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The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck

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The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997, has been hailed as a model of international solidarity and burden-sharing and criticized as an example of international buck-passing and questionable compromises. Looking back on this agreement—one in which both Sergio Vieira de Mello and Arthur Helton played significant roles—a fair conclusion might be that it was both. Though flawed in its implementation, however, the CPA does serve as a model of how interlocking commitments—to asylum, resettlement and repatriation—can promote regional cooperation in response to protracted refugee crises. Considering their roles in the CPA, though they operated from different institutional vantage-points, both de Mello and Helton showed an ability to combine humanitarian principles with political pragmatism.

Twenty five years ago, the international community responded to a burgeoning humanitarian crisis in Southeast Asia with a set of commitments that would dramatically reshape the refugee regime. In the summer of 1979, more than 350,000 Vietnamese and Laotian refugees were scattered in camps from Thailand to Hong Kong, and another half a million Cambodians were massed at the Thai border. Local promises of temporary asylum collapsed. Vietnamese boats were pushed back by the hundreds, and thousands of Cambodians were forced back at gunpoint into their country. Sea pirates raided helpless refugee boats, raping and plundering at will. Camps were filled to bursting and still they came, with untold numbers perishing along the way.

On 20–21 July, 1979, 65 governments responded to an invitation from the UN Secretary-General to attend an international conference in Geneva on Indochinese refugees. The new international commitments were several and significant. Worldwide resettlement pledges increased from 125,000 to 260,000. Vietnam agreed to try to halt illegal departures and, instead, to promote orderly and direct departures from Vietnam. Indonesia and the Philippines pledged to establish regional processing centres to speed resettlement and new pledges to UNHCR totalled about $160 million in cash and in kind, more than doubling the totals of the previous four years.

Although no formal commitments were made regarding asylum, the meeting endorsed the general principles of asylum and non-refoulement. Countries of first asylum, however, expected that no refugees would stay in their countries for more than a specified period. Thus was formalized a quid pro quo—temporary or 'first' asylum in the region for permanent resettlement elsewhere—or, as some came to describe it, 'an open shore for an open door'.

The pushback of Vietnamese boats was halted. Regional arrival rates fell dramatically as Vietnam cracked down on clandestine departures and a small trickle of direct departures began from Vietnam. More than 450,000 Indochinese refugees were resettled from Southeast Asian camps in the space of 18 months. From 1980 to 1986, as resettlement outpaced declining arrivals, refugee officials began to speak with growing optimism about solving the regional crisis.

But when Vietnamese arrivals surged again in 1987 and 1988, it became apparent that the old consensus would no longer hold. Western countries, faced with a rising tide of asylum-seekers at their own doors and persuaded that the Indochinese arrivals no longer warranted automatic refugee status, gradually had been reducing resettlement numbers and introducing more selective criteria. The agreement of 1979—first asylum for third-country resettlement—no longer held. Indeed, it seemed to some that open-ended resettlement, at least in part, was perpetuating an open-ended need for asylum.

In June 1989, almost exactly ten years after the first Indochinese refugee conference, another was held in Geneva. At the new international conference, the 70 governments in attendance adopted a new regional approach, which became known as the Comprehensive Plan of Action. The CPA established inter-locking and inter-dependent commitments among the first asylum states in Southeast Asia, the resettlement countries, and the governments of Vietnam and Laos. Some of these commitments were reminiscent of the 1979 agreement: to preserve first asylum, to reduce clandestine departures and promote legal migration, and to resettle refugees in third countries. The radically new ingredients of the Comprehensive Plan of Action were regional screening and repatriation. The five main objectives of the CPA (United Nations, 1989) were:

— to reduce clandestine departures through official measures against boat organizers and through mass information campaigns and to promote increased opportunities for legal migration under the Orderly Departure Program;
— to provide first asylum to all asylum-seekers until their status had been established and a durable solution found;
— to determine the refugee status of all asylum-seekers in accordance with international standards and criteria;
— to resettle those found to be genuine refugees in third countries as well as all Vietnamese who were in first asylum camps prior to the regional cutoff dates; and
— to repatriate those found not to be refugees and reintegrate them in their home countries.

The task of implementing the CPA fell to UNHCR, with financial support from the donor community. A Steering Committee was established, chaired by UNHCR and comprising representatives of all governments making commitments under the CPA, whether for asylum, resettlement or repatriation. Chairing the Steering Committee for UNHCR was Sergio Vieira de Mello, then Bureau Chief for Asia and Oceania. Widely acknowledged as one of the principal actors in both the design and implementation of the CPA, de Mello chaired the Steering Committee from 1989 to 1991 before departing on a series of assignments—including Special Envoy of the High Commissioner for Refugees in Cambodia, Director of Repatriation for the United Nations Transitional Authority in Cambodia (UNTAC), Head of Civil Affairs of the United Nations Protection Force (UNPROFOR), and United Nations Regional Humanitarian Coordinator for the Great Lakes Region of Africa. He returned to the issue in 1996 as Assistant High Commissioner for Refugees to preside over the phasing down of UNHCR involvement and the end of the CPA in Hong Kong in 1997.

In June 1996, de Mello was in Sungei Besi camp to attend closing ceremonies for Malaysia's last camp for Vietnamese boat people. 'There are few happy moments in the career of a refugee official', de Mello remarked in his speech (UNHCR 1996), 'and this is one of them. The CPA has been a model for multilateral cooperation, built on the principles of international solidarity, burden-sharing and proper acceptance of responsibilities. Its purposes were to end the ongoing tragedy on the high seas and to preserve asylum while reducing incentives for further mass outflow. It has been successful'.

But in what specific ways was the CPA successful and by what (and whose) criteria should that success be measured? In his book review of *The State of the World's Refugees: Fifty Years of Humanitarian Action* (UNHCR 2000), Arthur Helton wrote: 'To say that the Comprehensive Plan of Action for Indochinese refugees "restored the principle of asylum" in the region misses the real innovation in 1989, which was to introduce a repatriation option, including forced return' (2001: 269–270). If this is true, was this innovation a positive development and, if so, how and for whom? Finally, to what extent are the lessons of the CPA, its successes and its failures, applicable to other regional refugee crises? This paper will examine the outcomes of the CPA in its component elements—particularly, asylum, resettlement (including orderly departure), regional screening, and repatriation—and as a whole.

In general, it would be fair to look back on the CPA for Indochinese refugees as a qualified success. It could be argued that the CPA shored up flagging confidence in the asylum system worldwide, though its long-term impacts on Asian commitments to asylum were neither particularly positive nor potent. The CPA maintained commitments to international resettlement for those determined to be refugees (and to orderly departure for hundreds of thousands of humanitarian concern) but, in so doing, it undermined support for third-country resettlement within UNHCR and on the part of at least some governments.

The CPA also introduced the idea of regional screening and repatriation (including forced return of the screened-out), certainly the most controversial

element in the agreement but also, as Helton suggested, the only genuinely new initiative as compared to the 1979 understanding. As a human rights lawyer, Helton was generally critical of the screening and forced return as implemented under the CPA, not because he categorically opposed either one but because the screening procedures, in his expert opinion, did not offer benefit of the doubt to asylum seekers as was the standard in customary international law. Being a UN official, an international diplomat and a man committed to multilateral humanitarian action, Sergio de Mello, with an eye perhaps on the bigger picture, declared himself and his organization content that, while screening was not perfect, it had sufficient safeguards built in to ensure that those with valid claims to refugee status were screened in.

Looking back on the CPA, particularly in light of the significant roles played by Sergio de Mello and Arthur Helton, it would be simplistic to see de Mello as the champion of pragmatic compromise and Helton as the principled critic. Over their careers, though they operated from different institutional vantage-points, both showed an ability to combine humanitarian principles with political pragmatism. Looking forward, it might be possible to have imagined the two men combining their energies in envisioning and implementing a Comprehensive Plan of Action for another displaced population—the Palestinians—for whom durable solutions are every bit as complex and will require the same kind of cooperation and compromise as was brought to bear on the Indochinese refugee dilemma.

The CPA and Asylum

In 1978, when Malaysia was struggling to find temporary shelter for 63,000 boat arrivals, Indonesia received scarcely 3,000. In 1979, however, the levels equalized quite dramatically as each country took in about 50,000 boat people that year. As it turned out, Malaysia had been engaged in a crude but effective sort of burden sharing, pushing away roughly half the boats that were turning up in its waters.

For fully a decade after it had stopped turning boat people back to sea in 1979, however, Malaysia had maintained a creditable record of generosity, granting temporary asylum to more than 250,000 Vietnamese. After a six-year decline, however, boat arrivals increased modestly in 1987 then more dramatically in 1988, as Malaysia began to receive not only an increased flow directly from Vietnam but the boat arrivals that were being pushed back by Thailand as well. By April 1989, the refugee caseload in Malaysia had climbed past 20,000 for the first time in ten years. In late May, Malaysian authorities began turning away Vietnamese boats. In June, Malaysia's foreign minister, Abu Hassan Omar, was chairing the second international conference on Indochinese refugees in Geneva, at which all participants pledged that 'temporary refuge will be given to all asylum seekers', even as his government was pushing scores of people back out to sea (Robinson 1998).

In 1990, Malaysian arrival figures dropped to 1,300 for the year even as Indonesia's soared to ten times that number. It could be argued that the

Comprehensive Plan of Action restored asylum in Thailand—there were no reports of pushbacks after 1989—and the rest of the region by and large held to the CPA commitments. Malaysia, however, never restored asylum after 1989. The Vietnamese simply stopped coming. From 1991 to 1996, only one Vietnamese arrival was recorded in Malaysia. Neighbouring Singapore, since 1979, had been unwilling to accept any boat people—either those who arrived on their own or those rescued at sea—without an explicit commitment of resettlement within 90 days. During the course of the CPA, Singapore never consented to carry out regional screening nor agreed to accept rescue-at-sea cases.

So if one aim of the Comprehensive Plan of Action was to preserve asylum, then the agreement proved effective in four out of six participating states (though the quality of asylum proved another matter). Most would agree, however, that the CPA was designed not so much to preserve asylum as to obviate the need for it. To this end, the very first point of action endorsed by the plan was the 'Continuation of official [Vietnamese] measures directed against those organizing clandestine departures' (Draft Declaration 1989). The planners wanted this done humanely through the use of mass media activities and through the expansion of orderly departure procedures, but they wanted the boats to stop. If official measures encompassed interdiction of boats and arrest of organizers—and they did—then the plan encompassed these measures and, albeit tacitly, sanctioned them.

In Hong Kong, the CPA years witnessed a rising tide of tension and violence in the Vietnamese detention centres, sparked by the overcrowded, prison-like conditions; the in-camp rivalries and conflicts; the systematic use of mandatory return as a spur to voluntary repatriation; and cutbacks in camp services. UNHCR-supported cutbacks around the region included reductions in medical and counselling services, new restrictions on movement in and around some camps, elimination of income-generating activities and reductions in employment opportunities, and limits on monthly remittances from overseas. Perhaps the most dramatic and most controversial change was the elimination of all educational programmes above the primary-school level—a move that was greeted by a chorus of protests from the voluntary agencies.

There is no doubt that the CPA brought an end to the flow of asylum seekers from Vietnam (and from Laos). In 1989, roughly 70,000 Vietnamese sought asylum in Southeast Asia along with 3,300 Laotians. By 1992, only 41 Vietnamese and 10 Laotians asylum seekers had arrived in Southeast Asian camps and the numbers remained negligible through to the end of the programme. But it was not inappropriate that one of the very last camps to close was Whitehead in Hong Kong, a steel and barbed-wire cage in the middle of one of the wealthiest enclaves on earth. The CPA introduced screening and repatriation into the equation but the old guarantee of third-country resettlement for all refugees persisted. The countries of first asylum, with the exception of Singapore, agreed to conduct status determinations and, with the exception of Malaysia, continued to allow boats to land. But it is difficult to call what was offered 'asylum' when it amounted to little more than detention pending departure.

And what of asylum prospects in the region today? In 1975, when the Indochinese exodus first began, no countries in East or Southeast Asia were signatory to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. As of 2004, the list had grown but it is still a short one: Cambodia, China, Japan, Korea, and the Philippines. Perhaps the most glaring omission from the list is Thailand, a stable, democratic and increasingly prosperous country with a long and often painful history of hosting refugees, asylum seekers and undocumented aliens from every neighbouring country. If Thailand's experience with Indochinese refugees and the CPA has persuaded its policy makers that national interests are best served by avoiding statutory commitments to asylum, it will be difficult for UNHCR to persuade other Asian countries of the benefits.

China, for its part, signed the Convention and Protocol in 1982 and has resettled 260,000 Vietnamese, the largest numerical commitment ever undertaken by a socialist state. The world's most populous nation has not been so generous with migrants and asylum seekers from its neighbour to the northeast, the Democratic People's Republic of Korea. An estimated 100,000 North Koreans have crossed into China since the mid-1990s, fleeing famine, hardship and, in many cases, political and religious oppression but China will not allow UNHCR access to this population and insists that they are not refugees but economic migrants subject to arrest, detention and deportation (Refugees International 2003).

If the CPA is to be judged for preserving asylum in Southeast Asia until the Indochinese exodus came to an end, then it might be termed a qualified success. If it is to be judged by the depth and breadth of ongoing regional commitments to asylum in Asia, the marks deserve to be much lower.

The CPA and Resettlement

At the end of 1989, when the Comprehensive Plan of Action became operational, there were about 200,000 Indochinese refugees in UNHCR camps throughout Southeast Asia. This included 17,000 Cambodians in the UNHCR holding centre, Khao I Dang, and excluded another 270,000 'displaced persons' on the Thai–Cambodian border who were assisted by the UN Border Relief Operation. But the CPA made no provisions for Cambodians, either refugees or displaced persons. It made parenthetical reference to Laotian asylum seekers, who then numbered about 70,000 in Thailand. The focus of the CPA, whose costs would run in excess of $500 million over the next eight years, was some 100,000 Vietnamese boat people spread out over five Southeast Asian countries and the territory of Hong Kong.

Although the Comprehensive Plan of Action was about controlling migration, its overall effect was not to halt movements so much as to redirect the outflow. Indeed, more people were resettled during the first six years of the CPA than in the six years prior to it. During the period 1984–1989, a total of 442,168 Indochinese refugees and immigrants moved on to new lives. From 1990–1995,

a total of 507,549 did so, including a great many high-priority cases like former re-education camp prisoners, Amerasians, and others. For the Vietnamese, there were essentially two ways of getting resettled: as refugees out of the first asylum camps and as refugees or special immigrants moving via the Orderly Departure Program.

When the CPA was endorsed in June 1989, a total of 50,670 Vietnamese were identified as having arrived in first asylum camps before the various cut-off dates were imposed. It was one of the central agreements of the CPA that all of these pre-cut-off date refugees would be resettled, despite the fact that nearly one-quarter of them already had been rejected for failing to meet resettlement criteria of at least one country (UNHCR 1989).

By the end of 1992, most of the pre-cut-off date Vietnamese had been resettled overseas. In addition, a total of more than 32,000 Vietnamese were screened in as refugees under the CPA status determination procedures and resettled, along with nearly 5,000 Laotians. All told, in the full span of the CPA, nearly 125,000 refugees were resettled out of the first asylum camps, including more than 80,000 Vietnamese and 44,000 Laotians.

The seven-point Memorandum of Understanding signed in May 1979 between UNHCR and the Socialist Republic of Vietnam established two fundamental guidelines for what came to be known as the Orderly Departure Program (ODP); the programme to enable direct departure from Vietnam for those who might otherwise take flight in boats would be for 'family reunion and other humanitarian cases' and selection would be made 'on the basis of lists prepared by the Vietnamese government and . . . the receiving countries' (Robinson 1998: 56).

Although ODP succeeded in moving an average of about 16,500 people per year in its first seven years (by mid-1986, more than 115,000 Vietnamese had travelled safely, legally and directly to receiving countries, including 50,000 to the United States) its full potential was thwarted by continued mistrust between the Vietnamese and American sides. By late 1985 (and throughout 1986 and most of 1987) the ODP was in decline as Vietnam halted new interviews until the US agreed to clear up a growing backlog of cases already interviewed by US programme officials and awaiting exit visas.

Put simply, the United States wanted more people of higher priority: immediate family members of US citizens, former employees, Amerasian children, and, perhaps most significantly, current and former prisoners from re-education camps. The Vietnamese had other priorities, among them the continued exodus of Sino-Vietnamese. ODP officials privately complained that the Vietnamese lists looked much like the 'Cholon phone book', a reference to the ethnic Chinese enclave in the former Saigon (now Ho Chi Minh City).

In late 1986, the United States agreed to meet with Vietnam to discuss Amerasians on a bilateral basis. It took over a year for talks to bear fruit but in September 1987, the two governments announced an 'agreement in principle' to expand Amerasian processing. During that period, the United States and Vietnam were also making some progress toward the release and resettlement of political prisoners. By July 1988, the two countries had agreed in principle to

move 50,000 people (10,000 former prisoners and 40,000 accompanying family members) but both sides insisted that more meetings were needed to work out the details. According to one senior State Department official, 'We had made it part of our agreement to participate in the CPA that we must have cooperation on the re-ed prisoners. The CPA was absolutely critical in getting Vietnam to negotiate' (Robinson 1998: 197). Several international observers have credited Sergio de Mello with key diplomatic interventions to keep the two sides in dialogue.

By 1991, the Orderly Departure Program had reached a high water mark of 86,451 departures worldwide, including 21,500 re-education camp detainees and family members and nearly 18,000 Amerasians. From 1991 to 1995, orderly departures averaged more than 66,000 people per year before finally tailing off to one-third that number in 1996. In all, over the course of the CPA, a total of more than 400,000 people left Vietnam safely and legally, twice the number that had done so in the first ten years of the ODP. The huge majority of this number went to the United States, including 140,000 former re-education camp prisoners and their families and 40,000 Amerasians.

Clearly, international resettlement, fuelled primarily by commitments from the United States, was the engine that powered the many moving parts of the CPA. Without a guarantee of resettlement not only for the long-stayers but for screened-in refugee cases, the countries of first asylum would not have kept open the camps or agreed to participate in regional status determinations. Without a breakthrough on orderly departure, the United States as a key member of the Steering Committee might not have sanctioned involuntary return of the screened-out.

Overall, the CPA provided a vehicle for the international community to follow through on its initial commitment to resettle Vietnamese boat refugees while motivating a shift from dangerous, clandestine departure routes to legal migration channels. That is a singular success, however much one might emphasize its singularity. Loescher and Milner (2003) point out that the International Conference on Central American Refugees (CIREFCA), also convened in 1989, placed a much greater emphasis on return and local integration as the preferred durable solutions to resolve protracted refugee situations.

The CPA and Regional Screening

When Vietnamese boat arrivals jumped again in 1988, the Hong Kong government unilaterally announced that any Vietnamese boat people entering the territory after 16 June 1988 would be placed in a detention centre and subject to screening. For different reasons, both UNHCR Geneva and the Hong Kong government wanted the UNHCR branch office, despite its initial misgivings, to play an active role in the screening of the new arrivals. In September 1988, the two parties signed a Memorandum of Understanding in which UNHCR affirmed its readiness to monitor the screening procedures and advise the Hong Kong government on established international standards. Hong Kong, for its part,

agreed to permit all asylum seekers—whether screened in, screened out, or status pending—access not only to UNHCR officials but to a legal advisor.

The CPA Draft Declaration in 1989 spelled out a number of roles for UNHCR in regard to the regional status determination procedures:

— UNHCR was to participate in 'an observer and advisory capacity' in the status determination process, which was to be carried out by a 'qualified and competent national authority body in accordance with established refugee criteria and procedures'.
— UNHCR was to 'advise in writing each individual of the nature of the procedure, of the implications for rejected cases and of the right to appeal the first-level determination'.
— UNHCR was to help in the development of a uniform questionnaire which was to serve as the basis for the interviews and was to reflect the elements of the 1951 Convention and 1967 Protocol 'and other relevant international instruments concerning refugees'.
— UNHCR was to institute, in cooperation with the governments concerned, a comprehensive regional training programme for officials involved in the screening process 'with a view to ensuring the proper and consistent functioning of the procedures and application of the criteria, taking full advantage of the experience gained in Hong Kong'.

By 1991, all the countries in the region had fully implemented their screening programmes. Sceptics of the CPA noted the generally low approval rates at first instance as a sign of Hong Kong's pioneering influence. Those of a more optimistic mindset noted the explicit assurance given by the Hong Kong government to recognize UNHCR's mandate and hoped it would be granted similar weight throughout the region. As the months wore on, however, the most fundamental consistency across the region proved to be that each country did things differently, some better than others and none perfectly. With this realization, more and more people both within and outside the camps began to insist that UNHCR should be more than just observer and advisor to the status determination process but an active participant, advocate and, if necessary, final arbiter.

In March 1992, three years after the regional cut-off dates were put in place, UNHCR convened a meeting in Manila of senior government officials from around the Southeast Asia region. The subject was screening. Though the Vietnamese camp populations still exceeded 100,000 (with 57,000 in Hong Kong alone), new arrivals had dwindled to trifling numbers. The countries of asylum were eager to work through the caseloads in the camps and get people on to their final destinations, be it onward passage or return. Acceptance rates at the first instance (prior to appeal) ranged from a high of 32 per cent in Malaysia to a low of 3 per cent in neighbouring Indonesia. Hong Kong authorities had screened 24,000 people, of whom 7 per cent had been approved for refugee status. All told, more than 22,000 people had returned to Vietnam.

One of three outside experts invited to comment on refugee status determination and conditions in Vietnam, Arthur Helton, then head of the Refugee Project for the Lawyers Committee for Human Rights, urged that asylum applicants should be given the benefit of the doubt, this being the standard in customary international law. The concept of persecution, Helton said, was problematic. It must imply serious harm to the person concerned, it must be unjustified, it must be propagated by the State or an 'agent of persecution', and it must be attributed to one of the five reasons articulated in the 1951 Refugee Convention: race, religion, nationality, membership of a particular social group or political opinion. But given all this, he suggested, 'the refugee definition is very flexible, as are the persecutors' (UNHCR 1992).

The 1992 guidelines on screening were intended to contribute to a 'harmonization' in the region but if approval and denial rates are any measure, that did not occur. Despite efforts by UNHCR to coordinate screening procedures and standardize guidelines across the region, both the national procedures and the results varied widely from one country to the next. Hong Kong, which screened the most people (60,275), also had the lowest approval rate (11.6 per cent at the first instance and 18.8 per cent overall). The Philippines, which screened the fewest people (7,272) had the highest percentage of screened-in (46.6 per cent after the first interview and 53.4 per cent following appeals). Overall, about 28 per cent of Vietnamese asylum seekers who applied for refugee status under CPA procedures were successful.

In the end UNHCR (1995) declared itself satisfied that

> while the [status determination] procedures were far from perfect, there were safeguards built in to ensure that those with a valid claim to refugee status were 'screened in'. UNHCR is also satisfied that its views on a case . . . were generally accepted by the authorities or, failing that, UNHCR was able to exercise its mandate, which it used on behalf of about 1,600 people (1995: 1).

But how satisfied were the participants? Assuming that they did not find the screening process perfect, just how far from perfection did it fall? The governments involved—donor countries, countries of asylum and countries of origin—carped from time to time but ultimately expressed satisfaction with the results. The reactions of human rights organizations and refugee advocacy groups, particularly those comprising overseas Vietnamese, ranged from concern to outrage. Nguyen Dinh Thang, director of the Boat People SOS Committee in Washington, DC, recited a litany of problems:

> There was an acute lack of competent interpreters, lack of adequate training for UNHCR legal consultants, incompetent screening officials, inadequate understanding of Vietnamese country conditions, overly brief interviews—the average was 20 minutes—relying extensively on yes/no questions, no legal representation or assistance in the appeals stage, no reason for denial given except in the Philippines, no access to one's own records to review or correct possible errors. All of these

> procedural flaws compounded the problems of corruption. UNHCR was not in control of these procedures and it was unwilling to exercise its mandate sufficiently to correct the flaws. The Vietnamese called this 'xo', a lottery (Robinson 1998: 208).

Whether one views the regional screening under the CPA as merely imperfect or a miscarriage of justice, several lessons might be drawn from the experience. The first is that refugee status determinations are a complex and controversial process, requiring a well-trained cadre of immigration officials and, ideally, an independent judicial system capable of adjudicating appeals. It is not surprising that despite the substantial investment UNHCR made in legal training in the region, none of the countries involved in the regional screening have taken steps to introduce implementing legislation or to regularize local status determination procedures.

The second lesson is that refugee status determinations should convey some obligation on the part of the national authority involved to seek a durable solution for those who are granted status and a safe and dignified return for those who are not. In all the various commitments of the CPA, the countries of asylum that were responsible for the status determinations bore no real responsibility for the outcome of those decisions. The screened-out were to be received home again by Vietnam and the screened-in were to be resettled elsewhere. When a decision was challenged or appealed, it fell to UNHCR to be, in effect, the court of last resort. While the intent was to provide an extra safeguard to the process, the reality was that the agency mandated to protect refugees and asylum seekers came to be seen more as a prosecutor and even policeman in its response to the problem of the screened-out.

The CPA and Repatriation

In March 1989, a group of 75 Vietnamese returned home from the camps in Hong Kong, the first organized voluntary repatriation to Vietnam in at least 10 years. By the end of that year, about 800 more had followed suit. Faced with the arrival of 34,000 new asylum seekers in 1989 alone, however, the Hong Kong authorities took little comfort at the pace of voluntary return. The CPA agreement had stated that 'If, after the passage of reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress towards the desired objective, alternatives recognized as being acceptable under international practices would be examined'. Though many saw the timing as quite unreasonable, Hong Kong took steps to exercise its alternatives and start forcing people home before the year was out.

On 12 December 1989, under cover of darkness, more than 100 Hong Kong police and prison guards escorted a group of 51 Vietnamese men, women, and children across the tarmac of Kai Tak Airport to a waiting Cathay Pacific jet. At 5:09 am, the plane lifted off for Hanoi. This first exercise of what the Hong Kong government chose to call 'mandatory repatriation' launched a wave of international protest.

Following a brief lull at the beginning of 1991, Vietnamese asylum seekers once more began pouring into Hong Kong by the middle of the year. In October 1991, the British and Vietnamese governments announced they had reached an agreement that would encompass all the existing 19,000 screened-out cases and any new arrivals who were rejected for refugee status. Also in October, the warring parties to the long-running Cambodian conflict agreed in Paris to a peaceful power-sharing arrangement, pending UN-sponsored elections. Days later, US Secretary of State James Baker announced that his government was prepared to seek normal relations with Vietnam. Monthly arrivals in Hong Kong had totalled 2,893 in September 1991. In October, they dropped to 492 and, by November, they had fallen to only seven. Whether cowed by the new threats of forced return or coaxed into staying by the new prospects for economic opportunity, Vietnamese finally stopped fleeing their country by boat. The sea exodus was over.

In the Hong Kong camps, however, resistance to repatriation was building, particularly in Whitehead which then housed 25,000 people. Additional police units with full anti-riot gear were deployed amidst threats of widespread demonstrations and mass suicide attempts. On 10 November, Hong Kong police and security officers forced 59 Vietnamese, including two women injected with sedatives, onto a transport plane bound for Hanoi. By the end of 1995, Hong Kong sent back just over 2,100 people under the Orderly Return Program (ORP). 'We have never seen ORP as a main means of return', said one Hong Kong refugee official. 'It is a stick to encourage them to go home voluntarily but it must be regular enough to menace the population'. Because of the heavy security involved, ORP flights averaged about 60 people and were carried out roughly six times per year. This created in the camp a cycle that one UNHCR official described as 'two months of silence, one day of violence, two months of silence, one day of violence' (Robinson 1998: 217).

Following Hong Kong's lead, the remaining countries of asylum—Indonesia, the Philippines, Malaysia, and Thailand—eventually signed tripartite ORP agreements with Vietnam and UNHCR. These agreements—under which UNHCR provided some logistical support and funding for transportation costs—'do not envisage the use of force', as one UNHCR report said. 'As a matter of policy, UNHCR does not participate in movements that involve force' (1995: 2).

On 30 June 1996, UNHCR ceased funding for Vietnamese boat people throughout the region, with the exception of Hong Kong which still held 15,000 people in its detention centres. The rounds of violence and silence continued in the Hong Kong camps until only a residual caseload of several hundred refugees remained. Although the Comprehensive Plan of Action finally came to an end when the British colony reverted to Chinese hands on June 30, 1997, it would not be until 2000 that the last of the Vietnamese were expelled from the Hong Kong camps.

From 1989 until the end of the CPA, more than 80,000 Vietnamese boat people returned home. At least 40 per cent returned to cities and townships with populations of more than 100,000, a percentage that has probably increased with

secondary migration. From 1993 to 1995, UNHCR spent a total of $34.4 million on economic and social reintegration projects for returnees, mainly in the form of cash grants and small-scale community development projects. In addition, the European Union spent roughly $135 million on returnee reintegration. Of this total, at least $50 million was spent on small business loans, available to returnees and locals alike so long as they promoted economic reintegration and development; 88 per cent of these loans were repaid.

UNHCR also employed seven full-time, international, Vietnamese-speaking monitors, four in Hanoi and three in Ho Chi Minh City, to monitor returnees. As of 1996, UNHCR reported that its staff had visited more than 25 per cent of all returnees: 'Returnees in Vietnam have been monitored more intensively by UNHCR than any other group of returnees anywhere in the world'.

UNHCR certainly was more closely involved in the repatriation of Vietnamese and over a longer period of time than any other repatriation initiative in its history. That well-funded, sustained reintegration and monitoring are necessary components of any post-conflict repatriation effort is a lesson that should have been drawn from the CPA experience. That some of the repatriation involved force and that UNHCR was implicated in both voluntary and involuntary return was, as Helton noted, a 'real innovation' of the CPA, but the implications of this for the refugee protection regime are problematic at best.

Looking Ahead

The first international conference in 1979, remarked the then High Commissioner for Refugees Sadako Ogata (1995), 'ignored the responsibilities of countries of origin towards their own citizens. It failed to recognize the right of people to return, far less the right of people to remain in their own homes in safety and security'. The CPA, by contrast, marked 'the first attempt to implicate all concerned parties—countries of asylum, of origin, and of resettlement—as well as the donor community in a coordinated, solutions-oriented set of arrangements for the sharing of responsibilities for the refugee population' (Feller 2001: 133).

The CPA is often invoked as a model for a new system of multilateral special agreements envisioned in what the new High Commissioner for Refugees, Ruud Lubbers (2004), has called 'Convention Plus . . . UNHCR's blueprint for a new expanded international refugee protection regime'. The special agreements 'would supplement the 1951 Convention and form part of multilateral frameworks for protecting refugees and achieving durable solutions, primarily in regions of origin'.

One idea proposed by the United Kingdom would have sent some asylum seekers back to their regions of origin for processing and either return or local settlement. UNHCR's director of the Department of International Protection, Erika Feller, recently (Migration Policy Institute 2003) declared the UK proposal 'dead', while reiterating that Convention Plus was focused on creating 'comprehensive plans' involving a combination of solutions. She offered the example of the Iranian Kurds in Iraq, a long-stayer refugee population, for whom durable

solutions could involve a combination of voluntary repatriation, local integration in Southern Iraq, resettlement to Northern Iraq, resettlement to a third country, and others.

Feller noted that any plans for the Iranian Kurds 'were currently on hold because of the tensions in Iraq'. Some time before he died in that turmoil, along with Sergio de Mello and many other colleagues in the humanitarian field, Arthur Helton drafted a paper, 'End of Exile: Practical Solutions to the Palestinian Refugee Question'. The resolution of a problem involving some 6 million people displaced for several decades

> will necessarily involve some combination of three possible place-based outcomes: 1) some measure of voluntary return, 2) a good deal of integration in current places of asylum, and 3) perhaps a significant degree of resettlement in third countries abroad . . . In addition . . . there would also need to be mechanisms for compensation arrangements. It will be necessary to meld these components together in order to fashion a coherent international response . . . This might mean the creation of a . . . situation-based solutions program, like the Indochinese Comprehensive Plan of Action, in this instance a CPA for Palestinian refugees (Helton n.d.).

It should be noted here that Arthur Helton, quintessential advocate of human rights law and principle, is not arguing for the unconditional 'right of return' for all Palestinians displaced from their former homes in Israel. Rather, his vision of a CPA for Palestinian refugees calls for 'some measure of *voluntary* return' [italics added], along with 'a good deal of integration in current places of asylum and perhaps a significant degree of resettlement in third countries', along with 'mechanisms for compensation'.

There are probably a million reasons why such a plan might not work but like the CPA for Indochinese refugees, it is a call to concerted international action, involving sustained and inter-locking commitments and judicious compromise. Like the original Comprehensive Plan of Action, it would undoubtedly provoke some conflict and controversy. All the more reason why it could have used principled and pragmatic humanitarians like Arthur Helton and Sergio de Mello to imagine it and then see it through.

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