledge and also through the entanglement of others in webs of concrete relations. Those holding subjugated knowledge, engage in a variety of resistance efforts (analogies to and metaphors of guerrilla warfare come to mind) that seek to transform the order, disentangle themselves, and create autonomous networks of relations.

What this sort of analysis does not do, especially by its attitude, is encourage particularly regime-supporting perspectives or prescriptions. If anything, it is biased in favour of resistance. It, thus, runs less risk of becoming an apology for the way things are and presenting these as natural, good, true or beautiful. Any policy prescriptions that might follow from it would be largely strategic and tactical, available equally to supporters of and resisters to regimes, and useful for blocking, altering, or destroying as well as creating or maintaining an order. It does not suggest or assume that we should or should not want any specific regime or regimes as such. It leaves such debates to particular theories or ideologies in and for regimes.
An Illustration: Nuclear Proliferation

The case of nuclear non-proliferation can make the regime analysis more lucid. The apparent complexity of the non-proliferation regime and the disputes and strains to which it has been subjected from the beginning suggest that it is a promising and important area of investigation. The results of applying the above elaborate concepts to this public realm, however, are not comfortable, at least for standard Western non-proliferation analyses. This is because they indicate that Third World recipient and non-nuclear weapon states may have justified grievances about the course of development of nuclear non-proliferation since the negotiation of the Non-Proliferation Treaty (NPT) (Chander and Arora 1996: 225).

The non-proliferation regime seemingly consists of a large number of components of varied types and possibly disputed status (Fischer 1987: 3). Does this complexity form a coherent whole, or is this ‘regime’ a mere congeries held together by the vague idea that the spread of nuclear weapons is not a good thing? If coherence exists, then what are the analysis, implementation mechanisms, and issue area construction that holds it together? How do these interact with the network of relations among the actors in the regime?

The NPT and the International Atomic Energy Agency (IAEA) safeguards system, created under its terms, are usually taken as the heart of the regime. Together they form a coherent discourse on non-proliferation and set of implementing mechanisms. Although non-dissemination is the main focus of the NPT, it’s Preamble, Articles VI and VII, the procedural articles, and the negotiating history of the Eighteen-Nation Disarmament Committee point to a more complex identification of ‘proliferation’ — the acquisition of nuclear explosives (the dissemination problem), the deployment of nuclear weapons and vertical proliferation.

The dissemination problem is defined in end-use terms, as the production of nuclear explosives. The mechanisms to further the non-dissemination goal centre on safeguarded access to nuclear goods and services for civilian purposes and an undertaking not to develop nuclear explosives. The necessary machinery is provided by the IAEA safeguards system, a technology of surveillance and confession. This
discourse and mechanisms are consistent with a certain construction of the 'non-proliferation' issue area. Vertical proliferation is connected to horizontal dissemination. Therefore, non-dissemination must be connected to disarmament. Access to peaceful nuclear technology, however, is linked positively to economic development. Thus, measures to stop non-dissemination should not hinder civilian nuclear programmes.

The NPT, in particular, serves as a normative focus and a locus of struggle both among signatories and between these and non-signatories. States are pressured to sign on; those refusing to take the pledge are suspect, as are some of those who have already signed. Disputes over the implementation of the regime are carried out in its terms. Articles IV and VI of the NPT are major elements in the treaty's review conferences, being foci of tensions and disputes. The suggestion of a bargain in which these two articles are linked with forgoing the nuclear option by non-nuclear weapon states scarcely does justice to the situation. This is not a mere quid pro quo or tactical linkage but, rather, a reflection of the treaty's historical context.

Some parties take its safeguards requirement as a floor, an international minimum, and see supplier guidelines as supplementing or complementing the treaty. Others take it as a ceiling, a maximum, and consequently see supplier guidelines as potentially reneging on the treaty. Thus, the treaty's terms not only help to define normal and deviant behaviour, but also provide a public language for defence and attack, justification and condemnation, and pressure and resistance within the regime.

The safeguards system is implemented through a series of increasingly detailed agreements – down to the facility level – between signatory states and the IAEA. The system is increasingly portrayed as a positive good, a means of demonstrating good faith, rather than in negative or deterrent terms. Crucial to the success of the NPT, as a non-dissemination measure, and the idea of safeguarding, however, has been the support given to both of these in the network of bilateral civilian nuclear cooperation agreements. These might require bilateral safeguards or the application of an IAEA safeguards system. Some exporters may require the acceptance of NPT safeguards or their equivalent. Historically, both the principle and techniques of safeguarding were developed through bilateral arrangements. Both
supplier dominance in the international market for nuclear goods and services and the ability of suppliers to coordinate on conditions of supply have been crucial for the regime (Ing 1987: 119-130).

These components of the non-proliferation regime seem to function as an internally consistent and coherent set, in the terms laid out in foregoing discussion, possessing the qualities emanating from it. However, both the distinction between non-proliferation and non-dissemination and the history of the treaty's review conferences, particularly with respect to Articles IV and VI, point to some difficulties in the evolution of the regime. At best, these suggest strains in its coherence. At worst, they suggest a substantial reworking of the regime by dominant states, a subordination of the discourse of non-proliferation, found in the NPT, to a discourse of non-dissemination located in a less formalised nuclear export control regime dominating the international public space of non-proliferation.

Key elements in approaching these possibilities are national nuclear export legislation and practices, and the Nuclear Suppliers Group (NSG) guidelines. In US practice, safeguards are not the only controls placed on nuclear exports. There are formal as well as informal limits on access with respect to both the kind and the amount of nuclear material and technology supplied, and on whether and where certain fuel cycle services may be performed. Similar limits are found in the practices of other states. While such practices may have been formalised and made coherent to a significant degree among major suppliers only with the NSG guidelines, they comfortably antedate the NPT. Focusing simply on the NPT and on safeguards to the exclusion of other supplier conditions, thus, misses an old and substantial, if not always coherent, aspect of the history of non-dissemination efforts.

The term 'non-dissemination' is deliberately used here instead of 'non-proliferation'. The NSG guidelines, in particular, and this broader practice, in general, are organised around a substantially different discourse, a set of implementing mechanisms, and construction of the issue area than are found in the IAEA-NPT set. The discourse of non-dissemination found here reflects a latent proliferation. It is the spread not only of nuclear explosives, but also of the independent capacity to manufacture them. This problem of definition connects readily to technological rather
than motivational theories of proliferation (Meyer 1984: 3). It also implies a different approach to control. While safeguards are desirable, safeguarded access is obviously insufficient to deal with the non-dissemination problem so defined. This was obvious as early as the Acheson-Lilienthal Report (Secretary of State's Committee on Atomic Energy 1946) and the Baruch Plan (Chander and Arora 1996: 346).

Access to sensitive technologies and materials must also be regulated. At the least, this implies a supplier oversight function, a judgement of the legitimate needs of nuclear recipients. If latent proliferation is the problem, the connection between peaceful uses of nuclear energy and economic development becomes much more problematic, since the spread of nuclear technological capabilities, whether safeguarded or not, is precisely part of the problem. References to disarmament and to vertical proliferation, however, are notably absent or constrained. Not only is there a shift in the context, from disarmament to arms control, but the connection between non-dissemination and vertical proliferation may also be omitted or even reversed.

Central to this set of elements, as to the NPT, are the willingness and the ability of the dominant nuclear suppliers to agree on and to require conditions in return for exports. The centrality of networks of relations, as distinct from formal multi-lateral arrangements (which are only given effect through such networks), is demonstrated to the extent that major nuclear suppliers both dominate the market for nuclear goods and services, and adhere to this non-dissemination discourse. Suggested also is the ability of these states to redefine the non-proliferation regime, implementing their own discourse and disciplinary array, and effectively constructing preferences that are then enforced over nuclear recipients. Assuming supplier dominance and coherence, they can do this not simply against the express complaints of NPT signatories at the review conferences, but even in the absence of the NPT.

There seem to be, therefore, three choices with regard to the non-proliferation regime, varying with supplier analyses, strength, and cohesion. First, an NPT-IAEA regime strongly challenged by suppliers attempting to redefine it; second, two regimes within the same public space; and third, a nuclear export control regime that has subordinated the NPT. Any of these will account for the dissension and strains within the NPT and within the public realm of non-proliferation, because they all point to a
transformation – attempted, actualised, or in progress – from non-proliferation, in the terms of the treaty, to non-dissemination. It is precisely this redefinition process that generates the difficulties at the NPT review conferences. If one coherent non-proliferation regime, bringing together the various disparate components that have been noted, is insisted upon, the nuclear export, non-dissemination regime makes more sense as a description of the nature of things than an NPT-based regime that is supplemented by NSG guidelines.

The Development of International Refugee Regime (Regensburg 1996: 4-7)

The ‘international refugee regime’ is a collection of conventions, treaties, intergovernmental and non-governmental agencies, precedent, and funding adopted by governments. They protect and assist people who are displaced from their country by persecution, or by war in some regions of the world, where agreements or practice have extended protection to persons displaced by the general devastation of war, even if they are not specifically targeted for persecution (Keely 2001: 311). The regime centres around the UNHCR as the primary agency, the 1951 Convention and the 1967 Protocol on the Status of Refugees in international law. Inclusion of persons displaced by war is based on the Charter of the Organization of African Unity (OAU) and the Cartagena Declaration in regard to the Western Hemisphere.

This regime has its roots in action taken, following World War I, by the League of Nations, at the behest of non-governmental organizations, represented by the International Committee of the Red Cross (ICRC). The ICRC requested League action on behalf of Russian refugees against the Bolshevik revolution. The existing expression of the regime dates from the negotiations following World War II that led to the UN Statute, creating the UNHCR and the 1951 Convention.

Even this barest outline of the regime's origins and content indicate that states have agreed to collaborate on the provision of state-like protection and help for persons displaced outside their country due to persecution by their government or, in some cases, by political and social forces beyond their government's control. The regime developed to respond to European situations, following the two World Wars, initially had a Euro-centric focus. Not surprisingly, the countries of Western Europe
and North America were the prime movers in setting up the regime and have been the mainstays of the regime, politically and economically. Scholars of 'regime', agree that the regime's objectives are to provide protection and assistance and to work for durable solutions to the refugees' situation. There are three durable solutions: the preferred solution being repatriation in safety following changes that allow for return or, failing that, settlement in the place of first refuge or resettlement in a third country.

World War I resulted in the collapse of four dynastic empires, the Ottoman, the Romanov, the Hapsburg and the Hohenzollern, which had dominated Eastern Europe for centuries (Marrus 1985: 52, supra note 2). This post-war political transformation induced several refugee movements (Kulischer 1948: 166-174). The world community actually established the extant international refugee regime to regularise and control the status of stateless people in Europe, emergent in the wake of the War (Loescher 1994: 33).

Germans poured across the new frontiers from Alsace-Lorraine following its reattachment to France. Others moved south from northern Schleswig, territory now governed by Denmark. Refugees also entered Germany from Eupen and Malmedy, now joined to Belgium. From the East, German refugees moved westward from former Reich provinces, which had become part of Poland as a result of the Treaty of Versailles. In addition, the Treaty of Trianon, which officially signalled the collapse of Hapsburg authority, triggered a massive exodus of Hungarians from areas lost to Rumania, Yugoslavia and Czechoslovakia.

Flight from the former Tsarist Empire after the Russian Revolution also involved many nationalities. There was particularly large displacement of Jews resulting from their systematic persecution along the western borderlands of Russia. Other refugees, hostile to the Bolshevik regime, either poured north into Finland and the Baltic provinces, or moved south to Odessa and the Crimea. Between 1918 and 1920, refugees fleeing the revolution crossed the Ukrainian border into Poland, as did thousands of Poles who had been driven eastward during World War I.
The post-War peace treaties\(^1\) acknowledged that millions of people would be residing as minorities in culturally, linguistically, or religiously alien environments. Western nations initially enlisted the aid of private agencies to address the emerging burden of refugee assistance. However, international cooperation after World War I eventually resulted in the creation of the League of Nations\(^2\). In 1921, the League of Nations established the position of the High Commissioner for Refugees to address refugee problems (Martin 1993: 753-755). Unfortunately, support for the Commission dissipated soon after its formation, as did the goal of achieving universally protective refugee policies, because of resistance from countries receiving refugees during the years immediately preceding World War II\(^3\).

In fact, between 1922 and 1926, under the auspices of the League of Nations, several treaties were concluded to recognise displaced people as refugees. Since these treaties created certain obligations on the contracting states, it became necessary to define the term ‘refugees’. The League of Nations’ treaties initially defined ‘refugees’ as a category or group of persons who were (a) outside their country of origin, and (b) without the protection of the government of their home state (Bose 2000: 9).

Once the world community became fully aware of the extent of atrocities committed by Nazi Germany during the War, most governments acknowledged, at least to some degree, that refugee and asylum issues were critical to the safety of

\(^1\) These treaties included: the Treaty of Brest-Litovsk (1918) between Germany, Austria-Hungary, Bulgaria, Turkey and Russia; the Treaty of Versailles (1919), the Treaty of Saint-Germain (1919) between the Allied Powers and Austria, the Treaty of Trianon (1920) between the Allied Powers and Hungary and the Treaty of Riga (1921) settling the Polish-Soviet frontier.

\(^2\) The scope and carnage of World War I had a considerable impact on the attitude of States toward the use of force. With the strong support of President Woodrow Wilson, the creation of the League of Nations became an integral part of the peace settlement. Though the League did not prohibit war or use of force, it did set up a procedure to restrict international hostilities to tolerable levels. In particular, the League system included a guarantee by member states of the independence and territorial integrity of each member against external aggression and authorized the use of collective economic and military measures to defeat such aggression.

\(^3\) A large number of anti-fascist refugees attempted to flee the new governments in Italy and Germany during the 1930s. In particular, the Western democracies witnessed panic-stricken flight during the two years prior to the outbreak of the Second World War. Economic depression in the United States and Western Europe also contributed to anti-immigrant policies. France, however, was an early haven for asylum seekers until it also added restrictions to its immigration law. The League of Nations was powerless to act throughout this crisis, given the fact that most Member States were reluctant to accept more than a few thousand refugees. In 1938, Hungary, Yugoslavia, Italy, Belgium, Switzerland, and the Netherlands took measures to reduce their earlier rates of acceptance and to reinforce frontier guards. Within a year, Europe was immersed in another grand scale war while Adolf Hitler simultaneously proceeded with his policy of ridding the Reich of non-Aryans and political dissenters.
nations and the preservation of human rights. In the late 1940s, the US admitted approximately 350,000 individuals, displaced by the War (Loescher and Scanlan 1986: 2). By 1950, the newly formed UN initiated measures designed to define international refugee law. The UN General Assembly's first priority was to establish an office that would effectively oversee international refugee issues, resulting in the creation of the UNHCR. A subsequent international conference produced the UN Convention Relating to the Status of Refugees, an agreement that directly addressed the problem of European refugee flows due to events prior to 1951. A 1967 Protocol modified the 1951 Convention to apply a broader definition of refugee.

According to the 1967 definition, the following four elements are required for a person to attain refugee status: firstly, the person must be outside the country of his nationality; secondly, the person must be unwilling or unable to seek the protection of that country; thirdly, this inability or unwillingness must arise from a well-founded fear of persecution; and finally, the feared persecution must derive from being a member of a certain race, religion, nationality, or particular social group or from holding a particular political opinion.

The strategic dimension of the definition comes from successful efforts by the Western states to prioritise protection of persons whose flight was motivated by pro-
Western political values. As anxious as the Soviets had been to exclude political émigrés from the scope of the Convention for fear of exposing their weak flank, the more numerous and more powerful Western states were preoccupied to maximize the international visibility of that migration. As a result, it was agreed to restrict the scope of protection in much the same way as had been done in the post-World War II refugee instruments. This apparently neutral formulation facilitated the condemnation of Soviet bloc politics through international law (Hathaway 1991: 7).

However, from 1920 until 1935, refugees were defined largely in juridical terms, which meant that they were treated as refugees because of their membership of a group of persons effectively deprived of the formal protection of the government of their state of origin. The purpose of refugee status, in juridical terms, was to facilitate the international movement of persons who found themselves abroad and unable to resettle because no nation agreed to assume their responsibility (Hathaway 1991: 3).

Regional instruments adopted by Africa and South American states have given a wider meaning to the concept of refugee. The OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa (1969), while retaining the definition of refugees in the 1951 UN Convention, added that the term refugee shall apply to "every person or persons, who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/their country of origin or nationality is/are compelled to leave his/their place of habitual residence" (Bose 2000: 12). Besides broadening the refugee definition, it also strengthens the institution of asylum. Member states of the OAU, proclaims Article II, 'shall use their best endeavours to receive refugees and to secure the settlement of those unable or unwilling to be repatriated'. The principle of non-refoulement is stated without exception, although a call is made to lighten the burden borne by the countries of first refuge (Goodwin-Gill 1990: 107).

The Cartagena Declaration, adopted by the Central American governments in 1984, further expanded the definition of refugees to include, "persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order"
The Organization of American States (OAS) definition, synchronized with the Cartagena Declaration, adopted by the Latin American states in 1984, shares some of the innovative characteristics of the OAU Convention. First, it acknowledges the legitimacy of claims grounded in the actions of external powers by virtue of its reference to flight stemming from foreign aggression. Second, it offers a qualified acceptance of the notions of group determination and claims in which the basis or rationale for harm is indeterminate. The qualification stems from the fact that while generalized phenomena are valid bases for flight, and while acceptance of a claim is not premised on any status or characteristics of the claimant or a group to which she belongs, all applicants for refugee status must nonetheless show that their lives, safety or freedom have been threatened (Hathaway 1991: 20).

If one qualifies as a refugee under the Convention, he is entitled to certain statutory protections. Article 33 of the Convention articulates the principle of non-refoulement, the keystone of a refugee’s rights under international law. This principle dictates that a state may not return a refugee, within its borders, to his or her home country to face persecution. A refugee, however, must first be admitted within the borders of the receiving state and, once there, may still be removed to another country willing to extend acceptance and protection. The Convention does not bestow a right to asylum upon the refugee. Thus, any conferred right is actually a right of the state, as a sovereign, to grant asylum at its discretion.

In sum, international law may be said to recognize four categories of refugees. First, there are refugees defined by the Convention and the Protocol. Convention refugees are entitled to claim protection against return to a country in which they fear persecution from any of the more than one hundred state parties to the accords. They may also invoke the full range of rights set out in the Convention, and call upon the institutional support of the UNHCR. Second, there are refugees who are protected by a regional agreement. Such persons may be at risk of return to a situation of serious disturbance of public order, rather than persecution. Nonetheless, at least, within Africa and Latin America, they are generally protected against return, and may be entitled to other preferential rights akin to those afforded to Convention refugees.
Third, there are refugees who fear harm as a result of serious disturbances of public order, but who are not able to invoke the protection of a special regional arrangement. These refugees from man-made harm are entitled to special consideration prior to return to their state of origin, but they may not claim protection from return as of right except as stipulated in the national legislation of the asylum state. Finally, all persons who are involuntary migrants, as a result of natural or man-made causes, may claim institutional support of the UNHCR by way of material assistance, aid in voluntary repatriation or resettlement and, in some cases, legal protection. This residual class of refugees, however, has no special claim to protection under international law.

**Regime influence on states**

The international refugee regime influences host governments for both practical and normative reasons. Practically, international assistance increases a country’s ability to accept refugees by providing financial assistance, stimulating domestic markets and creating infrastructure (wells, clinics, roads) when refugee camps are constructed. The cost of refugee relief to Pakistan in the mid-1980s was about one million dollars a day, all of which was financed by contributions from foreign governments (channelled through the UNHCR) and private voluntary organisations. Cooperation in provisioning of refugee relief has occurred in so far as states have perceived themselves to have a linked interest in contributing. Where there have been strong structural inter-connections between issue-areas, the UNHCR has been able to appeal to and channel states’ interests in other issue-areas – notably in migration, security, and development – into a commitment to refugee protection. Where these structural interconnections have been weak or absent, attempted issue-linkage by the UNHCR has largely failed, undermining the prospects for cooperation (Betts 2008: 29).

At the normative level, the threat of bad international publicity is used by refugee organisations to pressure host governments towards more positive refugee policies. Since most governments desire to be in good international standing and do not wish to appear inhumane, so the publicity given to refugee abuses is a political consideration shaping their responses.
One reason for pressure from the international refugee regime not necessarily translating into policy action stems from sensitivities about national sovereignty. By demonstrating that borders can not be controlled, a mass influx challenges and undermines the government's sovereign right to determine who enters its territory. The influx also creates a situation of dependence for the host government by forcing it to seek international assistance to cope with the refugee burden. Sometimes they are required to compromise their preferred policy directions to accommodate recommendations by international organisations to incorporate long-term refugee assistance into national development programmes. Such pressure can be viewed by the government as a threat to its control over policy-making, and is particularly resented by those who advocate independence from imperialism and neo-colonialism.

In sum, the need for assistance, the avoidance of negative publicity and institutional weakness, all move the host government toward interaction with the international refugee regime which, in turn, pressurises it towards more positive refugee policies and practices. However, this relationship is not a straightforward one. Interaction is accompanied by countervailing tendencies, such as host governments' leverage over international organisations, and sensitivities about sovereignty that may offset the positive influence of the international refugee regime.

The relations with the sending country also influence the host governments' refugee policy decisions, demonstrated by the fact that most countries accord asylum to applicants depending on their countries of origin. Zolberg, Suhrke and Arguayo refer to this as the 'Haitian-Cuban syndrome' (Jacobsen 1996: 664). In the 1980s, Cuban asylum seekers, leaving an unfriendly communist country, were defined as refugees by the US, even though they could not prove individual persecution. Asylum seekers from Haiti, in a similar situation but not from a communist country, were not eligible for refugee status and hence were turned back. The situation, by no means unique to the US, reflects the role of geo-political and ideological consideration in refugee policy-making. Pakistan has treated Iranian refugees more negatively than Afghan refugees. The opposition of the Costa Rican government to the Sandinista regime in Nicaragua resulted in Nicaraguan refugees receiving generous treatment compared to that accorded to Salvadorans (Jacobsen 1996: 664-665).
The propositions about refugee policy-making concern a host country's internal or domestic context and fall into two categories. The first, local absorption capacity, refers to social, economic and cultural factors affecting the local community's response to refugees. It is argued that this response, in turn, influences the government's choices. The second category, national security, examines how security considerations, both independent of and with respect to refugees, affect policy-making. In examining absorption capacity and security threats, it is essential to focus on the local receiving community rather than the aggregate national economy.

Policy, in order to be relevant and effective, should be informed by an awareness of refugee needs and their strategies to fulfil those needs. In the same way that refugees adjust to their overall environment, they also sometimes adjust, according to their own strategies, to the policies which affect them, either because of or in spite of programme goals. Policies can often be adjusted to improve effectiveness or alter strategies. Refugees are survivors. The strategies which they employ to survive, both individually and as groups, reflect their cultural backgrounds as well as their perceptions of the future. It is essential that those involved with refugee resettlement be aware of the nature and dynamics of adjustment, not only at the individual level, but also at the larger refugee community level, in order to facilitate the survival of both.

Anomalies in the system: crumbling of refugee regime

The anomaly that emerged around 1990s existed at two levels. The countries that created and supported the refugee regime were attempting to alter it to such an extent as to be accused of repudiating seventy years of international humanitarian action. A second anomaly appears on closer inspection. The European and North American countries, accused of closing the doors on asylum seekers, did not have legal provisions and operational procedures in place for being countries of first asylum, where refugees could get temporary protection and assistance, while waiting for political changes that would allow their repatriation.

The very notion of repatriation, as the preferred durable solution, presumes that countries will give temporary refuge. The states that helped create and saw
themselves as the guardians of international refugee regime often encouraged other countries to honour first asylum, as in the case of urging Southeast Asian countries during the Indo-China problem in the late 1970s. Yet, they had not institutionalized the capacity, legally and operationally, to grant it themselves. In Western Europe and North America, the de facto preferred durable solution for refugees was (and typically still is) permanent incorporation into the receiving society.

Asylum in Western European countries, since the 1950s, had not meant temporary admission and protection, but a system of adjudication that lead to acceptance or rejection of permanent settlement for asylum seekers. In the US and Canada, mechanisms for permanent resettlement of refugees from first asylum countries were well developed, but neither had institutionalized mechanisms for being countries of temporary refuge, especially in cases of mass influx. When a mass first asylum movement from Cuba hit the US, during the Camarrioca boat lift in the 1960s and again especially in the 1980 Mariel boat lift, there was policy panic. Mass asylum seekers could only be handled, after intense and prolonged domestic political negotiation, within a programme to provide permanent settlement of those who turned up uninvited and uninspected seeking refuge.

Following the Mariel boat lift, the US followed a policy of deterring access to its soil from Cuba and Haiti in order to reduce the probability of a mass influx of asylum seekers. During the Reagan and Bush administrations, Central American migrants were generally portrayed as undocumented, economic migrants rather than refugees or bona fide asylum seekers. The Reagan administration sought public support for its Central American policies by alluding to the potential for ‘foot people’ crossing in large numbers from Central America if communist governments were not prohibited from being established in the region, or ousted in the case of the Nicaraguan Sandinistas. In the meantime, they simply were ‘illegal aliens’.

Unfortunately, nations are yet to give serious attention to the concept of burden-sharing. However, recent events indicate a willingness to move in this direction. During the early stages of the Haitian boat exodus, President Bush attempted to disperse the refugees throughout Latin America by soliciting aid from Honduras and Venezuela (Kamen 1991: A36). Similarly, President Clinton requested
help from the Caribbean nations Jamaica, Grenada, Dominica, Antigua, and Panama. Neither effort was very successful because each lacked adequate coordination and funding\(^8\). This directly addresses the problem; by controlling the flow of refugees, a well-organised burden-sharing programme furthers the human rights principles of international refugee law, while reducing the burden imposed on the receiving states.

In addition, adjudication of asylum claims generally adhered to a strict interpretation of the UN Convention and Protocol definitions, with the exception of the Cuban case, where precedent and law led to fairly generous treatment of arrivals, including granting permanent residence in virtually all cases through 1996. Particularly in regard to Central American asylum seekers in the 1980s, approval rates for asylum applicants were very low. There were domestic policy differences and debates about the low approval rates, wrapped in deep divisions within the US about Central American policy during the Reagan and Bush presidencies. Many Central Americans, aware of the low approval rates, did not apply for asylum but entered the country and remained in an unauthorized status, a strategy held against them as proof that they were not politically persecuted refugees, but rather economic migrants taking up unlawful residence.

The advanced industrial states created the international refugee regime, supported it politically, diplomatically and financially, and had large (in some cases majority) support from domestic constituencies for the refugee regime as part of foreign and domestic policy. Nevertheless, they did not themselves have the basic prerequisite for its implementation, that is, an institutionalized mechanism for providing temporary refuge or, in other words, being a country of first asylum.

Arguably, there was not one, but two international refugee regime during the Cold War – one in the industrial countries of the first world vis-à-vis Communism, and the other for the rest of the world. The second regime was where the UNHCR primarily acted, but it too was affected by the Cold War, particularly the proxy wars sponsored and supported by the East and West. The first regime in industrial

\(^8\) Because of the harsh economic conditions in Honduras and reported abuse of refugees by military personnel in that country, nearly all of the Haitians who were transferred there under the Bush Administration voluntarily repatriated.
countries, also termed as the Northern regime, was designed for political purposes of the Cold War (Keely 2001: 306). It was an extension of the strategy of containment. The regime operated in a fundamentally different way from the mantra typically used to describe the nature and mandate of the international refugee regime. Following the end of the Cold War, the states involved in the Northern regime tried to realign the policy and procedures, which seemed irrelevant to a world that was no longer bipolar. This led to internal resistance by significant parts of the electorates and to claims of reneging and even destroying the refugee practice built over decades. Phrases like 'Fortress Europe' entered political discourse to castigate governments for changing the rules of the game in reaction to emerging changes in geopolitical structure.

The Northern refugee regime was an instrument to embarrass communist states, and in some cases was used with the intent of frustrating the consolidation of communist revolutions and destabilizing nascent communist governments. The primary focus was originally the Soviet Union and the states of Central and East Europe, over which the Soviet Union established hegemony following World War II—the countries behind the Iron Curtain. The idea was to admit and resettle those who 'escaped communist oppression'. At a minimum, the programme could be used to demonstrate the bankruptcy of a system from which people had to escape, often at great peril. When people voted with their feet, even at great cost, they went to West and there was no comparable movement to a workers’ paradise in the East.

In Europe, the existing asylum system basically assumed that applicants would be from the East. Fairly generous assistance, commensurate with the welfare state policy that was generally pursued (and probably with a generous pinch of guilt about Holocaust era behaviour), and an adjudication system that provided the benefit of doubt to the applicant, prevailed. In this scheme, the UNHCR had virtually no role. The European desk in the UNHCR was increasingly attenuated after settlement of the people displaced by World War II. The UNHCR opened its first office outside Europe in Burundi in 1962 and quickly became an agency operating in the Third World.

In North America, especially the US, the Northern refugee regime primarily resettled those from communist countries. This included modest numbers of defectors from behind the Iron Curtain and also a good proportion of the periodic larger flows,
like from Hungary in the mid-1950s. It also included large numbers from Cuba and Indo-china in which the US had taken a special interest. Resettlement in the US was not afforded to all the countries where communist government had been installed. The Cuban case was important because Soviet influence in the Western Hemisphere was seen as particularly threatening within the logic of Cold War containment. The US accepted mass influxes (Camarrioca and Mariel) and negotiated orderly departures. Despite abandonment of all hope that mass exit would disable the government, US administrations of both parties accommodated Cuban refugees, in no small part due to the influence of Cuban Americans, who had previously been the beneficiaries of generous admission policy aimed at destabilizing the Castro regime in Cuba.

The political propaganda available from flows out of the Soviet orbit in Europe and countries that adopted communist governments was premised on a number of assumptions. First, the flows would generally be small in number, punctuated periodically by spurts, as with Hungary in 1956, Cuba beginning in 1959, the Czech Spring in 1968, and Indo-china beginning in 1975. Second, in general there was political support from domestic constituencies for this anti-communist programme. The programme itself was a tool to reinforce internal political support for an anti-Soviet, anti-communist foreign policy because Western generosity would strengthen the domestic constituencies’ indignation at the evils of communist ideology and oppression. Third, there was no question of repatriation because the soviet system of communism would continue for an indefinite future and living under communism was persecution enough. Resettlement was the only alternative for freedom fighters and those willing to risk all for freedom.

These premises turned the stated objectives and logic of an international regime on their head. The preferred durable solution of international cooperation on refugees was repatriation; assistance and protection being resorted to help stabilize explosive situations. The refugee regime was a necessary tool to deal with failures of the state system. When a state does not or cannot provide the minimum protections expected by citizens, the result is flow of refugees over external borders into other states. In such a situation, the international community of states agreed to act collectively to protect and assist persecuted people, who were unable or unwilling to seek the protection of their own government, and work for durable solutions. The
preferred solution was for the citizens to go back to their own states, in safety. When that occurred, the state system failure stands repaired.

In the Northern refugee regime logic, the goal of the refugee regime was not to help restore stability to the international system, but to destabilize governments, cause states to fail, and to create domestic support for a policy of constant opposition and weakening of communist governments. Also, assured nuclear destruction from both sides limited the levels of conflict either side was willing to engage in. Direct confrontation of the great powers was avoided. Three types of proxy contests were the usual modes of conflict: encouraging refugee exit from Warsaw Pact countries and other Soviet satellites; competition to win political allies and forge alliances in developing countries; and support for opposing sides in civil wars in the Third World.

In some proxy wars, the Northern regime states, especially the US, were willing to resettle citizens from selected Third World countries, Cuba and Indo-china being the major examples in numerical terms. However, the willingness to resettle persons from communist governments was not universal. Cuba was a test case to see if the exodus could weaken the capacity of the Castro government to consolidate the revolution and lead to a change of government and, thus, a solution to a communist foothold in the Americas. As happened in Eastern and Central Europe after World War II, refugee exodus from Cuba did not prevent regime consolidation. The Indo-china refugee programme of the US had an element of revenge and loyalty to comrades in arms, as well as a hope of weakening a new government, as part of a policy of isolating the Vietnamese government. But a strategy of keeping a viable opposition in place, as in Nicaragua, or assisting resistance, as in Afghanistan, were also options in place of large-scale permanent settlement in the US.

Meanwhile, the developing countries pursued, what is typically thought of as the normal refugee regime, a policy of protection and assistance, seeking permanent solutions to refugee displacement. The general assumption in countries of ‘first asylum’ was definitely not that the durable solution would be permanent incorporation into the country. For example, the refugees of the Pakistan civil war in India were not allowed settlement by the Indian policy. Similarly, the Southeast Asian countries insisted that boat people flows in the late 1970s would not be settled, but
must be moved out to third country resettlement if they were to continue providing first asylum. In order to address the issue of return of internally and externally displaced persons, regional efforts were made by Central America in the 1980s.

In many emergencies, the UNHCR provided coordination and leadership to bring relief and state-like protection to refugees. Since the opening of its first non-European office in 1962, it increasingly became an agency that operated primarily in the developing world. There have been important developments in the capacity of the UNHCR and the international regime generally to assist refugees, even against overwhelming odds of numbers, conditions, and geographic isolation. Lessons have been learned and improvements made, for example, with regards to awareness of and attention to the needs of women refugees and to women and children family units in refugee situations. Incremental improvements have also been made with regard to care and attention paid to repatriation efforts.

New challenges have been addressed and changes made in operational assumptions. For example, the scope of the refugee operations in northern Iraq and military involvement in providing logistical help led to re-evaluation of appropriate roles of the military in complex humanitarian emergencies. However, the security of humanitarian workers has been called into question as combatants rejected the notion of impartial humanitarian aid. Some of the challenges are still to be resolved, especially those involving seemingly impossible choices between two evils. For example, if refugee camps are controlled by combatants in a civil war, should aid still be given when it is clear that it will help the combatants to continue a war and create more casualties and refugees? Or should aid be withheld from such camps, causing suffering and death of innocent people in the camps that fighters’ control?

The refugee regime in the Third World has operated, more or less, as refugee regime is typically described. Even while addressing new challenges, it has adhered to the assumptions of the conventional description of what the refugee regime is and should be. International non-governmental agencies help governments in countries of first asylum to protect and assist refugees from war and persecution. The UNHCR is usually the lead international agency that provides oversight about state compliance with international humanitarian law affecting refugees, and along with other
international actors, tries to bring about durable solutions, especially the return of refugees to their own country in safety.

It is definitely not being argued that the activities of the refugee regime, operating in the developing world, go smoothly. Often states require prodding to provide asylum and facilitate assistance. An important challenge has been the very impact of the Cold War on Third World conflicts that have produced refugees. These conflicts often have had an element of proxy wars between East and West, with the government or rebel groups having support of the great powers. Vietnam, Afghanistan, Cambodia, Angola, Ethiopia and Nicaragua are a handful of countries in which they carried out their rivalry. In the 1970s and 1980s, refugees increasingly became long-stayers, that is, the length of time in refugee camps extended and repatriations became slower and harder to achieve. Some refugee flows had warrior refugees mixed into the populations and refugee camps became staging areas or, at least, havens for combatants.

During the Cold War, these two refugee regimes prevailed in different regions of the world. The Northern regime was a tool to create instability and relied on resettlement rather than repatriation. In the South, the regime was a mechanism to contain and control the political impacts of civil wars and state failures, related to ideological conflict, often combined with an element of ethnic or nationality conflict. In many cases these conflicts were exacerbated by great power involvement as part of Cold War conflict. The objective of the refugee regime in the developing world was to stabilize situations by providing state-like protection and assistance to victims and to repatriate them safely, although remaining in place or overseas resettlement also took place. The articulated ideal, however, was political solutions that allowed repatriation and return to the status quo, where the citizens went back to their country.

In the early 1980s, European governments noticed that the composition of asylum seekers in Europe was changing to include more from the Third World, with the numbers rising rapidly. European governments got worried about terrorists and about becoming political or even military staging grounds for opponents of sitting governments, such as Khomeini had been in France. They further wondered whether the Soviets facilitated refugee transit into Western Europe to fill up the asylum
systems resulting in huge cost for the Europeans. They thought of the Soviets as playing their own game of using refugees to discomfort the adversary.

Within Europe, the increase in asylum applications and the change in countries of origin affected the attempts by the European Communities (now the European Union) to attain a single market that allowed free movement of capital, goods, and people. Member states became wary of permitting free movement and settlement of refugees accepted by other countries. European governments also became concerned about multiple asylum applications in different countries by the same people or ‘asylum shopping’, when applicants turned down by one country applied to another.

**Western resistance to refugees and burden-sharing**

The Mariel boat lift in 1980 made the US government acutely aware of its vulnerability to mass migration flows. The US had no legal mechanism to admit temporary asylum seekers, until political conditions changed and allowed for return in safety to countries in the region. The US refugee system was geared toward permanent resettlement of refugees from overseas camps. During the 1980s and 1990s, under Reagan, Bush, and Clinton administrations, the asylum policy has generally been to keep people off US soil by interdiction on the high seas and other means, preventing them from seeking asylum.

Central Americans, in the 1980s, were typically denied asylum, with very constricted approval rates. In 1994 and 1996, Haitian and Cuban access to asylum was very limited; attempts were made to either convince other governments in the region to provide temporary protection outside the US territory or programmes were mounted to house them at the US naval base at Guantanamo, Cuba and, therefore, not affording the right to seek political asylum.

The increase in asylum applications by arrivals in Europe and the US has led to a series of legal and policy changes, making it more difficult to apply for asylum or to expedite the adjudication process, including restricting judicial review of asylum decisions by administrators. Many European countries have introduced visa requirements for persons from refugee producing countries. The Schengen and Dublin
agreements within the European Union (EU) framework have introduced ideas like ‘safe third country’ that allows return of asylum applicants to any country they passed through, which has a credible refugee process. These agreements have developed rules for countries that are responsible for making asylum decisions and permit other countries to accept a negative decision and not re-adjudicate a case.

Countries have introduced sanctions on airline carriers from transporting people without proper or on false documents. Some countries have introduced time limits within which a person must apply for asylum after entry. In short, European countries, the US, and Canada have moved away from a system that bent over backward in favour of the asylum applicant, a system developed in an era when the applicants were almost uniformly from communist countries behind the Iron Curtain or other Soviet dependent nations. Now asylum is being given more in line with strict interpretations of what is required under international treaty obligations, such as the Convention and Protocol on the Status of Refugees.

This change in policy has led to parts of domestic constituencies, in many liberal democracies, crying foul. There is an accusation of unfairness in making access more difficult or making the burden of proof harder. Implications of racism are introduced because many newer applicants are from Third World countries, rather than from Eastern and Central Europe or the Soviet Union. At the same time, other parts of European electorates support right wing, anti-immigrant policies. The ebb and flow of political controversy continues with no clear consensus on asylum policy.

The events in the erstwhile Yugoslavia, first in Bosnia and subsequently in Kosovo, have led European governments to develop temporary protection measures. Germany returned about three quarters of the 400,000 Bosnians to whom they gave temporary protection. In case of the Kosovars, Germany specifically invoked paragraph 32A of their amended refugee law authorizing temporary protection.

Can the countries that developed the Northern refugee regime reshape their policy, allowing temporary first asylum, without the expectation that asylees will typically become permanent residents? The answer is not clear. While domestic constituencies may make it difficult, logistics may make it harder, and labour force
considerations, reflected in low removal rates of rejected asylum seekers, may spell ultimate failure. Refugee flows from the Balkans are test cases that are still in process.

The Western democracies set up a refugee regime during the Cold War to destabilize Soviet-linked countries rather than to help control unwanted flows and protect persons until political stability allows for safe return (Keely 2001: 313). Whatever contribution that system made to the decline and fall of communism in the Soviet orbit, did not come without costs. The situation has declined due to increased levels of asylum applications from the Third World and refugee flows from the Balkans. It is not a good idea to pervert, corrupt, or abuse a system meant to re-establish international stability by having it increase instability.

The refugee regime has deep problems, not only because of the challenges of refugee flows. Past practices fundamentally diverged from the stated goals of the refugee regime, to the point of supporting two parallel regimes. After the end of the Cold War, the states operating in the Northern regime sought to adapt it to non-Cold War and non-bipolar political structures. However, domestic political controversy inhibits consensus on the extent of change to the Northern refugee regime. Meanwhile, the refugee regime in the developing world continues to face challenges of protection and assistance, even while Cold War proxy conflicts involving big power have receded, altering – but so far not notably reducing – political conflict dynamics in the South.

The contemporary international refugee regime is not sufficient to cope with refugee problems. Many states have shifted from an exile-oriented approach to focus more on security and root causes, and using the language of human rights and protection. “The protection and human-rights based approach blurs certain legal categories because it can be argued that all people within the state need protection and support. The displaced, therefore, may lose their ability to have protected status as refugees” (Lloydd 2004: 1). The actions of a state trying to limit the number of asylum seekers and migrants crossing their borders can actually lead to greater problems of racism and xenophobia. The events of 11 September 2001 only worked to reaffirm the image of foreigners as being dangerous.
Like other forms of trans-national migration, refugee migration and the international refugee regime are likely to be profoundly affected by the growing diversity in the political and economic circumstances in which people are forced to move, and by the greater complexity of interaction between policy processes in different contexts of forced migration. In Western Europe, for instance, refugee protection has become all but subsumed within the immigration control regime. In sub-Saharan Africa and the Balkans, meanwhile, refugee protection is defined largely by changing systems of international humanitarian response, the UN and the regional peace-keeping and conflict resolution initiatives, and particularly in many parts of Africa, by the wider and increasingly severe environmental and socio-economic challenges affecting both displaced and ‘host’ populations.

In the Middle East, South-East Asia and Central America, issues of refugee protection are affected more directly by political and diplomatic processes shaping (often highly conflicting) political and economic relations between states, and by conditions in the labour market that affect refugees and other migrants’ livelihoods and security of stay. In the Commonwealth of Independent States (CIS), refugee protection is almost entirely subsumed into national and regional political initiatives, focussed on issues of nationality and nation-building, minority rights and the management of inter-ethnic relations.

The most immediate danger for the international refugee regime, of course, is a further regionalisation of the financing of refugee protection and associated humanitarian assistance, resulting in meagre funding for refugee protection and assistance in regions where the need is greatest and resources are most stretched. But, the challenges faced in terms of the content and balance of activities and instruments that define the international refugee regime are also considerable.

Since securing refugee protection will continue to involve very different activities and policy focuses, there is a continuing need for flexibility and variation in the UNHCR’s mode of operations in diverse contexts. This is likely to pull the organisation in different directions, potentially opening up its activities to greater manipulation by governments that are less committed to refugee protection, reflected in the current debates surrounding the organisation’s protection versus humanitarian
roles and responsibilities, and its ‘externalist’ versus ‘internalist’ orientation vis-à-vis the causes of and solutions to refugee problems. Difficult balances will have to be struck in relation to the extent and nature of involvement in other policy regimes, such as in-country humanitarian protection and assistance, or migration control regimes that could risk compromising the UNHCR’s core refugee protection mandate.

The growing pressure for diversifying the means of securing refugee protection in different parts of the world increases the importance of maintaining a clear, shared view of core objectives and core principles within the international refugee regime. This will depend on the development of agreed and explicit criteria for defining and fine-tuning protection priorities and protection needs within and across different national and regional situations of forced migration. However, the difficulty of maintaining the clarity of vision and purpose has never been greater. The growing suffering and vulnerability of poor and marginalised communities, both from North and South, increasingly clouds the special claims of the refugees, which, in turn, underpins the international refugee regime. So, even greater effort will be needed in defining and communicating the special needs of forced migrants.

Need for coordination among all concerned

The progressive shift in power and authority away from the states reflects, in part, that refugee protection is likely to involve an increasing range of actors, including not only governments and inter-governmental organisations, but also voluntary and civil society institutions, Trans-National Corporations (TNCs), national and international NGOs, and media organisations, playing a variety of roles at different levels from the local up to the international. The future of international refugee protection rests largely on how these actors shape the causes and responses to forced migration in different contexts. Issues of complementarity and coordination, and of conflicting roles and objectives among these actors vis-à-vis refugee protection will be increasingly crucial to the strategies of the principal international refugee, human rights and humanitarian organisations.

The role of international organisations in advocating, facilitating, and capacity building, the effectiveness and commitment of local, national and regional actors in
influencing the activities and policies of other international actors, is crucial to the future of refugee protection. As national and international governance structures undergo transformation, the survival of the international refugee regime increasingly rests in the hands of non-governmental actors. Endurance of the international refugee regime in a seemingly difficult, volatile and unpredictable political and economic environment depends upon innovation, imagination, and risk-taking on the part of all the principal refugee protection organisations. Though core principles must be upheld and protected, but there are dangers in simply holding onto old certainties that are palpably breaking down. While the states, as the principal actor on the international scene, shall always have a role in providing protection to the uprooted and displaced, the new refugee regime visualises a distinct role for trans-sovereign forces in handling humanitarian crises revolving around refugee exodus (Mertus 1998: 322).

**Face-lifting the extant refugee regime**

The UNHCR is a well-meaning organisation incapacitated by sundry handicaps. Not only is the Commissioner without the power to compel states to cooperate on refugee problems, but the Office also lacks sufficient funding to be an effective force in a world undergoing enormous social and political change. As part of an international agency, it must serve as a catalyst for obtaining asylum opportunities. The UNHCR must be expanded to meet the demands of the massive flows of migration around the world. A proposal has been mooted to divide the Office into various committees, each focusing upon a particular region in the world. Its main goal can be to coordinate efforts within a region when, for reasons of war, famine, impoverishment, or persecution, a large number of people are on the move. By tapping the resources of the developed nations within the particular region, the UNHCR would be in a better position to apportion the responsibilities of asylum through equitable burden-sharing.

In order for this plan to be effective, the developed nations must agree to submit to the authority of the agency in several ways. First, they should agree to annually contribute a certain amount of money to a regional fund\(^9\), which would finance economic and social programmes that are deficient in other countries within

\(^9\) The amount of contribution may vary, perhaps based upon a combination of factors such as gross national product and the indirect costs of immigration to the national economy.
the region. As a result, the poorer states would be able to accept an equitable share of refugees, thereby eliminating a bulk of the burden normally imposed on the developed nation. Second, all the nations within a region would have to abide by a unitary asylum standard. This approach would abolish the existing inconsistencies while fulfilling the goal of harmonisation, set out in both the Dublin and Schengen Conventions. It would also provide a more active role for regional courts of law, responsible for appellate review of the asylum decisions. It would be naïve to think that this plan would face no obstacles. Indeed, the mere establishment of a workable legal mechanism for such a programme presents its own challenges. The proposal is likely to meet initial opposition from the more developed countries, because of their reluctance to cede sovereign powers relating to border control and judicial review. However, such barriers are surmountable, especially given the rapid transformations in favour democracy around the globe. The end of the Cold War has created a new era of cooperation among former enemies, most clearly evidenced by the Gulf War coalition. In this new world order, the conceptual structure of international law stands significantly revised. The new atmosphere lends itself to a discussion of a wider range of formerly internal matters.

There are two reasons for the great potential of this solution. The Western world is dealing with a surge of nationalism that has resulted in opposition to liberal asylum policies. Under the new international legal regime, wealthy states, like the US, surrounded by less developed nations, will gain additional assistance from these countries, without sacrificing their commitment to provide a safe refuge. In addition, this proposal contemplates a change in existing refugee law by stripping the refugee of the choice of refuge. Although the UNHCR may consider refugee preferences in determining the final destination of refugees, the burden sharing objective will allow officials to ferret out those asylum seekers who are exclusively economic migrants.

Second, the new arrangement will maintain the spirit of the original Refugee Convention. The remodeled refugee agency will continue to assert the right

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10 A more ambitious proposal would include the establishment of a United Nations Court on the Protection of Refugees and Displaced Persons. This court would allow aggrieved refugees to redress violations of international refugee law.
possessed by victims of human rights abuse to migrate from the place of persecution. Thus, the humanitarian goals of the signatories to the Convention remain unscathed. In fact, the Declaration on Territorial Asylum specifically advocates the achievement of international cooperation in solving international economic, social, cultural or humanitarian problems and in promoting and encouraging respect for human rights. It declares that where a State faces difficulty in granting or continuing to grant asylum, States individually or jointly or through the UN shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

Occasionally, taken-for-granted situations reveal striking anomalies on closer inspection. Concern among European and North American countries about asylum seekers led to changes in policy, law and procedures about admission and adjudication of asylum claims in the late 1980s and the early 1990s. This resulted in accusations, like ‘fortress Europe’, levelled by refugee and human rights advocates against liberal, democratic states that had been the originators and supporters of the international refugee regime. Attempts to alter the terms of asylum admission were treated as virtual abrogation of seventy years of humanitarian law and practice.

It is clear that there are weaknesses in the regime of international protection. One of the most critical, from the UNHCR perspective, is the agency’s financial dependency on the voluntary contributions of states. Funding alternatives certainly need to be explored in the years ahead. There is also a suggestion for a new international convention to reflect the changing nature of refugee movements and the present preference of states for temporary solutions pending inevitable return. Experience with the Draft Convention on Territorial Asylum in 1977 provides a lesson in caution and refugee advocates need to take careful soundings in relation to what is realistically attainable. Greater attention must also be paid to migration, pure and simple, a phenomenon still lacking all but very basic international regulation.

While certainly not constituting an ideal scheme for the protection of refugees, the Refugee Convention, some feel, is still capable of evolving — accommodating

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11 This non-binding declaration, which reiterated many of the principles of the 1951 Convention, was unanimously adopted by the UN General Assembly in 1967. Building upon the spirit of the declaration, the United Nations subsequently convened a conference in 1977 to draft a Convention on Territorial Asylum which ended in failure.
contemporary developments and incorporating the protection needs of those who suffer socio-economic deprivations – being constant in motive but mutable in form. The Refugee Convention, they are convinced, will make significant progress in achieving its purpose of providing protection to those most in need of international protection and also in upholding the human rights and humanitarian objectives of various categories of refugees (Foster 2007: 354-355).

It is also felt that a world tribunal could be established by an international accord, under the auspices of the UNHCR. Though such a tribunal would be unable to consider individual cases, but it could decide for the whole categories of refugees, for example, Tamils from Sri Lanka, including which countries are most suitable to consider their applications for asylum (Dummett 2001: 36).

The challenge for the international community is to find ways by which the appropriate universal and regional mechanisms can be advised in advance of emergent crises and enabled, if not to pre-empt crisis through forceful means, then at least, to initiate conflict mediation and dispute settlement processes. A considerable investment is, therefore, still required in democratisation and development. But like political solutions in general, this has remained primarily outside the mandate of providing international protection to refugees.