Refugee Studies Centre

Globalisation, Humanitarianism and the Erosion of Refugee Protection

B. S. Chimni

Refugee Studies Centre
Queen Elizabeth House
University of Oxford

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B.S. CHIMNI
Professor of International Law
School of International Studies
Jawaharlal Nehru University, New Delhi, India

Introduction

Nothing could give me more pleasure, or make me feel more privileged, than to have been afforded the present opportunity to deliver the first of the Harrell-Bond lectures here at the Refugee Studies Centre which she helped establish and define. Dr. Harrell-Bond has shown rare devotion to refugee studies. Among her many contributions is its successful rescue from the captivity of lawyers. She was among the first to emphasise that disciplines other than law had much to contribute to the study of refugees, and more significantly, that refugees had much to contribute to refugee studies. You will appreciate then why as an international lawyer I feel doubly privileged to be invited to deliver this lecture.

Refugee studies is also indebted to Dr. Harrell-Bond for the varied and generous ways in which she has supported it. I would especially like to record the solidarity that she has expressed with students and scholars from the Third World.

One of the features of Dr. Harrell-Bond's writings is that she has challenged conventional ideas about refugees and relief assistance programmes. It is this critical spirit that I hope to bring to bear in this paper on the ideology of humanitarianism and its implications for refugee protection and rights in the era of globalisation.

There are few words more frequently used in the contemporary discourse of international politics as 'humanitarian'. There is talk of humanitarian issues, humanitarian action, humanitarian assistance, humanitarian community, humanitarian standards, humanitarian intervention, humanitarian war and so on. The word 'humanitarian', according to the *New Oxford Dictionary of English*, means 'concerned with or seeking to promote human welfare'. Its association with all that is humane and positive perhaps explains the irresistible urge to use it to qualify a range of practices (Warner 1998b: 1).

A second reason is that the word 'humanitarian' is omnifarious and lacks rigid conceptual boundaries. It has not been defined in international law, that is to say, 'delineated with the precision accorded such concepts as "human rights" or "refugee"' (Minear and Weiss 1993: 7). It is therefore not captive to any specialised legal vocabulary and tends to transcend the differences between human rights law, refugee

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law and humanitarian law. A wide range of acts can therefore be classified as 'humanitarian'.[1] Its extendibility facilitates ambiguous and manipulative uses and allows the practices thus classified to escape critique through shifting the ground of justification from legal rules to the logic of situations.

While humanitarianism has always had a presence in international politics it has never had the salience it possesses today. It has therefore appropriately been asked 'why has it attained such prominence at this particular moment in history' (*Refugee Survey Quarterly* 1998: vi). I would like to suggest in the course of this lecture that the reason is *that 'humanitarianism' is* **the** *ideology of hegemonic states in the era of globalisation marked by the end of the Cold War and a growing North-South divide*.[2] By 'ideology' I understand here 'meaning in the service of power' (Thompson 1990: 8). It refers to those practices whose effects are directed toward a group's legitimacy and authority (McCarthy 1996:30). In other words, I want to argue that the ideology of humanitarianism mobilises a range of meanings and practices to establish and sustain global relations of domination. In particular, it manipulates the language of human rights to legitimise a range of dubious practices, including its selective defence. It has a dual essence: the justification of the use of force, in particular interventions and wars, and the amelioration of painful local conditions engendered by globalisation through a neo-liberal political and economic package whose objective is to restore and extend the reign of transnational capital.

The ideology of humanitarianism is, among other things, facilitating the erosion of the fundamental principles of refugee protection (as refugees no longer possess ideological or geopolitical value). The inclusive and indeterminate character of so-called humanitarian practices has led to the blurring of legal categories, principles, and institutional roles. These practices are threatening legitimate boundaries between international refugee law, human rights law and humanitarian law. Their distinctive and separate spaces are increasingly being transgressed in a bid to exclude and incarcerate those who seek to escape the consequences of a brutal globalisation process. The universal and protective label 'refugee' has, as a result, fragmented and translated into the curtailment of rights. Those who now seek refuge find that they represent security threats to states and regions and that all roads lead quickly home. On the other hand, reintegration is no easy task as a strange intimacy characterises the causes and solutions of refugee flows. Such is the humanitarianism of our times.

It is the basis, meaning and consequences of this new humanitarianism that I would like to explore in the rest of this paper, which is divided into three parts. In the first part I attempt to analyse the relationship between globalisation and humanitarianism in order to point to the underlying neo-liberal agenda and the selective concern with human rights. In the second part I look at the implications of new humanitarianism for the principles of refugee protection. The final part offers some broad recommendations by way of conclusions.

Globalisation and Humanitarianism

There is little doubt that the ideology of new humanitarianism is inextricably linked to the ongoing process of globalisation. It seeks, in my view, to legitimise and sustain an international system that tolerates an unbelievable divide not only between the North and the South but also inside them. A key mode through which the ideology of humanitarianism actualises itself is *unification*. As Thompson, a leading scholar of ideology, explains: 'relations of domination may be established and sustained by constructing, at the symbolic level, a form of unity which embraces individuals in a collective identity, irrespective of the differences and divisions that may separate them' (Thompson 1990: 64). The unity the ideology of humanitarianism constructs, in particular through the modern language of rights, is the most global and incontrovertible unity: the unity of humankind. This unity is today lent credence by the material reality of intensified interactions between peoples and states at the economic, political and cultural levels. Thus, it is no longer abstract thought but manifest reality which draws the world together as never before (*Human Development Report* (HDR) 1999).

The Dominance of Transnational Capital

The material reality is, however, given shape by transnational capital, which is unifying the globe in a bid to maximise returns as opposed to human development. Thus, the assets of the top three billionaires in the world are more than the combined GNP of all the least developed countries and their 600 million people (HDR 1999: 3). Yet, there is insufficient recognition that internal conflicts may be traced to shrinking shares of marginalised peoples in the globalisation process. Evidence of the one-sided globalisation process may be seen in the following examples from the field of international law.

Since the early eighties, coinciding incidentally with the beginnings of the non-entrée regime, Northern states have pushed through the adoption of a network of international instruments that seek to remove 'national' impediments to the entry, establishment and operation of transnational capital (Chimni 1999b). The goal of a unified global economic space has *inter alia* been sought through the conclusion of more than a thousand Bilateral Investment Protection treaties between the industrialised North and Third World countries, the establishment of a Multilateral Investment Guarantee Agency under the auspices of the World Bank, and the adoption of an Agreement on Trade Related Investment Measures and the General Agreement on Trade in Services as a part of the GATT Final Act of the Uruguay Round of Trade Negotiations. If these instruments are examined along with the 1992 World Bank Guidelines on Foreign Investment, the proposed Multilateral Agreement on Investment to be eventually negotiated in the World Trade Organisation (WTO), and the September 1997 statement of the IMF Interim Committee which endorses a move towards capital account convertibility (the Asian financial crisis notwithstanding), the trend towards

removing most fetters on the mobility of transnational capital becomes clear. Supporting these moves are the World Bank and IMF-imposed Structural Adjustment Programmes that insist on privatisation and the liberalisation of trade and investment regimes.

In the area of technology, the other crucial element in the globalisation process, a unified regime has already been instituted through the Agreement on Trade Related Intellectual Property Rights (TRIPS) which forms an integral part of the WTO agreements. Every single country in the world, be it Rwanda or the US, irrespective of its stage of development, will henceforth have the same intellectual property rights laws in order to maximise the profit-making capacity of transnational corporations.

But while these texts confer or hope to bestow a number of rights on the transnational corporate sector they impose no corresponding duties on them vis-à-vis the peoples of host states. The Code of Conduct on Transnational Corporations and the Code of Conduct on Transfer of Technology which impose certain duties on transnational corporations (like respect for host country goals, transparency, etc.) have, despite more than two decades of negotiations, yet to be adopted. Instead, the UN Center for Transnational Corporations, which was bringing some transparency to the functioning of TNCs, was shut down by the UN Secretary-General in 1993. While the WTO agreements promote the mobility of capital and services, they do not in any way promote the mobility of labour. Finally, the Agreement on TRIPS entirely overlooks the fact that it will threaten food security and deny access to health care to the poor in the Third World and consequently places no obligations on the patent holders in this regard. In sum, to quote the *Human Development Report* of this year: 'Multilateral agreements have helped establish global markets without considering their impacts on human development and poverty' (HDR 1999: 8).

A second key feature of contemporary international relations and law is the transfer of economic sovereignty from states to international organisations. The 'commanding heights' of state decision-making have now shifted to supranational institutions through a system of conditionalities and undemocratic decision-making processes (Robinson 1996: 18). In core areas of national life the word of the IMF, the World Bank and the WTO is final (Chimni 1999b). The creation of international state apparatuses is not in itself problematic. It is just that these institutions are not accountable to the peoples over whose destinies they preside. To quote the telegraphic language of the *Human Development Report, 1999* once again:

> Multilateral agreements and international human rights regimes hold only national governments accountable. National governance holds all actors accountable within national borders, but it is being overtaken by the rising importance of supranational global actors (multinational corporations) and international institutions (IMF, World Bank, WTO, Bank for International Settlements). Needed are standards and norms that set limits and define responsibilities for all actors (HDR 1999: 9).

Or as another observer puts it, 'at least one of the major projects of international institutions in the post-Cold War era – economic liberalisation – itself poses threats to democracy and human rights', whose violations are the root causes of refugee flows (Orford 1997: 444). Yet, as we shall see later, unaccountable institutions like the IMF and the World Bank are called upon to play a crucial role in the reconstruction of 'post conflict' societies.[3]

The Contemporary Standard of Civilisation

In view of the dominant role that transnational capital has come to play in the globalisation process, the world is today coming to be divided into those societies which provide the conditions in which it can flourish and others in which these conditions are absent. The neo-liberal agenda recommended by international financial institutions has today acquired the status of a truth. Edward Said has noted of colonialism that it was 'the practice of changing the uselessly unoccupied territories of the world into useful new versions of the European metropolitan society. Everything in those territories that suggested [difference] waste, disorder, uncounted resources, was to be converted into productivity...' (Said 1980: 78). Today, in the wake of decolonisation and the collapse of the socialist world, the Third World is to be reconverted into productivity even if it takes humanitarian interventions and wars. Thus, among the first acts of reconstruction recommended by the donor states in Kosovo has been to put in place 'a healthy and predictable environment for private investment and, more broadly, an accelerated process of transition to transform Kosovo into a market economy'. They have called for the privatisation of state owned industry and invited its business communities to look for investment opportunities (UN 1999b; World Bank 1999).

Productive space is, however, to be dressed in a democratic exterior. It must pay homage to the mantra of periodic and genuine elections. This mantra is now deeply embedded in international law. As Crawford and Marks note, 'a preoccupation with elections is, indeed a striking feature of international legal discussions of democracy. To raise the question of democracy is largely to raise the question whether international law requires states to hold periodic and genuine elections' (Crawford and Marks 1998: 80). And as they go on to observe, 'legitimacy is, accordingly, an event, an original act, as distinct from a process by which power must continuously justify itself and account to civil society' (p. 81). Indeed, international law operates 'with a set of ideas about democracy that offers little support for efforts either to deepen democracy within nation-states or to extend democracy to transnational and global decision-making' (p. 85; Gathii 1999a, 1999b). On the other hand, humanitarian intervention is deemed legitimate 'if it ensures that the criteria of formal procedural democracy are met even in sharply polarised societies where large groups are excluded from decision-making

power' (Orford 1997:46; Falk 1995). Haiti is cited as the classic example, notwithstanding the need to stop refugee flows and the structural adjustment framework that Aristide was compelled to accept (Falk 1995:353; Roberts 1996:28; Arthur 1997:27).

International Law and the Domestication of Anxiety
Attempts are made to legitimise interventions and wars in international law in the matrix of human rights concerns. Thus, for example, there is little doubt that the intervention in Kosovo was unlawful in international law. As Carlson and Ramphal put it, the NATO bombings 'strike at the heart of the rule of international law and the authority of the United Nations' (Carlson and Ramphal 1999). Those who supported the intervention often did so on ethical grounds, often admitting that it could not be justified in international law (Cassesse 1999). The absence of legality was, in other words, trumped by the idea of humanitarianism. 'International Law, Yes, but NATO was needed' summed up the general approach (Hiatt 1999).

This contention has an air of familiarity about it. This is not the first time a doctrine of humanitarian intervention has been advanced. During the colonial period John Stuart Mill confidently wrote that 'nations which are still barbarous have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners' (Mill 1984: 118). Today, we are told that the 'anti-interventionist regime has fallen out of sync with modern notions of justice' (Glennon 1999: 2). In Kosovo, according to this view, 'justice (as it is now understood) and the UN Charter seemed to collide' (p.2). One is reminded here of Derrida's perceptive comment that the originary violence that establishes the authority of legitimate power cannot rest on a moment of anterior legitimacy (Derrida 1992: 6). Thus, an act of originary violence is legal only in retrospect. To put it differently, what we are witnessing today is the founding moment of a new phase of imperialism, accompanied by the invention of new norms that will in hindsight legitimate in the name of human rights the necessary act(s) of violence. These new norms also facilitate the renewal and repositioning of agencies like NATO, which is bracing itself to meet the challenges of new humanitarianism.

Selectivity is the Key
This new phase of imperialism is, as in the past, marked by arbitrariness in the realm of action. Thus, according to Roberts, 'the practice of the Security Council does suggest a high degree of selectivity about situations in which humanitarian intervention might be authorised…' (Roberts 1996: 25). In the course of the NATO bombing of Former Yugoslavia, former US President Carter wrote: 'Formal commitments are being made in the Balkans, where white Europeans are involved, but no such concerted efforts are being made by leaders outside of Africa to resolve the disputes under way there. This

failure gives the strong impression of racism' (Carter 1999).[4] But what Carter, and other critics, did not appreciate is that selectivity, both in the choice of situations and the nature of means used, is the defining characteristic of new humanitarianism. The objective of selective intervention is to ensure that the legitimacy of the emerging international system is not undermined, whether in Africa through suffering or elsewhere through allowing a challenge to dominant states go unanswered, as also to stop refugee flows to the North even while extending and sustaining the reign of transnational capital in the South. Intervention in other situations is meaningless in this scheme of things.

The Political as Humanitarian

Unfortunately, Northern critics of selectivity, instead of analysing its essence, have been taken up more with protesting the fact that humanitarian action has been used as a substitute for more intrusive forms of intervention and projected as a non-political device. Albeit they have correctly noted that 'it is a very political move to separate the political from the humanitarian' and that humanitarian action is essentially a political act of abstention (Warner 1998b:4; Campbell 1998),[5] nevertheless, in their bid to demand intrusive interventions these critics have failed to see that there is more to the move to separate the humanitarian from the political than this disclosure. Thus, first, the critics artificially separate the political from the economic and remove from view the neo-liberal agenda which informs humanitarian intervention and wars. Second, the non-cognizance of the surplus meaning overflowing the separation between the humanitarian and the political generates an incessant demand for the political and ends up legitimising any version of it. In other words, it occludes a debate on the relationship of means to ends. Thus, for instance, the High Commissioner for Refugees, whose office has over the past few years criticised Northern donor states for substituting humanitarian for political action, including in the case of Kosovo , had the following to say in the middle of the NATO bombing:

> … it is not up to a humanitarian organisation like my Office to suggest which means to adopt to achieve such a solution. But I cannot avoid asking some questions: can bombs dropped from 15,000 feet resolve a house-to-house conflict between communities that have lived together, separate but intertwined, for hundreds of years? And even if they could soon contribute to end the appalling violence waged against civilians – and I hope they do – will the task of helping people rebuild their shattered lives, and of helping communities live together again, be any easier? … Wouldn't it be better to adopt a more timely, and at the same time more gradual, almost 'stratified' approach … ? (Ogata 1999a; Kaldor 1999).[6]

The rhetorical question invites an affirmative response. In the case of Kosovo, alternative political paths to the bombings were available but were deliberately excluded

(Barutciski 1999: 8). Speaking of Rambouillet, Kissinger has observed that it 'was not a negotiation – as is often claimed – but an ultimatum' (Kissinger 1999: 22). Other critics have pointed out that 'the Rambouillet documents … could not be acceptable to any state' (Hayden 1999; Ali 1999: 65). Yet the incessant plea for political action, without seriously debating its meaning and scope, legitimised the bombings, as it appeared to be action that the larger humanitarian community itself demanded.[7] Of course, on the other hand, the leadership of Northern states has had no hesitation in stating that it would go to any length to prevent gross violation of human rights because only a humanitarian discourse can justify a freedom of means (Blair 1999). It is time therefore that the humanitarian community pondered over the essence of new humanitarianism and the role of military interventions to protect human rights.

Selectivity All the Way

In any case, it is not as if selectivity cannot be defended. As has been pointed out, it may be argued that 'prudence is not a bad guide to action, some degree of selectivity is inevitable, and it is better to uphold basic principles selectively than not at all' (Roberts 1996: 20). But the defence fails when it is seen that selectivity is the norm not merely with respect to humanitarian intervention but in all areas of humanitarian life. Let me simply mention these without elaboration. First, there is 'substantial evidence that the evolving notion of European citizenship is closely connected to an increasingly racialised sense of European identity' (Bhabha 1998: 716; Ward 1997). Thus, the 1990 UN Convention on the Rights of Migrant Workers has presently been ratified by eleven states, none of which are Northern states (Collinson 1999: 8). Second, while the North expects the poor South to play host to refugees, it seeks to escape its obligations through constructing the non-entrée regime, and is now less than willing to share its financial burden. The central idea is to preserve unbelievable privileges for a section of its citizens, leading critics to label the contemporary international system 'global apartheid'. Third, Northern countries continue to impose economic sanctions against several countries with disastrous effect. Economic sanctions, as Mueller and Mueller remind us in a recent article in the prestigious *Foreign Affairs*, 'may have contributed to more deaths during the post-Cold War era than all weapons of mass destruction throughout history' (Mueller and Mueller 1999: 43). Fourth, in instances where violence has been directed against the Third World the violation of international humanitarian laws has generally been ignored, the latest instance being Kosovo (Sandoz 1999). Finally, the international financial institutions which Northern states control compel poor countries in the South to follow economic policies which lead to the mass violation of human rights. Yet, it is not my argument here that humanitarianism is therefore *always* a ruse, or is *ever* conditional, or that its agents

only respond to the calls of hegemonic states, or that it has *no* beneficial impact. Instead, the contention is that the ideology of humanitarianism seeks to obscure the fact that the Northern commitment to humanitarianism coexists with a range of practices which have for their objective its violation. What is more, it uses the language of rights to justify a range of questionable practices.

Humanitarianism and Refugee Protection and Rights

Refugee protection is no exception to this deployment of the language of rights. In my view the ideology of humanitarianism has used the vocabulary of human rights to legitimise the language of security in refugee discourse, blur legal categories and institutional roles, turn repatriation into the only solution, and promote a neo-liberal agenda in post-conflict societies leading to the systematic erosion of the principles of protection and the rights of refugees.

Containment of Refugees is a Matter of High Politics

The first implication of the central place that the ideology of humanitarianism has come to occupy in the strategy of Northern states, and its justification of the use of force, is that refugee issues are too important to be left to specialised organisations like UNHCR. Unsurprisingly, refugee flows have been identified as a major consideration in the decisions of the Security Council in six major crises (Roberts 1998: 382-83, 1999: 108), these being northern Iraq, Bosnia, Somalia, Rwanda, Haiti, and Kosovo. Thus, to quote Roberts, 'refugee flows have assumed heightened significance as potential triggers (even if not always the main causes) of international intervention' (p.108). This is proof, according to him, if it were needed, that the international refugee regime extends far beyond UNHCR, and is changing rapidly.

In a sense refugees were always a matter of high politics. The 1951 refugee regime was an integral part of Cold War politics. But for that very reason refugee issues had perforce to be set aside for an organisation like UNHCR whose specialised and non-political mandate was best suited to the pursuit of Cold War objectives. The end of the Cold War has removed those constraints and allowed dominant states to use the more powerful and effective UN Security Council, and if opposed there, regional organisations like NATO, to implement their current policy of containment. Indeed, Roberts singles it out as a major achievement of Security Council actions. According to him, 'these actions whatever their other purposes, did have the overall effect of helping to limit refugee flows' (Roberts 1998: 388).

Normalising the Language of Security

A consequence of the UN Security Council and NATO becoming key forums in which refugee matters are addressed is that issues relating to refugee protection are couched in the language of security. It has meant a shift in the terms of refugee discourse. For

instance, the language of burden sharing has today been transformed into a language of threats to the security of states. Refugees are now seen as threatening a host country's security by increasing demands on its scarce resources, or threatening the security of regions by their sheer presence (Chimni 1998b: 289). The fact that the threat perception can often be attributed to a policy of containment or to the absence of burden sharing is veiled by the language of security. The end result is the erosion of fundamental principles like the principle of *non-refoulement* as states feel justified in closing their borders or returning refugees to the country of origin in less than ideal circumstances.

A second outcome of the normalisation of the language of security is that refugee flows will henceforth justify the use of force against the country of origin, even if, as was the case in Kosovo (and earlier in Iraq), the use of force actually accelerates refugee flows (Erlanger 1999; Hayden 1999).[8] That in such instances the welfare of refugees is of little concern can be glimpsed from the attitude of Northern states towards Kosovar Albanian refugees in the months prior to the bombing campaign. According to Human Rights Watch, in the first half of 1998, 'despite calls from UNHCR to halt deportations, Germany and Switzerland expelled more than a thousand rejected asylum seekers to Kosovo … under the terms of readmission agreements with the Federal Republic of Yugoslavia' (Human Rights Watch 1999). Human Rights Watch interviewed some of these people, who described being handed over to Serb police at the airports in Switzerland and Germany and being detained, interrogated and beaten on return to Kosovo. Likewise, little attention was paid to the fact that the NATO bombing affected 'the second largest refugee caseload in Europe'. These were the approximately 500,000 Serb refugees from Croatia and Bosnia (UN 1999a).[9] The High Commissioner for Refugees reminded the NATO powers that they should not 'neglect the victims of the earlier Balkan wars … who were still hosted by Serbia and Montenegro' (Ogata 1999a, 1999b). She also pleaded that there should be no repetition of what happened in early 1996 in Sarajevo when after the conflict ended tens of thousands of Serbs fled (Ogata 1999a). We know what transpired, emphasising the harsh reality that refugees are pawns and not concerns and that human rights violations are often not the moving force they are made out to be.

Finally, the language of security invades the world of humanitarianism and starts to displace it. As Mrs. Ogata recently pointed out, 'in the Kosovo crisis, there were instances in which assistance was provided directly by the military … to gain legitimacy and visibility. These episodes undermined coordination and deprived civilian humanitarian agencies of effectiveness and clout' (Ogata 1999c; P. Morris 1999: 18). This may perhaps be the beginning of a dual role for a repositioned NATO.

The Whole Devours the Parts: Blurring of Categories
A significant feature of the concept of humanitarianism is, as I noted at the outset, its

inclusiveness. It represents the boundaries between human rights law, refugee law, and humanitarian law as being irrelevant to the end of giving protection to an individual. The sociological reason which informs the resultant inclusive conception of protection is that in the era of globalisation it is becoming 'increasingly difficult to identify and respond to the needs of refugees as a special and distinct group' in view of 'the increasing vulnerability and suffering of entire populations' (Collinson 1999: 24). This has in turn justified the blurring of legal categories and principles, to address the situation as a whole rather than specific categories of victims.

The trend towards inclusiveness is evidenced by the changed perspective of UNHCR on the relationship between refugee law and human rights law. Mrs. Ogata has drawn attention to the significant fact that 'not until 1990 did a High Commissioner for Refugees ever address the Human Rights Commission, *such was the perceived divide between human rights and humanitarianism*' (Ogata 1997: 135; emphasis added). The reason for this, as she noted, was the Cold War. In her own words,

> the 'non-political' and 'humanitarian' nature of UNHCR's work was seen as requiring the Office to concern itself with the immediate needs of the refugees and not why they were forced to flee. The focus of refugee law was on the refugees after they crossed their national borders. The role and responsibility of the country of origin in the prevention of refugee problems or in creating conditions to promote return was ignored (p.135).

In other words, the end of the Cold War opened up the possibility of direct engagement with human rights law as a means to execute the policy of preventive protection, on the one hand, and to promote return, on the other.

The changed perspective has yielded an *inclusive* concept of protection that increasingly does not distinguish between different legal categories of persons. The inclusive conception of course has certain merits. It is, in the words of Goodwin-Gill, 'unconfined by definitional constraints, free of all jurisdictional limitations, such as flight, alienage or nationality, and relatively unrestricted as to content' (Goodwin-Gill 1993: 6). In contrast, the *exclusive* conception links protection to a particular category of persons who are placed in a distinct situation, 'refugees' being such a category, and thereby invites the condemnation of measures to keep them out.[10] As Roberts explains, 'a return to legal basics implies a return to a narrow definition of the refugee; and it does not respond to the real and strong pressure to take action to assist potential refugees before they leave their country of origin' (Roberts 1996: 389).

The Proliferation of Labels in the North
This changed perspective also explains the proliferation of labels in the North. The counterpart of distinctions-blurring abroad through mergers is the fragmentation of the refugee label at home. For as Zetter points out, it helps 'narrow down and restrict

the allocation of the most privileged label – refugee' (Zetter 1999: 8). In other words, 'new labels are being used … as instruments of control, restrictionism and disengagement' (p. 2). In the UK, for example, these include: asylum seekers, spontaneous arrivals, quota refugees, people in refugee-like situations, stayees, the so-called category B status, asylum seekers with Exceptional Leave to Remain or Indefinite Leave to Remain and the 'white list of safe countries'. The labels institutionalise, not just a status, but, as has been pointed out, 'certain assumptions and expectations about *humanitarian* treatment and responses' (p. 8). To put it differently, the erosion of the rights of refugees has deep roots in the dilution of refugee law.

Human Rights as Repatriation

Another grave consequence of the inclusive concept of protection, and of moving the refugee regime closer to the human rights regime, is the erosion of the principle of voluntary repatriation. Since the early eighties, attempts have been made to explicitly develop this 'new approach to the refugee problem' to be 'based on human rights' (Coles 1988: 216-17). It has been argued that 'human rights should be recognised as central to the entire refugee issue' (Coles 1991: 63). Its centrality is used to contend that 'the goals of separation and alienation, which animated so much of the approach of the past, should be recognised as contrary to both individual human interest and the well-being of societies, particularly in today's conditions' (Coles 1988: 216-17). According to this view, 'voluntary repatriation was the basic or primordial solution' and its denial involved the violation of basic human rights (Coles 1991: 68). It initiated what I have elsewhere called the *repatriation turn* in refugee policy (Chimni 1998a: 363ff).

Once repatriation is presented as a solution whose denial implies the violation of human rights, it justifies its pursuit in all circumstances (Chimni 1991, 1999a). Thus, human rights discourse was once again placed in the service of a policy of containment. It is to the credit of Dr. Harrell-Bond that she was among the first to point out that the solution of voluntary repatriation has not been adequately researched and that there were situations and contexts in which it is far from being the ideal solution (Harrell-Bond 1989). But the ideology of humanitarianism used the vocabulary of human rights to distract attention from involuntary return.

Return and the Neo-liberal Turn

The growing emphasis on repatriation has turned the attention of the international community towards 'problems of return' where it is confronted with the reality that the countries of origin are very often poorer than the countries from which refugees are being returned (Chimni 1999a). Countries that have been ranked lowest on the Human Development Index scale have by far the highest propensity to generate large

movements of refugees and displaced people. Thus, of the 30 states at the bottom of the index, half have experienced substantial forced migration, including many of the countries most seriously affected by the problem of human displacement: Afghanistan, Angola, Bhutan, Burundi, Liberia, Rwanda, Sierra Leone, Somalia and Togo (UNHCR 1995:147). It is not surprising, then, that the governments of countries of origin are often in no position to assume responsibility for the reintegration of returning refugees or other displaced populations. In the circumstances, it is inappropriate to distinguish between refugees and IDPs, as returnees were only 'displaced persons of a special kind' (Gorman and Kibreab 1997: 42; UNHCR 1997: 152 and 147). Legal categories must blur once again.

But more significantly, 'post conflict societies' are to be restored to productivity. In the absence of domestic resources, the IMF and the World Bank step in with funds, overlooking the fact that their role in creating conditions of conflict is reasonably well established, and is conceded even by the UN Secretary-General.[11] Indeed, he has pleaded with the international financial institutions to ease the conditionalities that normally accompany funds and recommended 'a "peace-friendly" structural adjustment programme' (UNHCR 1997: 15; Oxfam 1998). Yet, two leading scholars, in what has been described as a 'path breaking work', have described as most 'promising' the entry of the World Bank into post-conflict reconstruction work. In the view of Cohen and Deng, the Bank 'will be able to address the underlying causes of conflict and shape solutions for their lasting resolution' (Cohen and Deng 1998: 303). Such thinking represents the ultimate triumph of the ideology of humanitarianism.

If post-conflict states are to be converted to productivity, return also demands the establishment of an accountable state that can come to terms with the legitimacy crises and the social protest generated by the continued implementation of the neo-liberal programme. Its key instrument, *vide* the international law principle of free and fair elections, is 'polyarchy' in which 'mass participation in decision-making is confined to leadership choice in elections carefully managed by competing elites' (Robinson 1996: 49). But political democracy does not necessarily lead to social and economic democracy.[12] Communal rivalries, or conflicts over water and land, or deep social disparities are not resolved through simply chanting the mantra of free and fair elections. It calls for genuine participatory democracy based on the principles of distributive justice. But who is to press for it – surely not the financial institutions or the states which control them?

The Impact on UNHCR

The ideology of humanitarianism has also had a profound impact on UNHCR, the principal agency concerned with the protection of refugees. First, the fact that refugees are now a matter of high politics has considerably reduced the autonomy of UNHCR. While the major donor countries have always exercised 'undue influence' on the

organisation, UNHCR was not seriously constrained in its operation in the course of the Cold War because of a convergence of interest to uphold the core principles of refugee law. However, UNHCR's financial dependence is today being used to prevent it from protesting too much against the erosion of basic protection principles (violation of the principle of *non-refoulement*, regressive interpretation of the definition of 'refugee', etc.) or taking the initiative to adopt creative measures to implement its mandate for supervision (Landgren 1999; Report 1999).[13] Instead, its goodwill and its knowledge production and dissemination functions are being steered to legitimise the Northern model of humanitarianism (Chimni 1998a: 365-68).

Second, as the tasks of UNHCR are being redefined in the matrix of the policy of containment and the accompanying language of security, the 'non-political and humanitarian' clause in its mandate is being diluted. The fact that between 1991 and 1997 the Security Council made specific reference to UNHCR assuming a leading humanitarian role more than 30 times, in contrast to merely four times prior to 1991, is a pointer in this regard (Sugino 1998: 43).[14] In Kosovo, UNHCR worked in partnership with an overt party to a conflict even without the cover of a UN resolution, so that 'its claim to be a neutral actor looked increasingly threadbare' (Newland 1999; Becker 1999; Morris 1999).[15] The erosion of the non-political clause will, in my view, further limit its autonomy as it will come increasingly to be associated with the strategy of Northern states.

Third, apropos the blurring of legal categories, UNHCR is being transformed from a refugee to a humanitarian organisation. Its growing involvement with internally displaced persons (IDPs) and its focus on preventive protection and repatriation has led it to concern itself with human rights activities and returnee integration in the country of origin (Gorman and Kibreab 1997: 42).[16] This has led, firstly, to an unfortunate new-found partnership with the international financial institutions and transnational corporations (UN 1999c). Secondly, it has distracted it from performing its principal function of providing protection, a fact reflected, among other things, in the reduced role in recent years of its Division of International Protection in internal decision making (Warner 1998a: 14; Report 1999: 214 and 220).[17] In her speech to the 50th session of the Executive Committee in October, the High Commissioner appears to recognise this and has sought to give 'a proper role for the Department of International Protection in contributing to the overall decision-making process' (Ogata 1999a). But we still do not know enough about the restructuring inside the organisation to tell if it will make a difference. Nevertheless, it is a relief that the problem has been recognised.

From New to Just Humanitarianism
In conclusion, I want to make a few points on how to move from new humanitarianism

to what I would like to call just humanitarianism. For the first time in human history there exist the material basis and conditions to offer to each individual on planet earth a life of dignity. There is no reason why, as we enter the new millennium, a vast part of humankind should continue to be deprived of the basic necessities of life or be encircled by violence or be deprived of the right to seek asylum. All this needs to change. I have in this regard three suggestions.

Costs of Policy of Containment
First, the humanitarian community needs to work towards getting the Northern states to change their non-entrée policies. Today, there is a passive acceptance of the erosion of core principles of refugee protection and rights in the name of a spurious realism. While there is no wishing away the difficulties in altering the course of Northern states, there is no alternative either to educating and mobilising people against the policies of exclusion. In this regard it needs to be stressed that a policy of containment is destroying the principles of refugee protection in the rest of the world.

Making International Institutions Responsible
Second, international institutions need to be made responsible for acts of omission and commission which lead to the violation of human rights. UNHCR, for instance, 'still remains largely unaccountable' for the violation of its mandate (Gilbert 1998: 377ff). A correlative of international institutions possessing legal personality and rights (to offer humanitarian assistance, to advance claims etc.) is responsibility in international law (Brownlie 1990: 701; Schermers and Blokker 1995: 990ff). Thus, UNHCR should be held responsible if it 'incorrectly declares that a source State is safe for return, closes a camp and permits or facilitates the repatriation of the refugee population who suffer persecution on return' (Gilbert 1998: 382). In brief, as the importance of international institutions grows in the era of globalisation it is imperative that they be accountable for their actions, be it UNHCR or the IMF and World Bank combine or the WTO.

Struggle for Global Justice
Finally, there is the need to address the larger question of global justice (Shapiro and Brilmayer 1999: 2). There is a tendency among those concerned with the problem of forced migration to leave big questions like global justice for others to address as they are preoccupied with more immediate concerns. This inclination is reinforced by the unquestioned assumption that local and national factors are largely responsible for threats to human rights and democracy in the Third World (Orford 1997: 449), with the result that the contribution of transnational capitalism, and the agencies which promote its interests, in undermining Third World economies and polities is largely ignored. However, if humanitarian organisations, governmental and non-governmental,

wish to avoid the charge of 'grassroots imperialism' then there is a need to explore what Zizek terms the 'shady world of international capital' (Zizek 1999: 77). To conclude, the issue of global justice can no longer be left to other fields of knowledge and action. It must be placed squarely on the agenda of the practitioners of humanitarianism. If it is not, then humanitarianism must be denounced for not being humanitarian enough.

Notes

1. For example, Minear and Weiss define 'humanitarian assistance' as 'encompassing activities covering a full spectrum, from the supplemental feeding of infants during famines to longer-term measures such as the strengthening of indigenous social and institutional coping mechanisms to avoid future crisis' (Minear and Weiss 1993: 9).

2. 'Globalisation' is an essentially contested concept. For the purpose of this article I go by the following definition offered by Robinson:

> The core of globalisation, theoretically conceived, comprises two interwoven processes: (1) the near culmination of a centuries-long process of the spread of capitalist production around the world and its displacement of all precapitalist relations ('modernisation'); and (2) the transition in recent decades from the linkage of nations via commodity exchange and capital flows in an integrated international market, in which different modes of production were 'articulated' within broader social formations, to the globalisation of the process of production itself. Globalisation denoted a transition from the linkage of national societies predicated on a *world economy* to an emergent transnational or global society predicated on a *global economy*. The essence of globalisation is global capitalism, which has superseded the nation-state stage of capitalism (Robinson 1998: 563).

3. On why it is erroneous to call societies which have been visited by civil wars etc. post-conflict societies see Crisp (1998).

4. A *Newsweek* article reported: 'The World Food Programme says its latest request for money from donors like the United States, Europe and Japan has been all but ignored. WFP officials in Luanda say that food and personnel have been diverted to Kosovo, even though Kosovo had fewer refugees than Angola and they faced no threat of starvation' (Marbury 1999: 2).

5. According to Warner, it is 'an abnegation of responsibility by those in power. That is, instead of admitting that civil wars or violent outbreaks such as the situations in the Great Lakes in Africa, Sudan, Afghanistan, Chechnya, are very political activities, these outbreaks are termed humanitarian crises in order to avoid hard decisions about what to do' (Warner 1998b: 5). Thus, Roberts writes in the context of refugee problems, that 'if there is one clear lesson from the developments of the refugee regime in the 1980s and 1990s, it is that a more interventionist approach to the cause, treatment and cure of refugee flows is unavoidable – and unavoidably political' (Roberts 1998: 394). From the perspective of refugee protection, as Harrell-Bond has noted, 'the danger of the assumption that it is possible to separate politics from humanitarianism' is 'that it prevents an examination of the effects of local, national, and international politics on refugee policy' (Harrell-Bond 1986: 17).

6. Likewise, Kaldor has written in the context of the NATO bombing of Kosovo:

the war over Kosovo establishes a precedent for the principle of humanitarian intervention, but the method was inappropriate and it would be a mistake to conclude that bombing works. Bombing is more in keeping with the traditional war fighting: it was designed to engage the Serbian military machine and only indirectly to protect people. The Nato intervention did not save one Kosovo Albanian (Kaldor 1999).

7. It was also suggested, albeit falsely, that the intervention was carried out on behalf of the international community even when only a handful of states were party to the decision. Kissinger noted 'the visceral reaction of almost all nations of the world against the new NATO doctrine of humanitarian intervention' (Kissinger 1999: 22). He aptly concluded a essay entitled 'New World Disorder' thus: 'The paradox is that a country that thinks of itself as acting in the name of the universal values is seen by too many others as acting arbitrarily, or inexplicably, or arrogantly' (p. 24).

8. Regis Debray wrote that 'it was the Nato strikes which caused the humanitarian disaster to snowball. Up to then, there had been no need for refugee camps on the border' (Debray 1999). According to Hayden, 'it is clear […] that the wide Serbia offensive against Kosovo Albanians began after NATO's attacks began' (Hayden 1999). This was confirmed by the official UN Mission: the account of all people interviewed was 'consistent that, in the parts of Kosovo visited by the mission, the period from 24 March to 10 April 1999 saw a rampage of killing, burning, looting, forced expulsion, violence, vendetta and terror' (UN 1999a).

9. The Mission pointed out that 'these refugees have the same rights and needs as refugees from Kosovo in Albania and Macedonia, and deserve similar levels of assistance and commitment from the international community to identify urgent solutions to their plight … It is important for the international community, as it attempts to provide assistance to the new refugees in Albania and Macedonia, not to neglect people who have been refugees for over four years and whose sub-human living conditions will inevitably be aggravated by the ongoing conflict' (UN 1999a).

10. The exclusive conception of protection, it may be clarified, does not reject a complementary exception which posits a situation in which protection to a category of persons incidental or related to the principal category of persons is also offered. In other words, the situation does not necessarily have to represent a zero sum game. The work of UNHCR has until now essentially followed this line of thinking. Till recently its involvement with IDPs has mostly been in the context of the voluntary repatriation of refugees where return movements and rehabilitation and reintegration programmes have included returning both refugees and displaced persons in circumstances where it was neither reasonable or feasible to treat the two categories differently.

11. 'In many African countries painful structural adjustment programmes have led to a significant reduction in social spending and consequent reductions in the delivery of many of the most basic social services. Especially when this is coupled with a perception that certain groups are not receiving a fair share of diminishing resources, the potential for conflict is evident' (Annan 1998: 18-19).

12. As Chabal puts it: 'I am not saying that elections are unimportant; merely that they are no substitute for effective political accountability' (Chabal 1998: 302). Cohen and Deng themselves state that 'in civil wars the gestures made toward peace often prove to be only momentary interruptions of the conflict' (Cohen and Deng 1998: 292). According to them 'internal wars dissipate only gradually' (p.292). The reason for this is that the root causes of conflict are not

addressed in the endeavour to reconstruct post-conflict societies.

13. 'It would be highly desirable for UNHCR to formulate an international legal strategy to enhance respect for the human rights of refugees. Key components could include the establishment of a Committee, or an advisory body of Friends, a revitalised use of existing reporting mechanisms both internally and to ECOSOC, the use of fact-finding procedures and a closer linkage with existing human rights law and mechanisms' (Landgren 1999).

14. Of course, UNHCR has little choice but to do the needful when it is required to do so by a Chapter VII resolution (Gilbert 1998: 357).

15. For an earlier negative view based on conflict and cooperation between the military and humanitarian organisations in Bosnia see AbuZayd (1997: 7-9).

16. These activities have included 'support for national human rights institutions to strengthen local capacity to protect human rights; assistance in training the judiciary and government officials in refugee and related human rights concepts; and working along with non-governmental organisations to spread awareness of human rights instruments, principles and practices directly impacting on refugee situations' (UN 1998: 12).

17. On the other hand, UNHCR has not seriously contributed to human rights situations, for as the Harvard anthropologist Sally Falk Moore has pointed out, the high sounding normative statements of international treaties mean nothing without 'a knowledge of nasty politics, vicious and violent competitions, and … serious reflections on existing economic and political equities' (Moore 1998: 47).

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