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**THE IMPACT OF LIBERTY:
QUESTIONING THE ETHICAL NORMS OF REFUGEE RESPONSE
IN THE MALAWIAN CONTEXT**

by

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**A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
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Master of Arts**

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ABSTRACT

Assisting refugees is generally considered a clear moral imperative. Yet, many refugees today are struggling with inadequate assistance and closed doors. This project asks why the international system of refugee response is failing to adequately respond to the needs of refugees in a third world context. To address this question, the paper delves into the ethical norms of the 1951 Convention on the Status of Refugees and investigates the impact of these norms on refugee response. By analyzing the case of non-Mozambican refugees in Malawi, this paper finds that the Convention impacts response in ways that allow states to harm the people it was designed to protect.

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PREFACE

Assisting refugees is almost universally considered to be a clear moral imperative. But, how much assistance should be given? Who should help, and at what cost? These less clear (and less commonly agreed-upon) issues constitute the point of departure for this thesis, which delves into the ethics of international refugee law and investigates the impact of ethical norms on practice. The hypothesis guiding this project is that the Convention's liberal emphasis has negative consequences for refugees in a third world context.¹ The objective of this paper is not to *test* this hypothesis (which would require an extensive multi-case analysis), but is rather to probe its plausibility, analyzing its application on the basis of one case study, and thereby opening opportunities for further research. The hope is that this project will inspire a re-thinking of the ethical norms that guide response² to refugees and will encourage amending the Convention itself.

The project aims to make four contributions: (1) to uncover the ethics of the Convention; (2) to demonstrate how the Convention's ethical norms impact real-world state response to refugees using Malawi as a case study; (3) to offer a comprehensive

¹ This project focuses on the third world for two reasons: (1) to explore whether the Convention, which was drafted by mostly western Europeans in western Europe to respond to the refugee situation in Europe after WWII (discussed later in this project) is inappropriate within a third-world context; and (2) to analyze whether refugees in the third world, as opposed to those being hosted in industrial countries, are in need of more assistance from the international community. An additional interest of this project is to investigate whether the Convention encourages sufficient support from the international community to refugees in the third world context.

² Throughout this project, the term "response" refers to both refugee response at a domestic level (meaning the response of a host state to refugees), response to refugees internationally (that is, how the international community through the UNHCR assists refugees), as well as the way individual states respond to refugees in other states.

discussion and analysis of Malawi's response to non-Mozambican refugees,³ a case study which has never been addressed in academic literature; and (4) to use findings from the case study analysis to encourage a re-thinking of ethical norms of international refugee law as well as the law itself. The first two contributions pave a path for subsequent interdisciplinary research that makes connections between ethical theory, legal documents and case study analysis. The third contribution is largely historical: this thesis represents the first comprehensive discussion and analysis of Malawi's response to non-Mozambican refugees. Since there is very little academic literature on this case study, much of the analysis draws on recent secondary sources, archival materials and interviews with refugees, field officers from the United Nations High Commission for Refugees (UNHCR) and government officials from the Government of Malawi (GoM). The analysis utilizes data collected over a three month period spent living in Malawi and therefore benefits from many personal observations and communications accumulated over this time period.

Before discussing the thesis's structure, terms used throughout this paper—terms which often have unclear meanings—will be defined. This project uses the term “ethics” and “morality” to refer to the same thing. Webster's Encyclopedic Dictionary suggests that the two words are synonyms:

moral: (adj.) ethical; capable of distinguishing between right and wrong; governed by the laws of right and wrong

ethical: (adj.) relating to morals; containing precepts of morality; moral

morals: (noun) moral principles

³ Although numerous studies have explored Malawi's response to Mozambicans, this thesis provides the first account of Malawi's response to a smaller population of refugees who are not from Mozambique. Non-Mozambican refugees have been in Malawi since before the Mozambican influx.

ethics: (noun) moral philosophy; the science which treats of the nature and grounds of moral obligation

An obligation is that which binds or obliges one to do something. Webster's defines an obligation as an external act or duty imposed by the relations of society.⁴ This project will discuss both positive and negative obligations. Negative obligations require one to not inflict harm on another. "They are called negative because they are obligations to abstain from doing something" (Tugendhat 1995, 129). Positive obligations require one to "do good"—to help and assist others. To give assistance to people experiencing a drought, or to provide a space for individuals fleeing persecution are examples of positive obligations.

This project is roughly divided into three parts. The first section introduces the Convention, the second explores the ethical norms on which it is based and the third investigates how these norms impact the well-being of refugees. These sections are broken down into six chapters. Chapter One gives a brief detailing of the history and main tenets of the Convention and discusses both historical and recent refugee trends—in part to demonstrate how this project's findings are relevant for other countries. As will become clear in this chapter, the Convention is a western⁵ document designed largely by western Europeans to respond to refugees in Europe (resulting from WWII).⁶ Chapter

⁴ The words oblige and obligate are both defined as "to bind, to bring or place under some obligation, to hold to some duty" (Webster's, 1980). This paper will use the word obligate interchangeably with oblige.

⁵ This is a problematic term which I am using to refer to ethical theories originating from the western paradigm, largely coming from western Europe and North America. The term is problematic because many "western" ethicists are working outside of this paradigm. Similarly, many scholars from third world countries and elsewhere are operating within this paradigm. Specifically, however, I am referring to a dominant school of ethical thought, *originating* from western countries, which has continued to influence international laws and norms of state obligation.

⁶ Asia, Africa and Latin America (with the exception of Brazil, Venezuela and Colombia) did not participate in its construction.

Two explores western ethical theories of state obligation and human rights as a first step in understanding the ethics of the Convention.⁷ The second step in clarifying the ethics of the Convention is taken in Chapter Three which assesses whether western liberal norms are evident in the Convention itself. This chapter concludes that the Convention does have a western liberal emphasis and that this emphasis impacts the response to refugees in three possible ways. The three possible implications offered by this chapter are sub-hypotheses, meaning they are speculations of how the ethics of the Convention impacts response to refugees. These three sub-hypotheses are used to structure the investigation of how the ethics of the Convention impact response to refugees. Chapter Four introduces the case study of Malawi's response to refugees and Chapter Five analyses this case study, structuring the analysis on the three sub-hypothesis introduced in Chapter Three. Chapter Six concludes the thesis, discussing problems and potential criticisms, reviewing lessons learned, suggesting policy implications and offering directions for future research.

⁷ This project limits the investigation of the ethical norms embedded in the Convention to western ethics. The exclusion of the wealth of ethical theories outside of the western paradigm is intended; because the Convention was designed by western countries to respond to refugees in the western world, this project assumes that an investigation of western ethics will most likely enable an understanding of the Convention's ethical position.

CHAPTER ONE

THE CONVENTION AND THE CURRENT REFUGEE CONTEXT

This chapter begins by giving an overview of the Convention in order to set the stage for a more thorough discussion of its Articles in later chapters. The chapter also provides a setting for the case study explored in this thesis by offering an overview of contemporary refugee movements.

The Convention

The Convention was drafted at a meeting of twenty-six delegates from predominantly industrial countries at the United Nations in Geneva from the 2nd to the 25th of July, 1951.¹ All ratifications to the initial document were completed by the 22nd of April, 1954, when the Convention officially “entered into force” (United Nations 1983, 1).

The Convention’s primary objective was two-fold: (1) to specify state obligations to refugees; and (2) to establish basic minimum standards for upholding refugees’ protection and welfare. The first task of the Conference, however, was defining the term ‘refugee’.

Article 1 of the Convention defines ‘refugee’² to mean a person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or

¹ Several others participated, other than the twenty-six state delegates. Cuba and Iran sent two observers. The UNHCR participated, without the right to vote, as did the International Labour Organization (ILO), the International Refugee Organization (IRO) and the Council of Europe. Twenty-nine non-governmental organizations were also present with observation status (UN 1983, 5-6).

² According to the UN Convention, a person must meet four conditions in order to be considered a refugee: 1) he or she must be outside his or her country of origin; 2) she or he must have a well-founded fear of persecution; 3) the fear must be based on either race, religion, nationality, membership of a particular

membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (United Nations 1983, 11). This definition, however, differs from the common definition used by the media, politicians and general public to describe anyone who has been forced to abandon her usual place of residence—those escaping persecution, political violence, ethnic conflict, ecological disaster or poverty are all, by this common definition, labeled refugees. The term is also generally used to describe both people who have left their country and also those who have been displaced within their homeland. This common usage of the term is therefore more extensive than the definition included in the Convention which specifies that only those fleeing *persecution*, who are *outside* of their country of origin are entitled to refugee status.

Those who are applying for refugee status and those who are awaiting the results of a refugee determination procedure are recognized by the UNHCR and government bodies as asylum-seekers rather than refugees. In general usage, however, asylum-seekers are called refugees. Although the term ‘asylum-seeker’ is less common than the term ‘refugee’, the numbers of asylum-seekers being hosted by any particular state is often higher than the number of refugees within a host state, resulting from stalled determination procedures. With the exception of one country (Zambia), the displaced population in most sub-Saharan African countries, for example, primarily consists of asylum-seekers (UNHCR 1998).

social group or political opinion; and 4) he or she must be unwilling or unable to be protected by her or his country of origin or to return there, for fear of persecution (Awuku 1995, 84).

Economic hardship (or a lack of subsistence) does not qualify an individual for refugee status. The presence of economic migrants is of concern to industrial countries, who attract many individuals seeking greater economic opportunities. For the first thirty years after the implementation of the Convention, however, the task of distinguishing refugees from economic migrants did not present serious problems (UNHCR 1995, 196). Throughout this period, the numbers of individuals seeking asylum in industrial countries remained quite small (UNHCR 1995, 196). Although the numbers of migrants began to grow in the 1960s and 70s, the majority of refugees remained within their own region (mostly in third world countries) and therefore were not of significant concern to the industrial world. In the 80s and 90s, however, the numbers of economic migrants to industrial countries steadily increased (UNHCR 1995, 197). In spite of this increase, the UNHCR and other refugee organizations have neglected to address the issue, concerned that any dilution of the distinction between refugees and economic migrants might have an adverse impact on the people they seek to protect (UNHCR 1995, 197). The issue of economic migrants is complicated by the fact that the root causes of refugee flows are often linked with economic failure. Armed conflict and political chaos often go hand-in-hand with economic instability (UNHCR 1995, 198).

The definition of the term 'refugee' (Article 1) as well as four other tenets of the Convention, do not allow for reservations. The non-discrimination clause (Article 3) stipulates that states hosting refugees are to apply the Articles of the Convention to refugees irrespective of race, religion, nationality or membership of a particular social group or political opinion. Refugees' free access to courts of law (Article 16), freedom to practice religion (Article 4), as well as protection from being returned, the principle of

non-refoulement (Article 33), are the other Articles concerning refugee assistance and protection that do not allow reservations.

In summary, the Convention's forty-six articles specify that in areas of public education, social security and public welfare, refugees are to enjoy no fewer privileges than the nationals of the host country. On the subject of employment, acquisition of property, and admittance to formal studies and professions, refugees are entitled to no less favourable benefits than those accorded to immigrants (Young 1979, 12). On virtually all matters the host country is encouraged by the Convention to offer refugees the same benefits as nationals.

The Convention was constructed specifically to respond to refugees created by WWII. According to the Convention, the refugee label was restricted to those who had experienced events leading to their refugee status before January 1st, 1951 (United Nations 1983, 12). This specification soon proved to be obsolete as post-WWII refugees required a response from the international community. In 1956, for example, when 200,000 Hungarians fled into Austria and Yugoslavia, UN agencies and other states assisted these refugees despite the fact that these refugees were not created by WWII. In Africa, people resisting colonial rule and fleeing resistance in the 1960s were granted material assistance from the UNHCR but were not protected by the UNHCR until the 1967 Protocol (Awuku 1995, 80).

The international community adopted the Protocol, a decade and a half after the Convention's signing, to respond to "new refugee situations" that had "arisen since the Convention was adopted" (United Nations 1983, 39). There was a recognition that the international community needed to respond to refugees who did not "fall within the scope

of the Convention” (United Nations 1983, 39). The only significant amendment which the 1967 Protocol made to the Convention was the elimination of the temporal limitation of the Convention. Virtually all other aspects, however, were left untouched: “one of the most striking aspects of the 1967 Protocol is its wholesale incorporation of the Convention’s key provisions” (Fitzpatrick 1996, 233).

Regardless of the lack of changes to the Convention for almost half a century, the Convention remains the centre of the international legal framework for the protection of refugees. Although many scholars have argued for amendments of the Convention (Juss, 1998; Hathaway and Neve, 1997), there is a widespread belief that the Convention “is not obsolete and continues to guide state responses to the flight of refugees” (Fitzpatrick 1996, 252). The Convention (or its Protocol) has been ratified by 134 states, making it one of the most widely endorsed of all international legal instruments (UNHCR 1998).

Recent Refugee Movements

The common perception that the international refugee problem is growing inexorably in size and geographical scope is inaccurate: although incidents of forced displacement and ethnic cleansing have increased over the last decade (perhaps increasing the *complexity* of refugee problems), the number of refugees has actually declined in recent times: from 18.2 million in 1993 to 13.2 million at the beginning of 1997 (UNHCR 1998).

According to the UNHCR, the decrease in overall numbers is the result of two factors. First, large-scale repatriation movements have taken place since the beginning of

the 1990s, involving countries such as Afghanistan, Cambodia, Mozambique, and Rwanda. In total, more than 10 million refugees are estimated to have returned to their homes since the beginning of the decade, either voluntarily or because of a lack of alternatives. Second, the number of persons internally displaced within their countries of origin is thought to have increased (UNHCR 1998).

As of the middle of 1997, the major refugee populations have been found most notably in Central and West Africa, the Horn of Africa, and South and South-West Asia (UNHCR 1998). Other major presences include approximately three million Palestinian refugees situated on the West Bank, in Gaza and other parts of the Middle East, who are assisted by the UN Relief and Works Agency.

Despite diminished overall numbers, the frequency of cross-border refugee movements does not warrant any relaxation of international response to refugees. In the latter half of 1996 and beginning of 1997, for example, refugees moved from Myanmar into Thailand, from southern Sudan into Uganda, from Colombia into Panama, from Afghanistan into Pakistan, and from Zaire into a number of neighbouring states. In the case of Zaire, refugees were generally moving for a second time, the first move of these Rwandese citizens was from their homeland to Zaire, many moved again, however, from Zaire to a safer country of asylum as the camps neighbouring the ethnic conflict became vulnerable to warfare (UNHCR 1998). There are also examples of many refugee movements which are smaller in size than the populations outlined above. Many refugees also self-settle (without UNHCR assistance) and are therefore not included in UNHCR records.

Refugee populations are generally perceived as large populations, displaced from neighbouring countries, that are living in vast, sprawling camps. Although these populations certainly exist, other presences of refugees, such as small or self-settled populations, amount to a large number of refugees on an international scale. Little attention, both from popular media and academic scholarship, is given to these populations. Some researchers have suggested that in Africa, well over half of all refugees are self-settled, meaning that they receive no assistance from relief organizations nor do they live in camps (UNHCR 1998). These refugees are generally found living along the border with their country of origin. Guinea and Côte d'Ivoire, for example, have hosted more than 700,000 Liberian refugees since the early 1990s, almost all of whom are spontaneously settled and many of whom are now partly self-sufficient (UNHCR 1998).

Malawi, which is the case study of this project, hosts a fluctuating number of refugees, approximately 2000, from countries outside of the Southern Africa region. Although Malawi's refugee population may come across as insignificant and atypical, the case of Malawi shares commonalities with many other refugee populations not only in Southern Africa, but in other regions of the world.

In Southern Africa alone, small, atypical refugee populations amount to a large refugee population in this region. Zambia hosts approximately 16,000 refugees: 3,500 of them live in Lusaka and benefit from activities directly aimed at self-reliance, approximately 2,500 others only use UNHCR-assisted health services. The remaining, close to 10,000 refugees, however, are not acquiring any assistance from relief organizations. Refugees in Zambia come from the Democratic Republic of the Congo (72

per cent), Rwanda (11 per cent) and the remaining percentage originate from Angola, Burundi and Somalia (UNHCR 1998).

Zimbabwe hosts a fluctuating population of 1,000 refugees and asylum-seekers, most originating from the countries in the Great Lakes region, Ethiopia, Somalia and West Africa (UNHCR 1998). UNHCR assists approximately 280 refugees and 60 asylum-seekers in Botswana, 26 recognized refugees in Lesotho, 60 refugees in Madagascar, 500 refugees and asylum-seekers in Mozambique, and a similar number in Swaziland. The majority of these refugees come from countries in the Great Lakes region. Namibia hosts a fluctuating population of 2,500 refugees, generally from Angola (UNHCR 1998).

South Africa, of all Southern Africa states, receives the highest numbers of asylum-seeker applications, approximately 1,500 applications per month. According to official statistics, nearly 40,000 asylum applications had been registered as of the end of 1997. Of these, only 3,847 had been approved by the end of 1998 (UNHCR 1998).

As demonstrated by the refugee populations currently in Southern Africa, refugees do not necessarily seek asylum in a neighbouring country. From the 1960s until the early 1990s, the apartheid regime in South Africa, its illegal occupation of Namibia, and the colonial independence struggles in Angola, Mozambique and Zimbabwe all resulted in mass flight of refugees to neighbouring countries. From the mid to late 1990s, however, large numbers of refugees Southern Africa have come from the countries of the Great Lakes region (Burundi, Rwanda and the Democratic Republic of the Congo), from the Horn of Africa (Ethiopia, Somalia and the Sudan), and from several West African

countries (UNHCR 1998). Asylum-seekers in Southern Africa have also come from as far afield as Afghanistan, the former Yugoslavia and Russia (UNHCR 1998).

The Convention and Contemporary Refugee Movements

Critiques of the Convention range from calling it “conceptually and practically obsolete” (Juss 1998, 311) to claiming that it is valuable, but in need of significant change (Fitzpatrick 1996, 230).

One criticism of the Convention is that it is western-centric. As previously mentioned, the drafters of the Convention were primarily from Western Europe and North America. Their objective was to assimilate persons displaced by WWII within European states (Fitzpatrick 1996, 233). Because the Convention was founded to respond to the specific refugee problems experienced in western Europe, the Convention has been criticized for having “installed a regime limited to the regional concerns of its drafters” (Juss 1998, 336).

Another criticism of the Convention is that it has not been altered to respond to the changing refugee context. “Today’s refugees are more vulnerable under the Convention standards than earlier refugee groups because the Convention. . . has failed to respond to the transformations that have occurred. This leaves refugees with little protection of their rights and host states with little incentive to fulfill their obligations” (Barkley 1989, 330). The Convention was established in response to the right-wing totalitarian regime of Nazi Germany that was a clear persecutor of segments of the population. At the time of its drafting, the Convention could be easily applied to victims of totalitarian governments in eastern Europe which were attempting to dissolve

nonconformists and others through state terror (Fitzpatrick 1996, 240). Critics claim that the experience of persecution has since become far more complicated than state terror against segments of its population, thereby stressing the ability of the Convention to protect refugees of the present-day. In some refugee-producing areas, for example, an organized state does not even exist. In this context, repression has come from organizations, or armed rebel groups who occasionally portray themselves as counter to the formal state. The Hutu militias of Rwanda, warlords in Somalia and extremist rebels in Algeria are a few examples of non-state actors that have caused large-scale refugee flows. Most of today's refugees, if fact, are victims of circumstances other than persecution. Revolutions, guerrilla warfare, changes of government and ethnic strife are leading causes of refugee flows in the contemporary context.

Some critics claim that because the Convention has not expanded the criteria for becoming a refugee, the refugee status of a person often depends on the subjective views of the adjudicator of refugee status. Some states, for example, have recognized forms of violence against women and violence against homosexuals as legitimate grounds for refugee status. Without concrete changes to the law, however, cases are vulnerable to the subjective bias of individual decision-makers and adjudicators. Similarly, the manipulability of the refugee definition enables national authorities "to tighten the criteria of eligibility, either consciously and visibly for deterrent aims, surreptitiously, or even in subconscious reaction to fears of opening floodgates" (Fitzpatrick 1996, 242). As a result of this subjectivity, refugees are not guaranteed protection from "any non-Convention harm. . . that does not have a 'persecutory' focus" (Juss 1998, 313).

The ability of the Convention to resolve contemporary refugee crises has also been questioned because the Convention fails to specify obligations that states owe to one another. In the Convention, “there are no duties to relieve other States of the burdens of asylum by providing either financial resources or offers of admission” (Fitzpatrick 1996, 250). One scholar claimed that this lack of specified burden-sharing is one of the main reasons why third world states have refused to ratify the Convention (Orland 1997, 121). Because the Convention does not guarantee assistance to third world states that are hosting refugees, rights to refugees “remain unprotected since the Convention wrongly assumes that host states have the mechanisms for guaranteeing these rights” (Barkley 1989, 331).

The lack of clear obligations of a state to refugees extraneous to its borders has resulted in further criticism of the Convention. State obligations, according to the Convention, begin only once a refugee has reached the borders of a state. By not obligating a state in any way to refugees beyond state borders, the Convention remains unable to “prevent states from evading their asylum obligations by devising deterrent devices such as stringent visa requirements, carrier sanctions [and] distant re-settlement programs. . .” (Fitzpatrick 1996, 313). Deterrent measures obstruct refugees from reaching state borders, thereby relieving potential host states of their obligations to refugees.

Concluding Comments

The objective of this chapter was to contextualize this thesis by (1) exploring the Convention, (2) discussing the recent international refugee context and (3) giving an

overview of contemporary criticisms of the Convention. A criticism of the Convention that is particularly relevant to this project is that the international community is dogmatically adhering to the Convention: “the reluctance of the international community to abandon the 1951 foundation [of refugee response] reflects. . . a sense that the Convention embodies indispensable and enduring values” (Fitzpatrick 1996, 234). The next chapter will investigate possible values of the Convention by drawing on western ethical theory.

CHAPTER TWO WESTERN ETHICS AND REFUGEE RESPONSE

The following discussion of western ethical theory gives an overview of the major principles of several paradigms of western ethics that are relevant to a discussion of the ethics of refugee response. This chapter begins with a discussion of three predominant western thinkers in the 18th and 19th centuries, Immanuel Kant, John Stuart Mill and John Locke. The later theorists are from more contemporary schools—Henry Shue, John Rawls, Robert Nozick and Michael Walzer. All of the theorists being discussed fall under the general sub-heading of liberal with the exception of Henry Shue. Shue does share several arguments in common with the other theorists mentioned but diverges from the liberal paradigm on several key points.³

In spite of the diversity of liberal arguments, both in terms of time and opinion, individualism, autonomy and reason are three common emphases in liberal paradigms. By individualism, I am referring to the liberal conception of a person as generally competitive and self-interested. Related to individualism, is the liberal value of liberty, according to which each person is entitled to pursue her life free from interference from others. The individual in liberal paradigms is therefore autonomous—meaning he is isolated and somewhat independent from community. As an autonomous individual, he makes decisions about his life using his capacity to reason, which, in the liberal paradigm, refers to a calculative, inductive or deductive process.

³ This will become clear in later discussion.

The discussion of each theorist will first explain his main argument(s) within a few paragraphs. The latter part of the discussion of each will look at what these arguments suggest (or imply) in terms of obligations to refugees.

A Historical Perspective

Deontological Ethics: The Position of Immanuel Kant

Deontological ethics place the locus of value on the act or kind of act rather than on the results of a particular action.

Even if it should happen that. . . this [good] will should wholly lack power to accomplish its purpose, if with its greatest efforts it should yet achieve nothing, and there should remain only the good will. . . , then, like a jewel, it would still shine by its own light, as a thing which has its whole value in itself. Its usefulness or fruitfulness can neither add nor take away anything from this value (Kant 1995, 251).

Recognizing the intrinsic dignity or non-relative worth of humans, Kant argues that a person should never be exploited, manipulated or used as a means to a greater good. Human beings should be treated in every case as an end and never as a means only (Kant 1995, 255). A person, therefore, must not be forced to live in conditions unfit for a human being—states or citizens who allow people to live this way are acting unethically, failing to recognize the intrinsic worth of all people.

According to Kant, every rational being has the capacity to act in accordance to a universal, absolute law of morals. Through reflection, one can understand universal law; upon understanding, one must act only with the intention of being dutiful to this law. Kant's categorical imperative stipulates that one must act only if she can will that every other person could act the same way: "I am never to act otherwise than so that I could

also will that my maxim should become a universal law” (Kant 1995, 260). In addition, ethical actions cannot rest primarily on one’s own life pursuits or inclinations. If actions to assist someone are motivated mainly by one’s inclination, they may be kind or beneficial acts, but they are not ethical. Morality, according to Kant, rests on acting not from inclination, but from duty (Kant 1995, 259).

According to Kant, one must act only in accordance to the moral law, regardless of impending sacrifice. Kant does argue that each person has “a duty to maintain [his] own life” and an obligation to promote her own happiness (Kant 1995, 259). Kant’s primary assertion, however, is that one’s pursuits and liberties should not impair one’s obligation to act in accordance to absolute moral law.

Relating Kant’s ethics to international law calls for some creativity, suggesting, not surprisingly, that deontological ethics are difficult to operationalize. It is important to note, however, that Kant, by arguing that each man⁴ is to be prized as an end to himself is largely espousing similar precepts as those offered by many classical liberals. Freedom and especially autonomy is central to these paradigms—one is ethically obligated to respect and encourage freedom of the individual.⁵ “Treat humanity, whether in your own person or in that of any other, in every case as an end and never as merely a means only” (Kant 1995, 253).

⁴ I am using gendered language here to reflect the gendered nature of Kant’s theory. Despite the fact that Kant appealed to absolute laws in order to frame his ethical precepts, these ethical laws tended to be applicable to men only.

⁵ In many discussions of the history of liberal thought, Kant (1724-1804) is included among other German philosophers such as Hegel (1770-1831) who argued for autonomy and freedom as a way of unfolding human potential.

Obligations to Refugees

A state, within the Kant's paradigm, is obligated to act in accordance to absolute, moral law. Kant argues against the idea of sovereign states that attempt to pursue the fulfillment of their interests (and the interests of their citizens) internationally. "Political maxims must not be derived from the welfare or happiness which a single state expects from obedience to them, and thus not from the end which one of them proposes for itself" (Kant 1993, 553). An individual state and individuals within a state should not be slaves to a "selfish propensity" (Kant 1993, 559). Instead, they should act only with the "pure concept of the duty of right, from the *ought* whose principle is given *a priori* by pure reason" (emphases in original, Kant 1993, 559). Kant calls on individuals to detect and conquer "the crafty and . . .dangerously deceitful and treasonable principle of evil. . . which puts forward the weakness of human nature as justification for every transgression" (Kant 1993, 560).

Kant's arguments, when applied to a discussion of the ethics of refugee response, suggest that the political objectives of a state or the interests of its populace should not factor into a response to refugees. "The rights of men must be held sacred, however much sacrifice it may cost the ruling power" (Kant 1993, 560). In terms of responding to refugees, therefore, Kant's argument suggests that regardless of sacrifice in a host country, the rights of refugees should be protected. "Hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another" (Kant 1957, 20).

Kant's position, however, is markedly less clear in a subsequent sentence: "one may refuse to receive [a migrant] when this can be done without causing his destruction;

but, so long as he peacefully occupies his place, one may not treat him with hostility” (Kant 1957, 20). In addition to the suggestion that states and individuals should respond generously to refugees, therefore, Kant’s argument also supports (in line with many other liberal philosophers), the idea that one should have, at least to a certain degree, the freedom to refuse admittance to refugees. People should not be used as a means to the end of protecting refugees, nor should a response to refugees make anyone susceptible to living standards that are not propitious for a happy life.

However, Kant’s predominant argument suggests that a state and its populace should not be a slave to selfish interests—they must act according to duty. Therefore, presumably, Kant’s ethics obligate a state and individuals to make many sacrifices in order to respond to refugees.

Utilitarianism: The Position of John Stuart Mill

John Stuart Mill (1806-1873)⁶ a primary scholar of the classical liberal tradition argues that Kant “fails. . .to show that there would be any contradiction, any logical. . . impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct. All he shows is that the consequences of their universal adoption would be such as no one would choose to incur” (Mill 1995, 173).

The morality of an action, in the utilitarian paradigm, rests in its consequences; the rightness or wrongness of an act is determined by the results that flow from it. An ethical act is one that increases utility. Utility, depending on the philosopher, refers to

either pleasure, happiness, welfare or fulfillment. Jeremy Bentham's (1748-1832) utilitarianism, which equated utility and pleasure, was labeled as the pig philosophy by his critics. They argued that Bentham's ideas implied that a pig enjoying its life would constitute a higher moral state than a slightly dissatisfied person (Pojman 1995, 168). Mill attempted to address this criticism by distinguishing happiness from pleasure in his writings. Increased happiness is a more appropriate guide of the ethical utility of actions, according to Mill, because a person with "higher faculties" requires more than simple pleasure to make him happy (Mill 1995, 177). In fact, a person will voluntarily forego pleasurable activities and indulgences, according to Mill, in order to acquire happiness.

All the grand sources. . . of human suffering are in a great degree, many of them almost entirely, conquerable by human care and effort;. . . every mind sufficiently intelligent and generous to bear a part, however small and inconspicuous, in the endeavour,[of ending human suffering] will draw a noble enjoyment from the contest itself, which he would not for any bribe in the form of selfish indulgence consent to be without (Mill 1995, 177).

Regardless of the definition of utility employed, utilitarians all assert that one must always act so that the consequences of his action bring the greatest utility for the greatest number. Rights and freedoms are therefore not important in themselves, but are necessary for the extent they increase overall utility.

Obligations to Refugees

The justification for responding to refugees, according to the utilitarian paradigm, is not derived from any rights of refugees that are to be unconditionally respected.

⁶ It is important to note that some scholars have attributed the insight of Mill's work to both himself and his wife, Harriet Taylor, who was a devoted liberal and to whom Mill's most famous essay, *On Liberty* (1859)

Instead, to operationalize an ethical response to refugees, utilitarians would consider all the interests involved and would come up with a response that would maximize overall happiness. Similar to a cost-benefit analysis, deciding whether to grant asylum to a refugee would involve a calculation of: 1) the suffering experienced by the refugee if left to remain in her present state or location; 2) the happiness resulting should the refugee be granted refugee status in a host country; and 3) the impact of the refugee on the happiness of the residents of the recipient nation.⁷ If a calculation indicated that a greater extent of happiness would result from not offering assistance to a refugee, then the state would be obligated to *not* protect the refugee.

Classical Liberalism: The Position of John Locke

Locke asserts that the rights to life, liberty and property are bestowed on humans by God; according to Locke, these rights are natural, they are part of the human self. “To understand political power aright, and derive it from its original, we must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature” (Locke 1995, 674). This law holds that “no one ought to harm another in his life, health, liberty, or possessions” (Locke quoted by Nozick 1974, 10).

Locke’s social contract between the state and citizen guarantees the protection of the rights of citizens through the limit of state power. According to Locke, people give up

was dedicated.

⁷ A similar calculation could find out the utility of offering assistance in terms of financial resources or other services to refugees in refugee camps. This calculation would similarly involve an analysis of the impact of assistance on the happiness of refugees and on the happiness of citizens who would be offering the assistance.

certain liberties in order to be governed “. . . yet it being only with an intention in every one the better to preserve himself of his liberty and property” (Locke 1993, 199). In Locke’s contract, the state is accountable to the people, and can be removed when acting “contrary to the trust reposed in them” (Locke 1993, 196).

Locke’s social contract contrasts that envisioned by Thomas Hobbes’ (1588-1679) which requires citizens to irrevocably transfer their rights to the sovereign. The sovereign, within Hobbes’ paradigm, has absolute power and is not subject to its citizens. “This submission of the wills of all those men to the will of one man, or one council, is then made, when each one of them obligeth himself by contract to every one of the rest, not to resist the will of that one man, or council, to which he hath submitted himself” (Hobbes 1993, 191).

Obligations to Refugees

Locke’s argument that all persons are entitled to the pursuit of life, liberty and property supports the idea that refugees, those whose have suffered violations of these *natural* rights, are deserving of immediate attention. Locke’s theory, however, does not offer any suggestions as to who is obligated to attend to the rights of refugees.

Locke’s writings focus only on negative obligations, his overarching claim being that “all men [should] be restrained from invading others’ rights, and from doing hurt to one another” (Locke 1995, 675). Locke claims that one should “as much as he can. . . preserve the rest of mankind, and not, unless it be to do justice on an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or

goods of another” (Locke 1995, 675). Locke’s claim suggests⁸ that with respect to conceptualizing obligations to refugees, a state should assist refugees “as much as [it] can,” (Locke 1995, 675) meaning a state should try to assist but is not obligated to do so. A state *is* obligated, according to Locke’s paradigm, to not harm a refugee or interfere in his natural rights unless the fulfillment of these rights obstructs the rights of another. Locke’s assertions would therefore suggest that states only have negative obligations to refugees.

Locke’s social contract, which obligates a state to protect its citizens, suggests that a state would have to respond to refugees in a way that would protect the rights of its citizens. Locke “saw rulers as trustees of citizenship and memorably envisaged a right to resistance and even revolution. Thus, consent became the basis of control of government” (Merquior 1991, 22).

A Contemporary Perspective

Basic vs. Non-Basic Rights: The Position of Henry Shue

According to Henry Shue, the most important rights are basic rights, which include some political and civil as well as some economic and social rights. Basic rights “are the morality of the depths. They specify the line beneath which no one is to be allowed to sink” (Shue 1980, 18). Although classical liberals would likely define only political and civil rights as basic rights, Shue argues that a social or economic right can be

⁸ I am assuming here that whatever obligations an individual has to a person in need apply to state obligations as well.

shown to be “as well justified for treatment as a basic right as physical security. . . and for the same reasons” (Shue 1980, 23).

Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations (Shue 1980, 24).

Shue’s argument that basic social and economic rights are as important as political and civil rights is strengthened by the assertion that economic rights are a necessary precondition for the exercising of political and civil rights. In order to exercise one’s right to vote, or to speak freely, some scholars suggest that one must have certain *a priori* needs addressed, such as food and shelter (Gould 1995, 200). “No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life” (Shue 1980, 24).

Skepticism of the primacy of political and civil rights has been voiced, not only by Shue in the early 1980s, but also by others in the 1990s, especially in the third world. At a conference on human rights in Vienna in 1995, delegates from several countries argued against a “general endorsement of basic political rights across the globe. . . The focus, it was argued, should be on economic rights and the satisfaction of elementary economic needs” (Sen 1994, 22).

There is much concern [in the West] with the right of peaceful assembly, free speech, thought, fair trial, etc. . . They appeal to people with a full stomach who can afford to pursue the more esoteric aspects of self-fulfillment. The vast majority of our people are not in this position. They are facing the struggle for existence in its brutal immediacy. Theirs is a totally consuming struggle (Claude Ake quoted by Nagan 1993, 92).

Obligations to Refugees

By placing basic economic and social rights equal in importance to political and civil rights, Shue opens up possibilities for compromising political or civil rights which are non-basic, such as, the right to pursue a luxurious lifestyle (a civil right) for the sake of fulfilling basic rights, such as subsistence (an economic right). Shue's paradigm, when applied to the question of how should a state or individual respond to refugees, suggests upholding the basic economic or social rights of refugees at the expense of non-basic political or civil rights of those living in affluence. If the rights of refugees did not conflict with the rights of wealthy individuals in host states, however, neither rights would need to be compromised. Where there are conflicts between rights, however, a person's right to the possibility of a healthy life takes precedence, in Shue's paradigm, over another's right to luxury items.

According to Shue, the idea that all people are entitled to have their basic rights to food and shelter (along with basic political and civil rights) respected means that one has moral duties to persons who are deprived of basic rights regardless of where or who they are (1981, 134). One's duty to a refugee, to a poor person in foreign state, and to a family member is the same—to fulfill basic rights at the expense of non-basic rights. "One is required to sacrifice, as necessary, anything but one's basic rights in order to honor the basic rights of others" (Shue 1980, 120).⁹

An ethical government, in Shue's paradigm, would have policies and institutions which would prioritize the security of subsistence of all persons—institutions that would

enable a transfer of wealth from those who have more than enough resources to those unable to provide for their subsistence (Shue 1980, 121). Although the extent of compromise, the amount of resources which are to be justifiably transferred is “less than clear,” in Shue’s argument (Gibney 1986, 42) the ethical motivation for obligation is made explicit—civil and political as well as social and economic liberties must be compromised when necessary to provide basic necessities (political, civil, economic and social) to refugees.

In terms of operating an ethical response to refugees, an application of this position would involve several steps. First, states and individuals would need to become aware of whose basic rights were not fulfilled at an international level. Second, individuals within a state enjoying the fulfillment of what Shue terms non-basic rights, such as large houses or expensive cars, would be obligated to surrender some of these non-basic items to provide more resources for refugees. Third, states would be obligated to facilitate the transfer of resources to ensure the protection of basic rights globally.¹⁰

⁹ Shue does not expect that the need for basic subsistence would result in an enormous sacrifice of individuals in industrial countries. “While this is debatable, the philosophical point is more interesting to note” (Gibney 1986, 42).

¹⁰ Although asylum or other needs of refugees may appear to be unconnected to the procurement of luxury items by individuals living in industrial countries, the connection can be easily drawn. Shue, who argues for extensive re-distribution, would legitimate taxation and other state action that would acquire non-basic resources from citizens who have more than enough. States would then transfer (and pay for the transferring) of financial (and other) resources to those who were deprived of basic food or shelter.

Two Principles of Justice: The Position of John Rawls

John Rawls, a liberal philosopher, believes¹¹ that the principles of justice, or, to put it another way, ideas of right and wrong actions, are derivable from what he terms the original position—a conceptual position, created by Rawls, that voids all situational differences that place people with more or less privilege than each other. The original position, according to one scholar, “[allows] egoists to agree on certain principles as if they were not egoists” (Laberge 1995, 19). In order to be in the original position, one must be behind a veil of ignorance—a conceptual tool created by Rawls that renders one’s class position, social status, or “fortune in the distribution of natural assets and abilities. . . intelligence, strength and the like” invisible (Rawls 1993b, 630). This veil conceals any privilege or asset that a person might possess, encouraging the formulation of principles of justice from the perspective of a person in the least well-off group.

Behind this veil, Rawls believes that most people will agree on two principles of justice. The first principle ensures that each person has an equal right to the most extensive basic liberty compatible with a similar liberty for others (Rawls 1993b, 232). By liberty, Rawls is referring generally to the same liberties espoused by Locke.

The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law (Rawls 1995, 635).

¹¹ In this section, I am discussing several predominant arguments of Rawls and relating them to the subject of obligations to refugees. A thorough application of all of Rawls’s works to the subject is beyond the scope of this paper.

Rawls's second principle addresses the problems of inequalities between individuals. Social and economic inequalities are to be arranged, according to Rawls, so that they are "(a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all" (Rawls 1993b, 232). An equal share of resources is not necessary; any inequality, however, must benefit society as a whole. Rawls's assertion that positions and offices should be open stems from his belief that inequalities will only be arranged to everyone's advantage if positions of authority and command are available to all.

The order of Rawls's principles is essential to his theory of justice. "A departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages" (Rawls 1993b, 237). Any redistribution of inequalities can only be done with full protection of individual political liberties.

Obligations to Refugees

Rawls's first principle suggests that harm should not be inflicted upon refugees, nor should their political or civil rights be interfered with (unless the fulfillment of these rights is harming others). Assuming that refugees are accepted as part of the state, Rawls's second principle of justice suggests that the social and economic inequalities between refugees and other individuals should be remedied. Organizing a society that would ensure that any inequalities were "reasonably expected to be to everyone's advantage" (part of Rawls's second principle of justice) would require restricting liberty for the sake of liberty, namely the liberty of those who have resources to ensure the

liberty of those without. As Rawls notes, liberties do conflict with one another. Rawls also suggests however, that people are very likely to voluntarily support just institutions which obligate them to contribute to those in need (Carens 1986, 44).

According to Rawls's paradigm, individuals have positive duties to assist those in need. Any assistance, however, must be afforded with full consideration for Rawls's first principle of justice and therefore must respect people's political and civil liberties.¹²

Although a state guided by Rawls's ethics might encourage its citizens to assist and contribute to refugees, the state would be obligated to first and foremost respect the political and civil rights of its citizens. Therefore, citizens cannot be compelled to accept refugees nor are people necessarily entitled to migration. As Rawls has argued, those who have caused problems within their own state cannot "make up for irresponsibility. . . by migrating into other people's territory without their consent" (Rawls 1993a, 57).

In spite of this, Rawls's writings, when applied to the subject of refugees, do suggest that individuals are obligated to provide some form of assistance. According to Rawls, people have "at least a qualified right to limit immigration" (1993a, 253). Although he leaves "aside. . . what these qualifications might be" (1993a, 223), he does argue that a "concern for human rights should be a fixed part of the foreign policy" of states (1993a, 80). He also calls for "principles for forming and regulating federations (associations) of peoples. . . cooperative arrangements" and "certain provisions for

¹² This point requires some clarification. Although Rawls's ordering of the two principles of justice limits any violations of political and civil liberties for the purpose of remedying social and economic inequalities, his writings, especially in *The Law of Peoples*, also argue for the implementation of a law that "takes into account people's essential interests and *imposes moral duties and obligations on all members of society*" (emphasis added, Rawls 1993a, 61). Rawls also suggests, in the same text, that there are "a special class of rights of universal application" (70) that include "such basic rights as the right to life and security, to

mutual assistance between peoples in times of famine and drought” that “specify duties” (1993a, 56). Therefore, Rawls’s argument would conceivably support obligations of a state and its citizens to host refugees or offer some other form of assistance.

Neo-Conservatism: The Position of Robert Nozick

Nozick, who extols the virtues of eighteenth-century liberalism, revives the claim that “the minimal state is the most extensive state that can be justified” (Nozick 1995, 614). According to Nozick, the “self-interested and rational actions of persons in a Lockean state of nature” lead to the establishment of governments, which Nozick defines as “single protective agencies dominant over geographical territories” (Nozick 1974, 118). A government is to be protective, according to Nozick, in much the same way as Locke prescribed a century earlier. It should protect the political and civil rights of citizens by “[enforcing] correctness as it sees it. Its power makes it the arbiter of correctness; it determines what, for purposes of punishment, counts as a breach of correctness” (Nozick 1974, 118). A state is therefore “minimal” in the sense that it is “limited to the functions of protecting all its citizens against violence, theft, and fraud” (Nozick 1974, 26). The state does not have any positive obligations to its citizens, let alone to those beyond state borders.

From the state-citizen social contract offered by Nozick arise two state obligations that are similar in scope to those previously mentioned in the discussion of Locke: (1) a state should not interfere in the right to life, liberty and property of its nationals; and (2)

personal property. . . to a certain liberty of conscience and freedom of association” (68). This account of Rawls suggests that refugees within a state’s borders would be entitled to significant assistance..

one's rights are legitimately interfered with if the exercise of these rights is violating the rights of another. It follows from the first obligation that a state cannot subject its citizens to binding obligations (other than those obligating a citizen to not interfere with the rights of another). Nozick, arguing against binding obligations that require a person to assist another, claims that

to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. He does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him—least of all a state or government that claims his allegiance (as other individuals do not) and that therefore scrupulously must be neutral. . . (Nozick 1974, 33).

According to Nozick, the state should not redistribute the resources of its citizens in order to minimize international or national inequalities; the state's only role is to protect people within a given territory against violations of their negative rights (Carens 1987, 253). "There is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good. There is no justified sacrifice of some of us for others" (emphasis in original text, Nozick 1974, 33).

Nozick's theory of justice is based on what he calls entitlement theory. This theory assumes that every person has equal opportunity for acquisition, and that every person has the opportunity and agency to succeed. As stated by another neoconservative liberal, "human beings are by nature creative, free agents, capable of self-direction in nearly any circumstance" (Machan 1995, 75). According to Nozick "what each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons" (Nozick 1995, 615). Nozick qualifies the

legitimacy of the distribution of either social or economic advantages by saying that a holding is just if it was justly acquired or justly transferred (Nozick 1995, 615).¹³ It follows from these arguments that the state is not obligated to provide for people in most circumstances (Machan 1995,75).¹⁴

Obligations to Refugees

According to Nozick, citizens may provide funds for education, to assist the poor or to organize social insurance or welfare programs, but these actions must be purely voluntary, and the state must protect the right of an individual to not contribute. Nozick's strong aversion to any positive obligations is rooted in his belief that all valid obligations derive from consent (Scanlon 1981, 107).

In Nozick's example of a society where half the population has two eyes and the other half has none, Nozick demonstrates his unconditional commitment to the idea that no person should be obligated to assist another. Should, assuming eye transplants are no problem, each person belonging to the first half lose one eye in favour of each person of the eyeless group? Nozick argues against such redistribution, stating that each person has a right to the integrity of one's body, and "so it should be with whatever is made or produced by it: let each person keep his own and whatever property they can legally come by" (Nozick quoted by Merquior 1991, 141). By extending Nozick's rationale to the case

¹³ A distribution is just, according to Nozick, if it arises through legitimate means. "Whatever arises from a just situation by just steps is itself just" (Nozick, 1993: 615). By just, Nozick is referring to those entitlements that have been acquired without interfering in someone else's rights to life, liberty or property.

¹⁴ Circumstances which warrant intervention, according to Machan, are those that involve violations of peoples' political rights (such as crime), and, in addition, circumstances such as natural disasters and war, that are most often outside of peoples' control. In these cases, a state is considered responsible to assist its citizens.

of refugees, no individual would be obligated to assist a refugee (or even to assist a person requiring assistance within his own state).

Although Nozick would legitimate the right of an individual to free movement (as any interference in this liberty would be a compromise of her civil rights), Nozick also supports the use of force against those who move onto one's property uninvited. According to Nozick's argument, when a host population or state refuses assistance, a refugee using this state's resources would be a threat to the independence and liberties of the host population.

Therefore, not only does Nozick argue against any binding positive obligations, he also legitimates using "force against another party who is a threat" even if this person "is innocent and deserves no retribution" (Nozick 1974, 34). "If someone picks up a third party and throws him at you down at the bottom of a deep well, the third party is innocent and a threat; had he chosen to launch himself at you in that trajectory he would be an aggressor" (Nozick 1974, 34). Although Nozick does not make a connection between his innocent threat concept and refugees, the similarities between the person in a well experiencing a person arriving without his permission, and refugees arriving at a border without the consent of the host population can be easily drawn.

Refugees, when arriving into a state where they are unwanted, do not intend to harm the citizens of the state, yet they may be perceived as threatening, just as the innocent person falling down the well is perceived as threatening to the person at the bottom of the well. Nozick claims that if one is subjected to an "innocent threat" they are entitled to act in self defense. "Libertarian prohibitions are usually formulated so as to

forbid using violence on innocent persons. But innocent threats. . . are another matter to which different principles must apply” (Nozick 1974, 35).

Nozick admits that he “tiptoes around” the “incredulously difficult” task of formulating just principles on which to base response to innocent threats, “merely noting that a view that says it makes nonaggression central [such as liberalism] must resolve them explicitly at some point” (Nozick 1974, 35). Unlike Rawls and even Locke, therefore, Nozick might legitimate compromising one’s negative obligations to refugees, if the refugee is: (1) perceived as harmful by the host populace; and (2) has not been given previous consent to arrive. Nozick’s position shares some similarities with the argument of Michael Walzer who argues against any interference in a state’s freedom to guide its own affairs.

Self-Determination: The Position of Michael Walzer

According to self-determinists, the state is a cohesive unit bound together by membership to pursue the goals and objectives of its members, similar to a club or family. The membership is to be based on a commitment to the political community, to strengthening the bonds that connect each member to the other. A state, according to Walzer, should be free of any intervention; the hesitance which people (or a state) occasionally express at interfering in affairs of the family because a family is entitled to its own norms should also be felt by states or individuals wishing to interfere in another state. Even if a government is acting unjustly, a greater injustice is potentially caused, according to Walzer, by interfering in the state.

The assertion that an individual's overall well-being is most likely to be fulfilled by her government is what forms the backbone for the strong aversion of self-determinists to intervention and their steadfast support for unconditional sovereignty. "If the citizen is alone, he is nothing; if he has no more country, he has no existence; and if he is not dead, he is worse than dead" (Rousseau quoted by Walzer 1970, 93). The state enables people to live in a stable community, bound to each other by loyalty and a special commitment to a common life (Walzer 1981, 32).

Obligations to Refugees

According to Walzer, protecting and restricting membership to the state is a fundamental state responsibility. Non-nationals may not step across the boundaries of a country without full consent (Chaney 1981, 71).

The refugee, who by definition does not have a medium in which to pursue his rights, creates a unique case for the self-determinists whose argument is based on the assumption that every person should have a state to which they can belong. Walzer expresses great sympathy for the situation of the refugee; by valuing the state as the best medium for pursuing one's life, Walzer empathizes with those who have been left stateless. "Toward some refugees we may well have obligations of the same sort that we have toward fellow nationals" (Walzer 1981, 20). Yet at no point in Walzer's writings do the obligations towards refugees become clear; clarity, indeed, would necessitate a compromise of the self-determinist position, a step which Walzer is unwilling to take.

Groups of people ought to help necessitous strangers whom they somehow 'discover' in their midst or in their path. But the limit on risks and costs is

sharply drawn. . . . My life cannot be shaped and determined by such chance encounters (Walzer 1981, 3).

As Walzer concedes, his self-determinist paradigm does not “suggest any way of dealing with the vast numbers of refugees generated by twentieth-century politics” and therefore does not “reach to the desperation of the refugee” (Walzer 1981, 21). Walzer remains committed to the idea that “everyone must have a place to live, and a place where a reasonably secure life is possible” (Walzer 1981, 21). Walzer’s aversion to statelessness, however, is not enough to diminish his overarching position—states cannot be forced to respond to refugees (Walzer 1981, 21).

Walzer, fifteen years after his “purist” self-determinist accounts were published, qualified his strict conception of state autonomy extending state obligations to certain tragic cases.

The vast numbers of murdered people; the men, women and children dying of disease and famine willfully caused or easily preventable; the masses of desperate refugees—none of these are served by reciting high-minded principles. Yes, the norm is not to intervene in other people’s countries; the norm is self-determination. But not for these people, the victims of tyranny, ideological zeal, ethnic hatred, who are not determining anything for themselves, who urgently need help from outside (Walzer 1995, 65-66).

Walzer wrestles with reconciling state freedom of one country with the needs of individuals suffering persecution, torture and poverty in another country. Walzer’s assertion in 1995, does not suggest that self-determination should be abandoned, only that exceptions that call for a state to respond or intervene should be honoured. The state obligations that such exceptions require, however, were not clarified in Walzer’s writings.

Concluding Remarks

This exploration of predominant western ethical paradigms demonstrates that there is not a clear set of ethical norms with which to guide refugee response coming from western ethics. In appendix 1 (figure 1), the ethicists discussed in this chapter are placed on a continuum displaying possible responses to refugees ranging from, on the far right, a position which permits the harm of refugees to the position on the far left, which permits the harm of the host population. The continuum roughly reveals how the ethicists discussed in this chapter compare with one another with respect to the ethical conduct of a state in light of refugee pressures.

As the continuum stretches to the left from Rawls, an ethical response to refugees requires more compromise from a host population. Therefore, as the continuum moves in this direction, a state is more obligated to establish taxation or re-distribution schemes that would equalize the freedoms and material wealth experienced by refugees and individuals in a host population, an ethical requirement suggested by Shue's paradigm. Rawls belongs to the left of Locke because of his second principle of justice which argues that "all social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage" (Rawls 1993b, 237).

Rawls's principles of justice are arranged in an order that does not permit "exchanges between basic liberties and economic and social gains" (Rawls 1993b, 238). Rawls's second principle suggests that if a response to refugees was guided by Rawlsian ethics, a state would have some positive obligations to refugees, such as the provision of

asylum and social or economic services such as health care, education and social insurance. Any assistance to refugees, however, would have to fully respect the basic political and civil rights of the host population. The arrow directly over the top of the box housing the names of the ethicists,¹⁵ indicates this position of Rawls. The arrow, which stretches from Rawls to Walzer indicates that the theories of Rawls, Locke, Nozick and Walzer all suggest that the political and civil rights of the host population are to be protected throughout any response to refugees. This arrow does not stretch over Kant and Shue, however, whose paradigms suggest that the political and civil rights of a host population could be compromised in order to respond to refugees.

Kant and Shue are situated on the continuum to the left of Rawls. Kant's paradigm, which argues that one must act only in accordance to ethical duty and not from inclination, would call for greater sacrifices in the host population than Rawls's paradigm which unconditionally protects the basic political and civil rights of the host population. Shue's theory, which argues for an extensive re-distribution of resources in order to satisfy the basic rights of all persons would similarly call for compromises in the political and civil rights of individuals in a host country. The far left of the continuum consists of an empty space. This is because none of the ethicists discussed would legitimate any harm inflicted on the host populace for the sake of a refugee.

To the right of Rawls are Locke, Nozick and Walzer. As the continuum stretches to the right, the state has fewer obligations to refugees and the state's population has more

¹⁵ This is labeled "Citizens' Rights" on Figure 1.

rights protected.¹⁶ On the top (State Obligations) line, the arrow stretching from Locke to Walzer indicates that the host state only has non-binding negative obligations to refugees within these paradigms, meaning two things: (1) that a state (and its populace) do not have any obligations to *provide* assistance to refugees; and (2) that a state can back out of its negative obligations to refugees.

The objective of this chapter was to apply the ethics of western philosophy to an understanding of various positions regarding an ethical response to refugees. This was a challenging task, as most of these theorists, with the exception of Walzer and Shue, do not explicitly discuss ethical obligations to refugees. Finding the connection between ethics and refugee response, however, is important to this project, which investigates the ethical norms of the Convention, a western legal document which continues to guide response to refugees. The following chapter bridges the arguments offered in this chapter with the Convention itself in order to uncover the ethical norms of the Convention.

¹⁶ This is indicated by the "Citizens' Rights" line which indicates, through an arrow stretching from Rawls over to Walzer, as mentioned earlier, which secures the political and civil rights of the host populace.

CHAPTER THREE THE ETHICS OF THE CONVENTION

This chapter aims to uncover the ethical norms of the Convention by delving into what the Convention says regarding the rights of refugees and state obligation. This chapter is placed after the discussion of western ethics purposefully—after exploring various western ethical paradigms in Chapter Two, this project now turns to the task of seeing if any of these ideas are evident in the Convention.

In hopes of covering all aspects of the Convention, this chapter first looks at how the Convention defines ‘refugee’. By looking at who is eligible for refugee status, the position of the Convention concerning what constitutes a violation of an individual will become evident, thereby demonstrating the Convention’s position on human rights. The chapter will then explore what the Convention stipulates regarding state obligations to refugees *beyond* its borders, to those who have not reached the borders of a state. The discussion will then shift to within a host state, investigating what the Convention says regarding the obligations of a state to refugees once they are within a state’s territory. Finally, the interests and rights of individuals within a host state or within a state that could offer assistance to refugees (other than hosting refugees) will be discussed, specifically with the purpose of investigating the position of the Convention concerning any compromises of the wants, needs or rights of these populaces.

Although the focus of this chapter, as already mentioned, will be exploring the ethical norms of the Convention through investigating the Convention itself, another method of researching the ethical norms of the Convention is to investigate the ethics of international norms of human rights. This research method will be explored at the outset

of this chapter. The majority of this chapter, however, will attempt to uncover the ethical norms of the Convention by exploring the Convention itself.

The drafting of the Convention occurred during a time of increased internationalization of human rights. Human rights were increasingly being recognized by international law as an area of international concern. Both the Universal Declaration of Human Rights approved by the General Assembly of the UN in December of 1948 and the Convention of 1951 recognized the legitimacy of international concern and action of human rights violations, rejecting the notion that a nation's mistreatment of its citizens is exclusively an area of domestic jurisdiction (Helton 1992, 374).

Evidence of the link between the Convention and international norms of human rights is apparent throughout its text. The Preamble, for example, affirms the principle, as outlined in the Charter of the United Nations and the Universal Declaration of Human Rights, that "human beings shall enjoy fundamental freedoms without discrimination" (United Nations 1986, 11). Article 1 of the Convention states that people can not suffer persecution "for reasons of race, religion, nationality, membership in a particular group or political opinion" (United Nations 1986, 12).

An array of literature which explores the ethics of international norms of human rights supports the argument that the Convention is founded on western liberal ethics. There is extensive literature written on the connection of the "Western liberal tradition of political thought" and international human rights standards (Donnelly 1989, 88).

Liberal thought, according to many scholars, has inspired the establishment of institutions and laws that protect the political and civil rights of individuals. Rights to freedom of thought, conscience, religion, association and speech outlined by international

covenants on human rights clearly parallel the rights that were deemed as important by Locke in the seventeenth century.

The more difficult connection to draw is between social and economic rights and liberal thought. Social and economic rights have been generally thought to be opposed to the liberal conception of a person as “an isolated, autonomous individual. . . with inherent rights in the domain of the civil and political” (Donnelly 1989, 88). Critics have argued that liberalism does not adequately take the communal aspect of human existence into consideration; instead, it protects possessive individualism and egoistic self-preservation (Donnelly 1989, 92). The liberal tradition has therefore been criticized for validating the right of a person to unlimited accumulation of material wealth, a right that generally counters any schemes to protect the social and economic rights of individuals. Liberal supporters, however, have defended the liberal concern with social and economic rights, claiming that in most liberal writings, including Locke’s, the argument for unlimited accumulation is valid only in conditions of abundance (Donnelly 1989, 97). The liberal concerns with freedom and equality and with organizing a society which secures enjoyment of the rights and privileges of nature for all people is what prompts liberal supporters to defend the liberal affiliation with social and economic rights. That social and economic rights are secondary in importance to political and civil rights within the liberal paradigm, however, is not disputed by either the critics or supporters of liberalism. The precedence of political and civil rights is evident in even the most egalitarian of liberal theories, such as Rawls’s, whose argument for two principles of justice protects political and civil rights through the first and social and economic by the second.

The literature which draws a connection between western liberalism and international norms of human rights generally does so through arguing that liberalism has been harshly depicted as individualistic and is actually more inclined towards economic and social rights than its critics suggest. The argument generally attempts to attribute political, civil, economic and social human rights espoused in international human rights covenants to western liberal ethics, thereby placing western liberalism in a positive light. A connection can also be drawn between liberalism and international covenants of human rights, however, through a less positive depiction of western liberalism.

A common criticism of human rights instruments such as the Universal Declaration of Human Rights is that they “do not clearly define who is obligated to ensure the enforcement and implementation of the rights they declare” (Nickel 1993, 77). It may not be a coincidence that this criticism is also generally directed at liberal ethical theories. A common criticism of liberal theories is that they say “relatively little about duties” and “provide little scope for obligations to society” (Carens 1986, 31). The liberal aversion of obligation stems from the emphasis of liberalism on freedom from constraint. Liberals tend to have no difficulty arguing for human rights, regardless of whether they are political, social, economic or civil. (This supports the arguments above that connect international human rights norms and western liberalism). Obligations in liberal theories, however, are difficult to find and if apparent, they are generally limited to negative obligations. The wide range of duties that are necessary for upholding international norms of human rights are absent both in liberal theory and in international covenants supporting the connection between liberalism and international norms of human rights.

The arguments supporting a connection between international human rights covenants and liberal ethics, if accepted, suggest that the Convention, which subscribes to that which is outlined in the Universal Declaration of Human Rights (as stated in its Preamble), is also based on liberal ideas of human rights and obligation. Investigating the Convention itself will serve to either confirm or reject this speculation.

The Definition of a Refugee

As mentioned earlier in this project,¹⁷ the Convention defines a refugee as one who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. . . is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (United Nations 1986, 12). The definition of a refugee articulated by the Convention suggests a grounding in two ethical norms: (1) that the political and civil rights of *all* human beings should not be violated; and (2) that a state is obligated to protect the political and civil rights of its nationals.

The fact that persecution is the only justification for refugee status (according to the Convention) suggests that the Convention, similar to the arguments of many of the western ethicists previously discussed, views the neglect of one’s negative obligations to an individual as a more serious violation than the neglect of positive obligations.

Persecution clearly involves a usurping of negative obligations. According to Webster’s Dictionary, to persecute is to harass “in a manner designed to injure, grieve or

¹⁷ I thought that it might be useful to re-state the Convention’s definition of a refugee at the beginning of this discussion which explores the ethical foundation of this definition.

afflict,” to annoy with “persistent or urgent approaches” such as threats or attacks or to cause suffering “because of a belief”. The Convention therefore shares the liberal idea that people are to be free from having their pursuit of life, liberty or property obstructed, that is, they are entitled to live free from persecution. Violations of one’s social or economic rights, however, which occur when a state (or any other party) neglects its positive obligations to assist an individual, do not warrant the protection of the international community. The Convention does not protect an individual who has not been supplied food, water, shelter, or other economic entitlements by the state.¹⁸

The Convention stipulates that a state, in addition to *not harming* the political and civil rights of its citizens, is also obligated to *protect* the rights of its nationals. A refugee is someone who “is unable or . . . unwilling to avail himself of the *protection*” of his country of origin (emphasis added, United Nations 1986, 12). This statement indicates that the Convention values a norm of state-citizen relationships that is evident in the liberal social contract—a state is obligated to protect its nationals.

As discussed earlier in this project, the Convention’s definition of a refugee has been extended, in practice, to include refugees resulting from external aggression, occupation, foreign domination or events seriously disturbing public order (Shacknove 1985, 276).¹⁹ These extensions of the definition in practice to include criteria other than persecution recognize that one’s civil and political rights can be violated by many

¹⁸ If economic pressures were included, the number of impoverished people alone that would be eligible for refugee status would overload both the refugee determination systems in industrial states and the carrying capacities of potential host countries. A refugee regime that included economic criteria for refugee status would therefore be very difficult to operationalize both logistically and politically.

¹⁹ The Convention’s definition of a refugee remains unchanged since 1967. In practice, however, there are examples of the granting of refugee status to internally displaced persons, domestic assault victims

different events or circumstances. What has not changed, however, is the extension of protection to those displaced on the basis of economics or natural disasters. The increased importance given to the violation of political and civil rights over social and economic rights suggests that an ethical norm of the Convention is the prioritization of political and civil rights over social and economic rights. This prioritization is integral to most liberal paradigms.

State Obligations to Refugees Beyond State Borders

The Convention does not stipulate any state obligations to refugees residing in other states. “The obligations articulated in the Convention all run from the state to refugees who arrive in its territory. There are no duties to relieve other States of the burdens of asylum by providing either financial resources or offers of admission” (Fitzpatrick 1996, 250). In addition to the absence of any obligations of a state to offer asylum to refugees beyond state borders, all financing of international organizations (such as the UNHCR) is on a voluntary basis.

As discussed in the previous chapter, liberals are often criticized for saying very little regarding obligations (Carens 1986, 31). The fact that the Convention shares this lack, suggests that it is also averse to restricting liberty (in this case the liberty of states) through any binding obligations.

Walzer’s argument for state autonomy, in particular, would support restrictions on state obligations. According to Walzer, any obligations placed on a state interfere with

(generally from countries that do not recognize domestic violence, or violence against women as criminal offences) and to those who have been persecuted on the bases of gender or sexual preference.

the state's ability to be a vehicle of the interests of its citizens. Assistance to refugees can only be initiated by the citizens of a state, not propelled by obligations drafted by the international community.

In addition to restricting state obligations, Walzer would in particular reject state obligations to refugees residing in other states. This obligation would inevitably result in a loss of state autonomy for the state hosting refugees as other states in the international community would involve themselves with the refugee determination procedure, and/or the protection and assistance of refugees within a host state. Walzer would reject any measure that would threaten a state's autonomy while hosting refugees. The Convention appears to share Walzer's concern with protecting autonomy.

State Obligations to Refugees Within Its Borders

State obligations outlined in the Convention can be divided into two categories—those that are binding, and those that are not. Articles which stipulate binding state obligations are those that do not offer opportunity for reservations. Article 42 of the Convention states that at the time of signature, ratification or accession, any State may make reservation to articles of the Convention other than 1, 3, 4, 16 (1) and 33 (United Nations, 1983).²⁰ The opportunity for reservations offers a state the opportunity to withhold its commitment to fulfilling all but the five articles of the Convention listed above.

²⁰ A state cannot make reservations to articles 36-46 which are articles concerning the execution of the Convention. These include such Articles as those dealing with which reservations are permissible (Article 42), when the Convention comes into force (Article 43), opportunity for revision (Article 45) etc. These

One of the most binding, and inevitably the most valuable, stipulations of the Convention is that once an asylum-seeker has reached a state, she cannot be returned to persecution.²¹ The principle of nonrefoulement has been called the central pillar of the Convention (Fitzpatrick 1996, 237). Some critics of present international responses to refugees have claimed that “the traditional asylum states are reducing refugee law to its bare core: the protection of nonrefoulement” (Fitzpatrick 1996, 238).²²

Although the Convention demonstrates the importance of the principle of nonrefoulement by removing opportunity for reservations on this principle, the Convention does not mention, in any of its articles, that a country is obligated to provide asylum. “The question of asylum, that is, the refugee’s admission to safety in another country. . . is not explicitly dealt with in the UN Convention of Refugees” (Awuku 1995, 82).

The fact that the principle of nonrefoulement is included in the Convention as a binding obligation, while the obligation to provide asylum is non-existent, suggests that the Convention assigns greater importance to negative than positive obligations. The principle of nonrefoulement is a negative state obligation for two reasons. First, returning a refugee is in violation of a state’s obligation to not inflict harm on individuals. It is conceivable that a state that returns a refugee to persecution is just as responsible for the

are more important for the general functioning of the Convention and will therefore not be a focus in this discussion which is concentrating on Articles specifically concerned with state obligations to refugees.

²¹ Article 33 states that “no Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (United Nations 1983).

²² I am purposefully neglecting to mention the option of a state to send a refugee to a third country for safe asylum as this practice is not part of the Convention. Recent treaties in Europe as well as the present

harm inflicted on the refugee as the actual persecutor. Second, violating this principle—returning a refugee to a state where he is persecuted—would most likely require acting against a refugee’s will, and might even require force. Using force against a person’s will, however, is itself in violation of a state’s negative obligation to all people. In contrast, the obligation to provide asylum clearly falls into the definition of a positive obligation—providing asylum requires a host state to offer help and provide to a refugee.

The importance given to the negative state obligation of nonrefoulement compared to the positive obligation of the provision of asylum (i.e. one is a binding obligation in the Convention and the other is non-existent) parallels a prioritization evident in many liberal paradigms. Locke, Nozick and Walzer restrict obligations, especially those that are binding, to negative obligations, i.e. obligations to not harm individuals. Positive obligations are non-existent within their arguments.

Article 1, the definition of a refugee, does not allow reservations, perhaps on the grounds that the main objective of the Convention—the protection of those who are persecuted—would be potentially thwarted if states could decide who qualified for refugee status.

Three other Articles that do not allow reservations are Articles 3, 4 and 16. Article 3 specifies that states should apply the Convention to refugees without discrimination as to race, religion or country of origin (United Nations 1986, 14), thereby reflecting the adherence of the Convention to international human rights norms. Article 4 states that

negotiations between the U.S. and Canada, however, are making shared asylum-seeker agreements more of

Contracting States “shall accord to refugees. . . treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children” (United Nations 1986, 14). Article 4 stipulates a negative state obligation. It does not obligate a state to offer assistance to refugees; instead, it obligates a state to not interfere in the religious freedom of refugees. Article 16, which also outlines a negative state obligation, stipulates that a state cannot restrict a refugee from using courts of law.

All other articles of the Convention offer opportunity for reservations. The fact that the majority of articles in the Convention allow a state to decline from fulfilling the obligations, is itself suggestive of a liberal emphasis in the Convention. Liberals, especially neo-conservatives such as Nozick, support the view that assistance should be limited to voluntary, rather than obligatory acts.

Non-binding state obligations outlined in the Convention are not just limited to the economic and social rights of refugees. Articles concerning many political and civil rights of refugees also offer opportunity for reservation. The most relevant articles to this discussion (i.e. those which concern the protection of the rights and welfare of refugees) will be briefly mentioned in the following paragraphs.

In addition to Articles 1, 4, 16 and 33 that are binding, there are many non-binding Articles of the Convention that are concerned with the protection of the political and civil rights of refugees. Although states are not obligated to give refugees property, they are obligated to not interfere with a refugee’s legal acquisition of property (Article 13). Refugees also have the right to associate with whom they wish (Article 15) and to

a reality.

move freely within the host territory (Article 26). Refugees are also entitled to transfer their assets from the host state to another country.²³ All of these Articles aim to guide a state in respecting the political and civil rights of refugees once they are within its borders. The fact that many negative state obligations in the Convention are non-binding counters the liberal argument that the political and civil rights of all people are to be respected. The non-binding nature of these obligations, however, supports liberal arguments found in the more neo-conservative liberal paradigms. Walzer's emphasis on state autonomy would render any obligations to non-citizens, regardless of whether they were refugees, conditional on the interests of the host populace. Similarly, Nozick argues against any obligation to protect the political and civil rights of another if it requires any compromise of one's own liberty. The Convention, by allowing reservations on Articles concerning the political and civil rights of refugees, similarly prioritizes the rights of states to be *free from* interference over the rights of refugees to be *free to* move, associate, or acquire property as desired.

The Convention specifies several Articles concerning the social and economic rights of refugees. Once basic asylum has been offered, host states are obligated to "as far as possible facilitate the assimilation and naturalization of refugees" making "every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings" (United Nations 1986, 25). Host states are to supply refugees with educational services, public relief and assistance, social security²⁴ and administrative

²³ This is common for refugees who have been granted asylum in one country but have been admitted for the purposes of resettlement in another (UN 1986, 23).

²⁴ By social security, the Convention refers to assistance in case of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any

assistance to the extent that these services are available to nationals.²⁵ The host states are obligated to issue identity papers and travel documents to refugees in their territory who do not have these required papers (Article 27 and 28). The Convention also states that refugees have the right to earn wages, become self employed and/or (Articles 17 and Article 18) practice professions if they hold the appropriate diplomas (Article 19).

The fact that the Convention includes state obligations to fulfill (or respect, as in the case of employment) certain social and economic entitlements of refugees, appears to parallel the more egalitarian ethical norms evident in the work of Henry Shue. The lack of binding obligations to uphold these articles, however, disassociates this aspect of the Convention with Shue's paradigm. Indeed, most liberals argue that social and economic entitlements are extremely important. Unlike Shue, however, liberals tend to be averse to any binding obligations which fulfill these entitlements. The Convention appears to share a similar aversion.

In summary, all binding state obligations outlined in the Convention, such as the principle of nonrefoulement, are negative—they are stipulations that a refugee should be free from interference by the host state. The lack of binding positive obligations is suggestive of a liberal emphasis in the Convention; liberalism, which is generally averse to any binding obligations, generally supports the view that assistance should be driven by charitable inclination rather than obligation.

other contingency which, according to national laws or regulations, is covered by a social security scheme (United Nations 1986, 21).

²⁵ These provisions are specified in Articles 22, 23, 24 and 25 of the Convention (United Nations 1986, 20-22).

Rights of Individuals in a Host Country

Rather than specifically stating what a state must do or give as a host of refugees, the Convention claims that a state should “as far as possible” respect the freedoms of refugees and should offer services to refugees that are “as favourable as possible”. The terms “as far” or “as favourable as possible” in phrases such as “Contracting States shall accord to a refugee lawfully in their territory treatment *as favourable as possible*. . . as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce. . .” (emphasis added, United Nations 1986, 19) are frequently used in the Convention, indicating that the protection and entitlements of a refugee within a host state is somewhat conditional on what is “possible” for the host state. Articles protecting the rights of refugees to acquire property (Article 13), to engage in self-employment (Article 18) and to practice professionally (Article 19) are all qualified by the “as far as possible” clause. In addition, host states are obligated to provide housing (Article 21) and education (Article 22) that is “as favourable as possible” and are to “*as far as possible* facilitate the assimilation and naturalization of refugees” (emphasis added, United Nations 1986, 25).

What does the statement *as far as possible* imply? When is it *possible* for a state to protect a refugee’s political, civil, social or economic rights? Webster’s Dictionary defines the word possible as that which is “within the limits of ability, capacity or realization”. The Convention, through its use of the clause “as far as possible” suggests that certain circumstances justifiably excuse a state from ensuring the fulfillment of the rights of refugees. The existence of the clause absolves a state’s *unconditional*

responsibility for the recognition of rights or entitlements outlined in the Convention's Articles.

It is conceivable that the phrase "as far as possible" is included in the Convention to enable the protection of the rights of citizens within a host country. The Convention would be implying, through the use of this clause, that assistance or protection could be afforded to refugees only with the full protection of the rights of the host populace.

The word 'possible' might also be acknowledging that host states have physical and financial limitations. Although not a strong concern at the time when the Convention was drafted, the fact that most refugee movements now occur in third world states increases the likelihood that physical and financial limitations of states might limit the response to refugees. "Most developing countries barely have wage-earning employment or arable land available for the majority of nationals, let alone aliens or refugees" (Barkley 1989, 330).

The opportunity afforded to states to decide what is possible for them to offer to refugees in terms of protection or assistance may be used to protect the rights of their citizens or resources in light of a refugee movement into its borders. The fact that a response depends upon a host state's evaluation of what is within its capacity, however, suggests that a response can depend upon numerous factors. Therefore, although the phrases "as far" or "as favourable as possible" may not *cause* a state to respond to refugees based on its own interests, they *allow* a state to do so, offering a state extensive flexibility during a response to refugees. The political interests or biases of the ruling party, the economic interests of the wealthy and xenophobia are a just a few of many variables that may impact a state's perception of *what is possible* to offer refugees. The

Convention, by not clearly stating in the majority of its articles what a host state must provide or protect unconditionally, places the decision of how to respond to refugees within the jurisdiction of the host state.

The opportunity given to a host state by the Convention to decide the extent of its assistance to refugees suggests that the Convention is based on liberal norms. Liberals, especially neo-conservatives like Walzer and Nozick, would generally support any aspects of the Convention that would offer a state freedom and autonomy when responding to refugees.

Concluding Comments

The main conclusion of this chapter is that the Convention protects many of the ethical norms espoused by liberal philosophers. This is apparent in four ways: (1) the Convention aims to protect those persons who have suffered violations of their political and/or civil rights, but does not aim to protect those who are suffering from violations of social and/or economic rights; (2) the Convention does not stipulate state obligations to refugees beyond its borders; (3) the Convention does not include any binding positive obligations to refugees within state borders; and (4) with the exception of five binding obligations, the Convention ensures (through the opportunity for reservations and the “as far as possible” clause) that a host state can decide how it will assist refugees.

As this is a turning point in this project, it is perhaps important to recap what this project has achieved to this point and to mention where it intends to go from here. In order to probe the hypothesis that the liberal emphasis of the Convention has negative consequences for refugees in a third world context, the first three chapters of this project

worked towards understanding the ethics of the Convention, beginning with a discussion of the Convention and the international refugee context in Chapter One, continuing with an overview of western ethical theory in Chapter Two and completing this task with the discussion of this chapter on the similarity between liberal norms and the ethical norms of the Convention. This paper now turns to discussing the impact of the ethical norms of the Convention on response to refugees, and the consequences of this response on the overall well-being of refugees. In order to assess this impact, this chapter will discuss possible implications of the ethics of the Convention on response. These implications are hypothetical ideas that will guide the second half of this project which analyzes refugee response in practice.

Three implications of the liberal emphasis of the Convention on refugee response seem particularly probable.²⁶ First, the response to refugees will prioritize the political and civil rights of refugees over their social and economic rights. Second, the involvement of the international community in the response to refugees will be motivated by the political and economic interests of the states of the international community. The Convention does not include any obligations of states to refugees that have not reached their borders, either in terms of financial assistance or the provision of asylum. Although this lack of specified obligation would not necessarily *cause* states of the international community to base response to refugees on political or economic interests, the lack of obligations suggests that the Convention *allows* states to do so. Third, the involvement of

²⁶ In case the reader is wondering how these three implications were derived, I suggest turning back to the first paragraph of this section which lists the ethical norms of the Convention that were uncovered by the chapter. The implications are simply hypothetical ideas of how the ethical norms listed in the first paragraph will impact the response to refugees.

the host state in responding to refugees will be motivated by the political and economic interests of the host state. Although the Convention does specify obligations of a state to refugees who have reached its borders, the opportunity for reservations and the prevalence of the “as far” or “as favourable as possible” clauses allow a host state to base a response to refugees on its political and/or economic interests.

The three implications of the liberal emphasis of the Convention on practice mentioned in the previous paragraph will be called sub-hypotheses from now on, reflecting that they are hypothetical ideas which will guide the case study analysis.²⁷ These sub-hypotheses will be used to facilitate the probing of the main hypothesis of this project—that the liberal emphasis of the Convention has negative consequences for refugees in a third world context.

This project is now prepared to launch into the case study and its analysis. The next chapter will introduce the case study, giving a background of Malawi and an overview of its refugee population.

²⁷ They are labeled sub-hypotheses in particular (i.e. rather than hypotheses) to distinguish them from the main hypothesis.

CHAPTER FOUR INTRODUCING THE CASE OF MALAWI

The prior chapter developed three sub-hypotheses of the implications of the liberal emphasis of the Convention on response to refugees by exploring the ethical norms of the Convention. Conducting a rigorous test of Chapter Three's hypotheses is beyond the scope of this paper. Testing would require surveying a range of responses to refugees in various states, a task which would require time and resources that are simply not available for this M.A. thesis. Instead of comprehensively surveying a diverse selection of responses to refugees in various states, this paper uses the case of Malawi's response to non-Mozambican refugees to probe the plausibility of the hypothesis that the liberal emphasis of the Convention harms refugees in the context of the third world. This chapter introduces the context of the case study and discusses why it was chosen to probe the hypothesis of this project.

Malawi's Response to Non-Mozambican Refugees in Context

Individuals have been crossing borders in Africa for thousands of years, long before formal legal instruments on refugees were adopted. Searches for more fertile or abundant land and resources, slave raids, colonial occupation, ethnic conflicts, droughts and volatile weather changes drove people to move to other territories, which, in the 20th Century came to be known as distinct nation-states. Today, individuals flee for many of the same reasons— violent conflict, government persecution, drought or famine. Some refugees flee to neighbouring states where they are occasionally greeted by kin or

individuals with whom they share a common language or share a common ethnicity. In other cases, they flee to far-away regions in order to escape ethnic conflict that has spread into neighbouring states.

Political History

The present political context of Malawi is only explainable by looking at Malawi's political history, which is dominated by the presence of Hastings Kamuzu Banda. Banda's obituary describes him as a leader who "proclaimed himself president for life, locked up his opponents, lived royally in a poor country, carried a fly whisk and went to church" (Hastings Banda 1997, 92). After being educated in the US and receiving medical training in Scotland, Dr. Banda lived in Britain from 1937 until 1957. When he eventually returned to Malawi, he "knew no local language and, extraordinary for Africa, had no relations. Some doubted that he had come from there" (Hastings Banda 1997, 92). During Banda's rule, dissent was openly suppressed—at one point, Banda claimed that any one protesting his rule would be "food for crocodiles" (Hastings Banda 1997, 92).

Despite Banda's oppressive rule, there was "solid Western tolerance and support for Banda's dictatorship" (Ihonvbere 1997, 225). Banda's profound dislike of communism during the Cold War protected his regime from censure from the West. "He also espoused a brand of private enterprise which was sweet music to the West—and whose true nature did not become clear until recently" (Oyowe 1995, 43).

Banda privately controlled the Malawian economy through the Press Corporation. This monopoly continues to be involved in the manufacturing of virtually every product

in Malawi. The corporation's activities in 1995 accounted for 30% of GDP.²⁸ Even when Banda was ousted from power in 1994, he retained his hold on the Malawian economy, an issue which the current leader, President Muluzi, said he was "vigorously examining... we do not feel that it is proper that Banda should have personal control of almost 30% of GDP" (Oyowe 1995, 40).

Economic and regional political factors led to a breakdown in Banda's regime. His power consistently deteriorated from 1992 until the first multiparty elections in 1994. The economy was in deep trouble in 1992, "unemployment, crime and hunger had reached unprecedented proportions" (Ihonvbere 1997, 226). This economic hardship contributed to a growing opposition of Banda's rule. Malawi also lost many of its supporters in Africa. Banda had been a historical partner of the Apartheid regime that was being rendered obsolete in South Africa. "In Mozambique and Angola, steps towards multiparty democracy also reduced Banda's relevance to rebel organizations like RENAMO" (Ihonvbere 1997, 226).²⁹

In March of 1992, Amnesty International released a highly critical report of Malawi's human rights record. In that same month, Malawi's eight Catholic bishops released a letter entitled *Living Our Faith* to their congregations which denounced the

²⁸ Press Corporation's operations are presently divided into three divisions: trading, industrial and investment. Agriculture has not been included in this profile. The Company's nineteen subsidiaries, five associate companies and three reporting units have interests in fuel, beverages, trading, food and packaging, property, agriculture, clothing, transport, tobacco processing and financial services (Wilshaw 1998, 55).

²⁹ RENAMO (a Portuguese acronym meaning Mozambican National Resistance), was known as one of the most terrorist-oriented organizations in the world. It was made up of displaced Portuguese colonials, opponents of FRELIMO and deserters from the Mozambican army (Barkley 1989, 337). Rhodesian forces created RENAMO in the mid 1970s in an attempt to destabilize Mozambique so that it could not effectively assist those fighting the white Rhodesian Government (Barkley 1989, 337). FRELIMO, the opposition to RENAMO, was the political party that governed the newly independent Mozambique after wresting control from the Portuguese Government.

injustices caused by Banda's regime (Ihonvbere 1997, 227). The letter resulted in massive protests against the government for the first time. Despite arresting the bishops and sending out riot police to halt the protests, the letter (and Banda's response to it) gained the interest of the Vatican and many of Malawi's major aid donors. This increased international pressure on Malawi's regime, gave courage to the domestic press to start printing messages of resistance, and encouraged many political exiles to return to Malawi.

Eventually, Banda was forced to change the constitution in order to allow a referendum on multiparty democracy. On the 15th of March 1993, 63.5% of the vote was in favour of multiparty politics despite Banda's final appeals that he was father of the nation and that "democracy would increase tribalism and regionalism" (Ihonvbere 1997, 231).

The May 1994 multiparty elections confirmed that Banda's tight political control over Malawi, which had begun three decades earlier, had crumbled. The three major players in the election were Bakili Muluzi of the United Democratic Front (UDF), Banda of the Malawi Congress Party (MCP) and Chakufwa Chihana of the Alliance for Democracy (AFORD). Bakili Muluzi won the election with 1.4 (47%) million votes, Banda came second with 996 363 (33%) votes and Chihana came third with 552 862 (19.5%) votes (Ihonvbere 1997, 237). The significantly large amount of support for Banda was a surprising result. The other results, however, were expected, the vote was divided along regional lines with AFORD gaining all thirty one seats in the north, the UDF taking most of the seats in the south and the MCP remaining predominant in the central region.

Malawi is presently passing through a challenging political period. Because Malawi was ruled by one party (and one man) for thirty years, the change to democracy is far from simple. Aspects of a dictatorial state remain embedded in Malawian politics. Many civil servants are hesitant to make decisions, even minor ones, for fear of retribution. This has resulted in a slow and bureaucratic administration. One problem that has accompanied democratic freedom is the rise in crime and insecurity; “the reaction of some Malawians, in the absence of a trustworthy police force and an efficient judiciary, has been to take the law into their own hands” (Oyowe 1995, 35). Arms are abundant in Malawi. Many Malawians attribute the large numbers of guns to illegal trafficking of arms from war-torn Mozambique. The breakdown of the armed Malawi Young Pioneers (MYP)³⁰ group has also increased the numbers of unregulated weapons in Malawi. The judiciary is attempting major reforms, including opening up positions to people from private sector, an opportunity which no one has taken advantage of. “There is a paucity of qualified people in the Malawi legal profession and the low level of remuneration does not make the job particularly attractive” (Oyowe 1995, 36). The prison system remains largely focused on punitive measures instead of rehabilitation and many in the police force remain operating as though they are an arm of the ruling party. Transparency and

³⁰ The MYP was a group of male youths, sometimes as young as nine years old who enforced Banda’s power throughout the country. Many of them have either fled to Mozambique, fearing retribution, or have found work as security guards in Malawi. An ex-MYP who was a security guard in the area where I was living proudly recounted stories of his MYP days and showed me his still intact MYP identity card, signed by Banda.

accountability are problematic in Malawi,³¹ as the Government attempts to establish measures to deter corruption.

Non-Mozambican Refugees: An Overview

The massive influx of Mozambican refugees, the largest refugee influx ever to occur in Africa, drew attention away from a smaller presence of refugees of various nationalities who were staying mostly in urban areas at the time of the Mozambican influx. There has been virtually no academic scholarship on non-Mozambican refugees in Malawi. Scholarship today on Malawi and refugees continues to be focused on Mozambicans, investigating the aftermath of the massive influx.

Any Mozambican still in Malawi today “is not a refugee” (Interview 3). Mozambicans are no longer under the auspices of humanitarian relief organizations in Malawi, nor are they eligible for UNHCR assistance. The greatest period of repatriation of Mozambicans occurred in late 1993 and during 1994. By the end of 1993, the refugee population had shrunk from over a million in 1992 to approximately 88,000 (UNHCR of Malawi and Government of Malawi 1995, 8).

The presence of non-Mozambican refugees in Malawi fluctuates week to week, both in number and ethnicity. The average number of refugees at any given time tends to be around 1500, vacillating between 1000 and 2000.³² The majority of refugees since

³¹ In May 1995, some parliamentarians were paid about \$US 3300 out of the poverty alleviation account. There are also many accounts in local papers about sugar and drug smuggling involving high-ranking officials (UNESCO 1995, 42).

³² Although the numbers of refugees in Malawi at the current time may seem trivial compared to large refugee populations elsewhere, there are two main reasons why the Malawi refugee population is not trivial. First, simply, refugees within small refugee camps are as important as those in large camps, both are deserving of the same response. As mentioned in the introduction, small refugee populations have been

January 1998 have been from Somalia and the Great Lakes Region (namely Rwanda, Burundi and the Democratic Republic of Congo).

Table 1. The Dzaleka Camp population (January 21, 1998)

Nationality	Male	Female	Age 19-60	Age 13-18	Age 6-12	Age 0-5	Total
Zaire	207	211	212	38	93	75	418
Rwanda	122	146	113	21	36	98	268
Burundi	131	86	118	16	21	62	217
Somalia	150	173	137	53	53	81	323
Ethiopia	3	2	—	—	—	—	5
Total	613	618	585	127	203	316	1231

Source: W. K. Sichinga and M.B. Phiri. *Refugees Profiles and Proposals in Self-Reliance. Dzaleka Refugee Camp*. Dowa, Malawi. 1998.

All refugees in Malawi stay at Dzaleka Refugee Camp, which is the only camp operating in Malawi.³³ Dzaleka is located 45km north east of Malawi's capital city Lilongwe. The assistance to refugees/asylum-seekers at Dzaleka is outlined by a tripartite agreement; the UNHCR operates through two implementing partners, the Government of Malawi (GoM) and the Malawi Red Cross Society (MRCS). The responsibility for protection of refugees is limited to the GoM and the UNHCR. Under the tripartite agreement, the UNHCR provides funds and technical assistance for all camp facilities and maintenance. The UNHCR also "plays fully its traditional role of monitoring and has full access to the refugees/asylum-seekers in the camp" (Malawi 1995a [?]).

generally overlooked as subject-matter for scholarship on refugees. Second, there are many small refugee populations in states that are not bordering conflicts. In Southern Africa alone for example, approximately 50,000 refugees are spread throughout the region that are primarily from conflicts in Somalia and the Great Lakes region. The UNDP Human Development Report has a column which states the number of refugees within a country. This column indicates that many states throughout the world have populations under 5000. Therefore, although the numbers may seem small in one state, the frequency of cases of refugee populations in states globally adds up to significantly high numbers of refugees living in small refugee settlements.

³³ From now on Dzaleka Refugee Camp will be referred to as Dzaleka.

The GoM is the predominant administrator of the camp, GoM officials appoint a camp administrator who is responsible for the overall management. The administrator tends to handle refugee complaints, conflicts and applications for entry or exit. The Ministry of Health in connection with Dowa District Hospital is responsible for the management of the health program. All distribution and organization of relief items is largely coordinated by the MRCS. The MRCS is also responsible for managing education, social and recreational services within (Malawi 1995a [?]).

Choosing Malawi as a Case Study

Malawi was chosen as a case study for this project for three reasons: (1) The Government of Malawi is a contracting state of the Convention and Protocol Relating to the Status of Refugees; (2) several factors characterize Malawi as a propitious place for refugee influx; (3) Malawi is one of the poorest nations of the world. These factors make Malawi an ideal case study for investigating the hypothesis of this project—that the liberal emphasis of the Convention has negative consequences for refugees in a third world context.

Malawi ratified the Convention in November 1987, when the numbers of Mozambican refugees in its territory necessitated international support. Before this time, Malawi had absorbed the refugee influx independent of international assistance. In fact, in 1985, despite a large presence of Mozambicans in its territory, Malawi claimed that it did “not have refugees and therefore [had] no refugee problem” (Zetter 1995, 1655) in order to deter international attention. During the early 1980s, the Government of Malawi, reluctant to admit the intensifying influx, did not accede to the Geneva Convention

(1951), the Protocol on Refugees (1967) or the OAU Refugee Convention (1969) (Zetter 1995, 1655). In 1987, when inflow expanded to an average of 20,000 a month, the Government of Malawi began to alter its independent position to enable international support. In November 1987, with over 300,000 refugees already within its borders, Malawi ratified the Geneva Convention and Protocol on Refugees as well as the OAU Convention (Zetter 1995, 1658).³⁴

Malawi is vulnerable to refugee influxes for several reasons. One of the main reasons is that Malawi is close to refugee producing regions. As discussed, during the late 1980s and early 1990s, over a million refugees from Mozambique crossed into Malawi's borders. Malawi's current refugee population has traveled to Malawi through Tanzania. As a result of Malawi's large border with Tanzania,³⁵ Malawi is within reach of refugees from the Democratic Republic of Congo, Burundi, Rwanda and Somalia. Even though Malawi is not the first country of asylum for these refugees, it continues to receive a small but steady flow of refugees from these areas.

Political boundaries separating Malawi from its neighbours have "never served as boundaries of exclusion" (Callamard 1994, 534). People have constantly shifted territory between Malawi, Mozambique and Zambia, evading tax collections and terrorization under colonial rule³⁶ and fleeing political persecution or corrupt governance after independence (Callamard 1994, 534). Migration occurring between these countries has also been facilitated by the common ethnicities existing in these states. During the

³⁴ A more extensive discussion regarding the reasons why Banda wished to minimize international involvement of the influx, as well as a more rigorous explanation of the factors which led him to eventually ratify the Convention will be discussed in the next chapter.

³⁵ The Tanzania—Malawi border is 475 km (CIA Fact Sheet, 1998).

nineteenth and twentieth centuries, the Sena and Lomwe from Mozambique's north-central region fled violence induced originally by the slave trade. Forced labour later carried out by the Portuguese colonial practices maintained migration from this area (Callamard 1994, 534). These migrants (and descendants of these migrants) now constitute the majority of the population in southern Malawi.

In the case of neighbouring countries, common ethnic ties might encourage refugees to seek asylum in Malawi. For many other refugees, however, Malawi is an attractive option for seeking asylum because of its lack of ethnic ties. After residing in the country of first asylum, refugees flee to Malawi in order to escape ethnic violence within refugee camps on the edge of armed conflicts (Interview 2). Another reason why refugees come to Malawi from the Great Lakes region is because countries such as Tanzania and Kenya are "saturated by refugees" (Interview 2). This saturation forces refugees back into places where there is continued fighting, or encourages further exodus to Malawi (Interview 2). According to the first country of asylum principle, voiced a UNHCR officer, refugees shouldn't really be in Malawi; many refugees in Malawi, however, claim that they are not safe in Tanzania, Kenya and other countries of first asylum and that "Malawi is the safest place" (Interview 3).

Another possible reason why refugees are attracted to Malawi is because of its proximity to the wealthier southern region of Africa, particularly South Africa. According to some GoM and UNHCR officials,³⁷ the presence of a South African Embassy in

³⁶ The Portuguese, Mozambique's colonialists, known to be "unmercifully cruel and harsh" drove many refugees into Malawi when Mozambique was under colonial rule (Barkley 1989, 337).

³⁷ This was mentioned in Interview 3 and 4.

Malawi entices young individuals to come to Malawi to obtain an entry visa (Nkotima 1996, 5).

As well as Malawi's experience with consistent refugee pressures, Malawi is also one of the poorest nations of the world. Since the Wall Street Journal in September 1988 claimed that Malawi was "one of the poorest countries in a poor continent" and "a true have-not" (Barkley 1989, 335), little has improved in the country. Malawi is ranked number 161 out of 174 developing countries on a scale of human development indicators (UNDP 1998, 161). Even when compared with other third world states, therefore, Malawi, in terms of poverty, literacy, safe water, health services and education is one of the worst off. The GNP per capita in Malawi is \$210 (World Bank 1999, 13).

The economy of Malawi is dependent largely upon agriculture, which accounts for 44% of GDP and 90% of export revenues (World Bank 1999, 193; 205). Of the 5 million registered in the labour force, 78% of males and 96% of females work in the agriculture (World Bank 1999, 51; 55). The population of Malawi is 10.3 million, 86% of which live in rural areas (1999, 43; 157). The population growth rate is 2.2% (1997-2015). In addition to population density (540 people/sq km. of arable land), the present agricultural output is strained by several environmental problems, including land degradation, water pollution from agricultural runoff, sewage and industrial wastes (1999, 121; 136).

Malawi's economy is common to many other third world countries. The primary exports are raw materials such as tobacco, tea, sugar, coffee, peanuts and wood products; the main imports are food, petroleum products, semi-manufactures, consumer goods and transportation equipment (1999, 205). Due to a constant balance of payments deficit, the

economy depends on substantial inflows of economic assistance from the IMF, the World Bank, and individual donor nations. In 1997, Malawi received \$348.3 million in donor pledges (1999, 353).

Several statistics reveal that many people in Malawi experience the consequences of poverty. The infant mortality rate is 133 deaths/1,000 live births (Canada's is 6/1000) (1999, 111). The life expectancy at birth for the total population is 43 years (Canada's is 79 years) (1999, 111). Despite these poor health indicators, there are fewer than 200 doctors (the majority expatriates) in the whole country (Oyowe 1995, 34). In terms of participation in education, 89% of primary school aged children are attending school and 17% of secondary school aged children are enrolled in secondary school (World Bank 1999, 79).

In order to analyze the response to refugees in a particular context, the response and the context should be discussed. Now that the case study of non-Mozambicans in Malawi has been introduced and the context of response explored, this project now turns to an analysis of refugee response in Malawi.

CHAPTER FIVE CASE STUDY ANALYSIS

This chapter explores how the ethical norms of the Convention impact the response to non-Mozambican refugees and investigates the possible consequences of this response on refugees. The analysis will be guided by three questions that were introduced in Chapter Three as sub-hypotheses:³⁸ (1) Did the response to refugees prioritize their political or civil rights over social or economic entitlements? (2) Was the response from the international community to refugees motivated by the political and economic interests of states of the international community? (3) Was the response from the host state motivated by the political and economic interests of the host state?

This chapter is divided into two sections, copying the general divisions made by literature on refugee response. The first section explores the protection of refugees, focusing on refugee determination procedure in Malawi. The second investigates assistance to refugees, investigating the response to refugees at Dzaleka. The investigation of each section is structured around the three questions listed above. The results of this analysis are displayed in table 3 at the end of this chapter.

The data for this case study analysis was acquired during the months of June, July and August 1998 in Lilongwe, the capital city of Malawi, and Dzaleka, Malawi's only refugee camp.³⁹ Although some refugees were interviewed alone, information from refugees was also acquired through a two hour group meeting with approximately eighty

³⁸ Chapter three investigated the ethics of the Convention, concluded that the Convention has a liberal emphasis and hypothesized possible implications of the liberal emphasis of the Convention on the response to refugees. The result was the three questions stated above which are being used to investigate the impact of liberal emphasis of the Convention on response to refugees.

refugees which was initiated and facilitated by the refugees. All interviews, with the exception of one, were carried out with individuals during the three month time period spent in Malawi. The one exception took place before departing for Malawi in Ottawa, in April 1998, with a UNHCR official. For purposes of confidentiality, throughout the paper, all interviewees will be identified by number only. This section also benefits from many personal communications that occurred with refugees and Malawians over the three month period. UNHCR Malawi⁴⁰ had an opportunity to peruse a draft of this paper, in order to guarantee their approval with the quotations and paraphrasing included.⁴¹ Unfortunately, they have not yet commented on the draft and it is unlikely that there will be any future response—the UNHCR office in Malawi closed in June of 1999.

The Protection of Non-Mozambican Refugees

The standard process of refugee determination in Malawi involves five steps: presentation to immigration, filling out a refugee application form, preliminary screening by the UNHCR and immigration officials, an intensive interview by the Technical Committee (TC) and final decision by the Refugee Committee. The preliminary screening is quite brief, attempting to clarify whether the person being screened has a substantial reason for applying for refugee status (Interview 3). If passed through the

³⁹ The interviews were conducted at the UNHCR Branch Office in Lilongwe and at Dzaleka.

⁴⁰ This research greatly benefited from numerous reports, documents and unpublished articles available through the UNHCR Office in Lilongwe

⁴¹ A draft of the paper was available to UNHCR Malawi by email. It has been very difficult, however, to send the draft to any other parties. Many of the refugee camp would be unable to read the draft because English is not their first language. There are also many who are illiterate. There are also logistical obstacles, such as the remote location of the camp and even the case study itself in terms of time required to mail the draft to those without internet access. The inability to share this draft with the people who

preliminary screening, the person is officially labeled an asylum-seeker. The claim for refugee status is not judged until the Technical Committee interview, which is the second and more rigorous interview. If the application for either asylum (preliminary screening) or refugee status (TC interview) is rejected, the asylum-seeker “may exercise [his] right of appeal against the rejection” (Malawi 1995a [?], 4). An appeal must be lodged to the Minister of the Department of Relief and Rehabilitation within fourteen days from the date of the decision of the Technical Committee. The decision of the Minister is final.

The term ‘asylum-seeker’ is used to refer to those who are waiting for their TC interviews, or to those who have gone through the TC interview and are waiting to hear the results. Although the term ‘refugee’ is more frequently used when referring to the residents of Dzaleka, the majority of persons at Dzaleka are actually asylum-seekers, as evident from Table 2.⁴²

Table 2. Refugee Status (January 1998)

Country	Total Population at Dzaleka	Total of Individuals w/out Refugee Status	Total of Families w/out Refugee Status
Burundi	214	173 (81%)	75
Rwanda	257	242 (94%)	87
Somalia	305	164 (54%)	43
DRC*	381	300 (79%)	101
Ethiopia	6	4 (67%)	3

* Democratic Republic of Congo

Source: Malawi, 1998

The time lapse between the preliminary screening and the TC interview is difficult to confirm: one UNHCR official claimed it was generally six months to one year

assisted with the research, in spite of the fact that no names are used, has been discomfoting but difficult to remedy.

⁴² Throughout this project, the term ‘refugee’ will be used to refer to both asylum-seekers and refugees.

(Interview 3, 1998). An administrator at Dzaleka felt that the time lag was half this long, between two to three months (Interview 2, 1998). This administrator claimed that the whole process, from arriving at the Malawian border to being granted refugee status, took approximately one year (Interview 2); other sources, however, suggested longer time estimates, of up to two years (Interview 3, 4).

Those with refugee status are the only residents at Dzaleka eligible to apply to the UNHCR for the following services: voluntary repatriation assistance, resettlement, a Convention travel document, family re-unification (in Malawi or elsewhere) and education at any level outside of the limited facilities of Dzaleka (Malawi 1995a [?], 4). One official claimed that refugees are also more eligible for loans from the UNHCR and other lending agencies than are asylum-seekers (Interview 3). Although having refugee status is an important issue for refugees because of the added benefits offered to those with refugee status (Interview 4), the GoM does not allow those with refugee status to live outside of the camp. For those staying in Malawi, therefore, acquiring refugee status does not significantly alter their daily lives. “Both refugees and asylum-seekers receive the same treatment at the camp” (Interview 3).

The Response to Refugees’ Rights

Did the response to refugees during the refugee determination process prioritize their political and/or civil rights over their economic and/or social entitlements? Evidence from both the forms and the interviews used to screen refugees suggests that the refugee determination process is based on protecting those who have suffered violations of their

political and civil rights and not those who have experienced a lack of economic or social entitlements.

The Application Form for Refugee Status

If asylum-seekers wish to seek refugee status in Malawi, they must present themselves to immigration officials at the border of Malawi (Interview 3). At the border, the asylum-seeker is asked to fill out an application form.⁴³ Several aspects of the form suggest that the interest of the immigration officials is whether the asylum-seeker has experienced violence or persecution. The form asks what political, religious, military, ethnic, social or professional groups the person (and her family) belonged to, what her responsibilities or activities were in each group, whether any incidents occurred as a result of this involvement, whether she has ever been arrested or detained and whether she has been involved in any violent incidents. The forms, however, are often blank or incomplete—many asylum-seekers do not speak English⁴⁴ and therefore cannot understand the form. Even if they do speak English, the prevalence of illiteracy also decreases the ability of the forms to acquire any information (Interview 3). According to a UNHCR legal officer in Malawi, more relevant information is obtained during the actual preliminary screening than by the form (Interview 3).

⁴³ A copy of this form is included as appendix 2. This form was acquired from the UNHCR of Malawi.

⁴⁴ The majority of people at Dzaleka speak Swahili, French or Arabic (Sichinga and Phiri 1998, 12).

The Interviews

Upon the arrival of asylum-seekers to the border, an initial preliminary screening occurs which attempts to separate those who have a claim to refugee status from those who do not. During this initial screening, the refugee is primarily asked why she left and, if she is not from a neighbouring country, she is asked why she did not seek asylum in a transit country (Interview 3). If a family has traveled together, the heads of families are screened—if they are accepted, then the entire family is accepted.

People who arrive at Malawi's borders claiming that they have suffered persecution either in their countries of origin or in other refugee camps are generally accepted (Interview 3). Although the exact numbers of those accepted and rejected were difficult to receive from either the UNHCR or the GoM, the opinion expressed by those working in the field was that few people are turned away during the preliminary screening (Interview 3, Interview 4). This opinion was shared by refugees who did not express concern with the initial screening process (Interview 5). Those who are accepted are transported directly to Dzaleka Refugee Camp. Those who are rejected at this stage are released and must either leave or apply for immigration. If a refugee arrives at Dzaleka without being previously screened by immigration officials (generally meaning that he entered the country illegally), he is not accepted at the camp or given any assistance until he agrees to an interview with immigration. "Once the asylum seeker has successfully gone through the preliminary interview, he/she is given a token card for presentation to the Camp Administration at Dzaleka" (Malawi 1995b [?]). Unless an asylum-seeker has this token card, however, she will not be allowed entry into Dzaleka.

The second screening process is the TC interview. This screening is more rigorous, involving several members of a panel—usually the UNHCR legal officer, Immigration, Relief and Rehabilitation, the police, External Affairs and the Camp Administrator (Interview 3). The general questions asked at this meeting are: When did you leave your country? Why did you leave? Which countries did you transit and why did you not seek asylum in those countries? When did you arrive in Malawi? Are you intending to return to your country? (Interview 7). According to the UNHCR in Malawi, these five questions are usually enough to establish a refugee claim (Interview 3). Some screenings involve further questioning about an asylum-seeker's family (Interview 3).

The screening process is the same for all asylum-seekers with the exception of Rwandans. Malawi conducted their first screening of Rwandans in September of 1997 and was planning to conduct another in October of 1998. The reason for the different process is to ensure that the GoM is not hosting war criminals who should, according to Article 1 of the Convention, be returned and tried by a war crimes tribunal (Interview 3). Screening of Rwandans is different from the general screening of asylum-seekers in two ways. First, each Rwandan over eighteen years of age is screened individually. As mentioned, in the general screening process, the heads of families are the representatives of their whole families' refugee status and are the only ones screened. Second, the interview questions during the screening of Rwandan refugees are designed to obtain information regarding the asylum-seeker's role in any violent act. The Rwandan asylum-seekers are asked what disturbances or problems happened in their commune/village,

what was their role in those disturbances, whether they ever involved in violent incidents, and if yes, what was the nature of the incident and their role in them.⁴⁵

Data indicating numbers of those accepted and those rejected by the TC interviewers was not available. One official involved in the process suggested that more are turned away at this stage than during the preliminary screening but that most are still accepted (Interview 3).

After the TC interview, the Technical Committee either refers or does not refer the candidate for refugee status to a Refugee Committee, who judges upon the recommendations of the Technical Committee (Interview 3). The Refugee Committee involves the Minister of the Department of Relief and Rehabilitation and the Minister of Immigration, and is basically a last checkpoint of the application.

Throughout the entire process, officials accept those who demonstrate that they have been persecuted on the basis of ethnicity (the usual case), religion, belief, membership to a certain group or opinion (Interview 3, 4) and to those whose lives or security is in danger as a result of conflict or political instability. Whether the persecution or threat is experienced in the country of origin or in another refugee camp is insignificant to refugee determination (Interview 3, Interview 7).

The objective of the screening process in Malawi is to find out if the political or civil rights of an individual have been threatened in his country of origin or in a refugee camp outside of Malawi. The forms and the interview process both suggest that if economic migrants reside in Dzaleka, they have concealed their intentions in order to pass through screening. According to one UNHCR officer, this is very uncommon—an

⁴⁵ A copy of the form used by interviewers of Rwandan asylum-seekers is included as appendix 3.

arrival “seeking economic status” is “very rare” in Malawi, occurring at the most “once in three months. . . Malawi is a poor country” surrounded by poor countries, “the push and pull factor” is therefore “minimal” (Interview 3).

This opinion contrasted that of one GoM official who claimed that some people at the camp, especially those staying short periods of time, are “just seeking adventure” (Interview 2). An unpublished document, written by a UNHCR official, agreed. It claimed that the inflow of refugees to Malawi was in part due to Malawi’s proximity to wealthier southern regions (Nkotima 1996, 5). “Why should Angolans travel all the way to Malawi bypassing refugee centres in Zambia and Zimbabwe?. . . the analysis done by this office concludes that the aim of asylum seekers/refugees is to use Malawi as a transit country to enter into South Africa” (Nkotima 1996, 5). Malawi, unlike some countries in the surrounding region, has a South African Embassy where it is possible to acquire visas.

The presence of economic migrants at Dzaleka is logistically quite conceivable. Economic migrants, by disguising their intentions, could pass through the preliminary screening, which is less thorough than subsequent interviews, reside at Dzaleka refugee camp and work on receiving either a transit visa or other means of traveling to South Africa. Personal interviews with UNHCR and Government legal officers suggest, however, that asylum-seekers must demonstrate that they have suffered persecution or violations of their political or civil rights in order to remain in Malawi (Interview 2 and 3). It is possible that an economic migrant would be able to demonstrate this, however, especially during the preliminary screening.

Although there may be individuals residing at Dzaleka who have come to Malawi to seek better economic opportunities, the screening process in Malawi clearly indicates that violations of the asylum-seeker's political or civil rights are prioritized over violations of economic and social rights. Those who have not suffered violation or persecution of their political and civil rights are not accepted as refugees unless they can convince immigration and the UNHCR otherwise.

In terms of the impact of the screening process on asylum-seekers, the only voiced complaint mentioned by the asylum-seekers was with respect to the time taken to go through the refugee determination procedure. The asylum-seekers did not voice any concern with the forms or the interview process itself.

Response from the International Community

Was the involvement of the international community in the refugee determination procedure in Malawi motivated by the political and/or economic interests of the states of the international community? Evidence suggests that the answer to this question is yes. Strong evidence supports the argument that states would not be interested in Malawi's refugee determination process for either economic or social reasons. Evidence also points out a lack of international involvement in Malawi's refugee determination procedure.

This section will begin by assessing the interests of the international community in the refugee determination procedure of Malawi and will then explore the involvement of the international community in this process. There are two possible ways for the international community to participate in the refugee determination procedure of a state:

either individual states are involved directly in the determination procedure of another state or they are involved indirectly, by funding the UNHCR.

Assessing the Economic and Political Interests of the International Community

States have virtually no economic or political interests that would be served by involving themselves in Malawi's refugee determination procedure.

States have generally become involved in the refugee determination procedures of other states when they have felt that generous refugee determination procedures in neighbouring states have increased the numbers of asylum-seekers reaching their borders. In the EU, for example, once an asylum-seeker is granted asylum by any EU-member state "an asylee would have freedom of movement within the entire Union" (Fitzpatrick 1996, 243). Several EU nations have expressed concern with the generous refugee determination procedures adopted in fellow member states. In March of 1995, the Justice and Home Affairs Council of the EU approved minimum guarantees for asylum procedures supplementing former Western European agreements on asylum-seekers such as the Dublin and Schengen Conventions signed in 1990 (Juss 1998, 333).

The US and Canada, who are presently negotiating a Memorandum of Understanding regarding asylum-seekers, have had similar concerns regarding each other's refugee determination processes. The US is also negotiating with Mexico, attempting to increase Mexico's scrutiny of Central American asylum-seekers who often attempt to transit through Mexico to the US (Abell 1996).

Malawi's small refugee population decreases the incentive of Malawi's neighbouring countries to become involved in Malawi's refugee determination procedure.

In addition, any political or economic incentive of industrial states to become involved in Malawi's refugee determination procedure is diminished because of a lack of proximity to Malawi's borders.

The political and economic interests of individual states also potentially effect the involvement of the UNHCR in states' refugee determination procedures. The UNHCR is dependent on voluntary contributions from states that are raised donor by donor, program by program and year to year (UNHCR 1997, 6). Approximately ninety-five percent of UNHCR funding comes from fifteen governments—the US, the European Commission and Japan were the top three donors in 1996 (1997, 6). As a result of its dependency on donor funding, it is conceivable that the UNHCR must juggle its objective to respond to the needs of refugees with the political and economic interests of donor states.

One relatively recent trend of the UNHCR that appears to be in line with the political and economic interests of donor states is the "right to remain". The "right to remain," meaning the right of people to stay in their countries of origin, was a term coined by the UNHCR in the mid 1990s, arguably in response to a demand from both industrial and third world states for less demanding obligations to refugees. According to Hathaway and Neve, the "UNHCR saved face and *raison d'être*, away from the goal of ensuring access to quality asylum, in favour of an avowed commitment to eradicate the need to flee in the first place" (1997, 133). This assertion of Hathaway and Neve is not entirely consistent with comments from Sadako Ogata, the United Nations High Commissioner, who stated recently that "asylum is the cornerstone of refugee protection" (Ogata 1998, 2). In a speech to an international law group in Ottawa, Ogata reaffirmed

the need “to promote the commitment of governments to the refugee status determination system based in refugee conventions—particularly the 1951 Geneva Convention” (Ogata 1998, 2). The point here is not to debate whether the UNHCR has switched focus from asylum to protecting the “right to remain” but only to suggest that the pressure to keep refugees in their countries of origin has impacted the priorities and interests of the UNHCR. Although the UNHCR continues to be vocal about the importance of the provision of asylum, the UNHCR has switched more attention to the prevention of refugee camps by setting up in-country safe-havens for refugees and by attempting to begin repatriation as early as possible (Hathaway and Neve 1997, 133-137). Although this can be perceived as a positive step, it has generally been met with criticism (Hathaway and Neve 1997, 135). Various NGOs have argued that the donor communities’ interest in preventing refugee flows is “diluting UNHCR’s ability to campaign on behalf of asylum” (UNHCR EXCOM 1998, 22).

International Involvement in Malawi’s Refugee Determination Procedure

States have not become independently involved in Malawi’s refugee determination procedure. The only involvement of the international community in Malawi’s refugee determination procedure has been through the UNHCR.

State involvement in the regional agreements outlined in the previous paragraphs, such as the EU agreements and the Memorandum of Understanding presently under negotiation between Canada and the U.S., have been criticized by the UNHCR for being more concerned with restricting refugee movements than with identifying and

coordinating a stronger response to refugees (Juss 1998, 333). It is conceivable, therefore, that the lack of interest of states in Malawi's refugee determination procedure may be of benefit to the refugees in Malawi.⁴⁶

UNHCR's Involvement in a Malawi's Refugee Determination Procedure

Malawi granted the UNHCR a supervisory role in the refugee determination procedure when it ratified the Convention in 1987. Article 35 of the Convention, which does not allow reservation, stipulates that host states must "cooperate" with the UNHCR "in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of [the] Convention" (United Nations 1983, 25).

The annual budget of the Malawi UNHCR office was \$600,400 US in 1997. In the summer of 1998, there were five full time staff working at the UNHCR Malawi office: a legal officer, protection officer, program officer and two assistants. From the late 1980s until June 1999, UNHCR officers were involved in the refugee determination procedure in Malawi as monitors and advisors to ensure that refugees were admitted into asylum and treated in accordance with established international protection standards. A UNHCR legal officer was present during both the preliminary screening and Technical Committee interviews and was free to ask questions (Interview 3). The UNHCR also performed an advisory role for the procedure. In 1998, for example, the UNHCR drafted

⁴⁶ I could not find examples of states involving themselves in the refugee determination procedures of another state in order to make the determination process more flexible or inclusive. There are examples of states interjecting into another state in order to compel access to relief organizations, such as when the Security Council insisted that Iraq allow immediate access to humanitarian organizations during the internal displacement of Kurds in 1991. Examples of this nature, however, are not particularly relevant to a discussion of international involvement specifically in refugee determination procedures.

the interview questions for the screening of Rwandans during the Technical Committee interview.⁴⁷

The UNHCR also played a strong role outside of the screening process. The UNHCR legal officer provided counseling to both asylum-seekers and refugees, primarily during the appeal of a refugee status decision but also when there were disputes between refugees at the camp or between administration and refugees. An impression of the UNHCR legal officer, acquired through various trips with her to the camp and by watching her interact with many asylum-seekers, was that she was aware of the status of the applications of each asylum seeker and was accessible to them, acting as a go-between between the asylum-seekers and GoM officials during the determination process. Officers of the UNHCR were also involved in lobbying the GoM on behalf of specific refugee claims (mostly with respect to expediency) and, when relevant, were also involved in critiquing any part of the determination procedure which did not encourage the protection of refugees (Interview 3).

As evident by the earlier discussion of the political and economic interests of states of the international community, the UNHCR's participation in the refugee determination procedure of the GoM was *not* in the political or economic interests of UNHCR donors. The political and economic interests of states support efforts which prevent (rather than protect) refugees.

The fact that the UNHCR office has now closed, however, supports the hypothesis that the involvement of the UNHCR is dependent on the political and economic interests

⁴⁷ Personal communication, July 1998.

of donor countries. The office closed in June of 1999, transferring all duties to GoM officials and to UNHCR offices in Zambia and Tanzania (Interview 7).

Four possible explanations of why the UNHCR office was in Malawi for as long as it was are as follows: (1) donor states were politically or economically interested in being involved in Malawi's response; (2) donor states were interested in supporting Malawi's response to refugees for other reasons; (3) given the small budget of UNHCR Malawi, the presence of the office was overlooked or viewed as insignificant to donor states; or (4) it took the bureaucracy of the UNHCR five years (the repatriation of over one million Mozambican refugees was completed in 1994) to complete the logistics required for closing down its office in Malawi.

The first explanation has been disputed in this discussion; it is unlikely that the international community funded the UNHCR office in Malawi because of the political or economic interests of donor states. However, this does not suggest that the international community was involved because of an interest in the lives and welfare of refugees. It is very probable that the the UNHCR office in Malawi was simply over-looked by the donor community because of its small annual budget. It is also possible that the large UNHCR bureaucracy resulted in the delayed closing of the UNHCR office after the repatriation of Mozambican refugees.

This discussion supports the hypothesis that the involvement of the international community in the refugee determination procedure is motivated by the political and economic interests of states of the international community. Evidence from the EU and North America suggests that a state intervenes in the refugee determination process of another state when there is political or economic incentive to do so. Evidence also

suggests that there is very little economic or political incentive for states of the international community to become involved in the refugee determination procedure in Malawi. Unlike states of the EU and North America, Malawi's small refugee population and lack of proximity to industrial states decreases the threat of Malawi's refugee population on states of the international community.

Although the lack of involvement of states in Malawi's refugee determination procedure may be of benefit to refugees, as previously discussed, the closure of the UNHCR office is most likely negative for refugees in Malawi. Almost a year before the office closed, asylum-seekers were expressing concern about the closure, worrying that the delays of the refugee determination procedure would increase and that they would be less protected throughout the process once the UNHCR left Malawi (Interview 4).

Response from the Host State

Is the involvement of the GoM in the refugee determination process of refugees in Malawi motivated by the GoM's political and economic interests? The GoM's strong adherence to the protection standards articulated by the Convention in spite of having no clear political or economic interest for protecting refugees refutes the hypothesis that a state's involvement in the refugee determination process of refugees reflects its own economic or political interests.

Assessing the GoM's Political and Economic Interests

The political and economic interests of the GoM point in favour of a restrictionist refugee determination procedure. Being a relatively new democracy, it is in the GoM's

political interest to demonstrate that it is responsive to the Malawian people. The Malawian public, however, has generally expressed suspicion of non-Mozambican asylum-seekers. Therefore, it is within the GoM's political interest to continually heed the concerns of its public by restricting the numbers of non-Mozambican refugees in Malawi. In addition to political incentive, Malawi also has a clear economic incentive to restrict refugees. The extent of poverty in Malawi makes it potentially vulnerable to any refugee population. Both the political and economic interests of the GoM with respect to non-Mozambican refugees will be discussed below.

Evidence suggests that non-Mozambican refugees have been generally distrusted by the Malawian public. According to one UNHCR report, "the non Mozambican asylum seekers have been known to be a hostile group by the residents of the city of Lilongwe," the capital of Malawi (Nkotima 1996, 4). "Insecurity" and "bandits" occurring in urban areas have often been perceived by the Malawian public to be the result of refugees (Interview 2, 1998).

One of two national newspapers in Malawi, *The Herald*, published numerous accounts of suspicion of non-Mozambican refugees in 1994. In one article, residents of Lilongwe expressed concern with the large presence of Somali refugees in the country, and in another area residents "complained that uncontrolled influx of refugees in the country could endanger the national security" (Nkotima 1996, 4).

The perception of non-Mozambican refugees as prone to aggression is possibly the result of one greatly publicized event in September of 1994, when non-Mozambican asylum-seekers and refugees occupied UNHCR Branch offices in Lilongwe demanding

that their status be addressed. During this occupation property was damaged (Nkotima 1996, 4) but nobody was wounded.

The distrust might also be the result of a lack of ethnic ties shared between Malawians and non-Mozambican refugees. Many Malawians voiced sentiments such as ‘they cannot be trusted’ when describing non-Mozambican refugees, which is in strong contrast to the kinship feelings expressed regarding Mozambican refugees. One GoM official, for example, stated that Mozambicans are “neighbours and friends who belong to the same ethnic group and the same tribe as our own people. We can thus identify with their trouble” (Callamard 1994, 533). Another program officer claimed that during the civil war in Mozambique, there was “no restriction on Mozambicans” fleeing to Malawi “because they were easily accepted” (Interview 1). Unlike Mozambican refugees, with whom Malawi shared common ethnic, cultural and linguistic characteristics, non-Mozambican refugees were more conspicuous (Schaeffer 1997 [?]) and easily stood out as different—in language, customs and appearance.

The contrasting public reaction to Mozambican compared to non-Mozambican refugees is also possibly the result of greater understanding of the push factors in Mozambique. As thousands of hungry, tired and wounded refugees crossed into neighbouring Malawi from Mozambique, there was little doubt as to why they were fleeing. Malawians are more suspicious of the reasons pushing refugees from Somalia and the Great Lakes region to Malawi.⁴⁸ Some Malawians felt that the only reason why non-Mozambican refugees traveled to Malawi was to receive UNHCR handouts.⁴⁹

⁴⁸ Personal communications, July 1998.

⁴⁹ Personal communication, July 1998.

It is in the political interests of the GoM to respond to the suspicions of the Malawian public. Although the GoM has been in power since 1994, the Malawian public remains eager to test the validity of the democratic parties after a thirty year dictatorship. Given the lack of interest from the international community on the subject of refugee determination in Malawi (and therefore lack of international political incentive), the main political incentive of the GoM is to respond to its people.

In terms of economic interests, the high level of poverty, significant unemployment, food shortages, inadequate health and educational services and other characteristics common to a third world context increase the likelihood that any number of refugees into Malawi would further exacerbate Malawi's economic problems. Scarcities of employment, income-generating opportunities, education and health care, as well as shortages of basic commodities like food, fuelwood, drinking water and construction materials tend to be exacerbated by refugees. It is likely, however, that the small numbers of non-Mozambican refugees would not pose a significant threat to Malawi's economy.

The GoM's Involvement in the Refugee Determination Procedure

The GoM is the main actor throughout the refugee determination procedure in Malawi. The two main Government Departments involved in the refugee determination procedure are the Department of Relief and Rehabilitation and the Department of Immigration. As discussed, the Ministers of these Departments have the final say regarding who is entitled to refugee status.

The UNHCR's role during the procedure was predominantly supervisory and although they lobbied the GoM on some occasions, the GoM had the liberty to either respond to or refuse the requests of the UNHCR.⁵⁰

Throughout the refugee determination procedure, the GoM respected both Article 1 (the definition of a refugee) and Article 33 (the principle of nonrefoulement). This was evident from the questions which were asked during the screening and from the lack of any evidence from the UNHCR, who monitored the procedure, that the GoM returned an asylum-seeker to a land where she might have feared persecution. The GoM also upheld Article 1 to the extent that those suspected of war crimes were returned to their country of origin (Interview 3). Article 1(F) stipulates that the Convention does not apply to "any person with respect to whom there are serious reasons for considering that. . . he has committed a crime against peace, a war crime, or a crime against humanity" (United Nations 1986, 14).

Both Article 1 and Article 33 are binding, in the sense that Malawi cannot have reservations on either of these articles. The GoM appears to respect these Articles during the refugee determination procedure in spite of the political and economic incentives for the GoM to pursue a more restricted definition of refugee and a tighter determination procedure in general. The GoM's involvement in the refugee determination process therefore counters the hypothesis that the involvement of a state in the refugee determination procedure will reflect its own political and economic interests.

⁵⁰ Personal communications, June/July 1998

Assistance to Non-Mozambican Refugees

The assistance to asylum-seekers and refugees in Malawi by the GoM and the UNHCR was shaped by Malawi's accession to the Convention with nine reservations (Malawi 1990 [?]). Malawi has reservations on the following Articles: (1) Article 26 relating to the refugees' freedom of movement within Malawi's borders; (2) Article 13 concerning the acquisition of property; (3) Article 15 relating to right to free association; (4) Article 17 concerning wage-earning employment; (5) Article 19 concerning the professional practice of refugees; (6) Article 22 on the provision of public education; (7) Article 24 concerning labour legislation and social security; (8) Article 7 relating to exemption from reciprocity; and (9) Article 34 on the naturalization and assimilation of refugees (Malawi 1990 [?]).

The assistance of non-Mozambican refugees within Malawi will be analyzed by using the three sub-hypotheses which guided the previous analysis of the refugee determination procedure in Malawi.

Response to Refugees' Rights

Did assistance to refugees prioritize political and/or civil rights over economic and/or social entitlements? Counter to the hypothesis that the response to refugees will prioritize political and civil rights over economic and social rights, assistance to refugees in Malawi compromises the political, civil, social and economic rights of refugees to an extent where neither class of rights of refugees appear to be valued over the other.

Assistance and the Political and Civil Rights of Refugees

Correspondence from refugees at Dzaleka makes the compromise of refugees' political and civil rights perfectly clear, at least in the eyes of the refugees—"we refugees in Dzaleka camp we [are] like prisoners in Dzaleka."⁵¹

An obvious violation of the political and civil rights of refugees is the restriction of their movement within Malawi's territory. All refugees arriving into Malawi are taken directly to Dzaleka after the preliminary screening process that occurs at Malawi's border. The fact that Dzaleka was a former prison⁵² under Banda's regime surely does not help remedy the feelings of captivity which many refugees experience. In one meeting several of them made statements such as "we have no freedom of movement", we have to "ask permission to go anywhere, even to clinics. . . we feel like prisoners" (Interview 5).

According to a camp administrator, there are few restrictions on the coming and going of refugees (Interview 2). They do need permission if they leave the camp, but this was inferred as quite easy to receive (Interview 2). Several occurrences support the opinion of the administrator. During one visit to the camp, a vehicle that had just returned from a hospital run was packed with refugees from the camp that had gone along with the person who was visiting the hospital. Refugees would also often initiate meetings with myself in Lilongwe and on one occasion I ran into a refugee from Dzaleka in the main central market of Lilongwe. Although not conclusive, these incidents support the idea

⁵¹ A photocopy of the original of this letter is included as appendix 4.

⁵² Dzaleka was well-known under Banda's regime for being particularly harsh and torturous for inmates, many of them political dissidents. The general sentiment expressed was that few people who went in to the prison ever returned.

that although refugees have to ask permission to leave, the permission is (at least on some occasions) granted.

The isolated location of Dzaleka, however, presents other challenges to the refugee's freedom of movement. Even if they were granted permission to leave the camp, refugees would either have to hire vehicles which are very expensive,⁵³ walk (the nearest village is an hour away) or wait for a hospital or provision run.

The freedom of refugees to acquire property⁵⁴ is restricted by the GoM through legislation (Malawi 1991 [?], 2-3). In practice, this freedom is limited by the restriction of refugees to Dzaleka.

The lack of opportunity to acquire property is a significant problem expressed by refugees. In July of 1998, Dzaleka officials encouraged movement from dormitories to individual plots of land just outside of the fence of the refugee camp, on which the refugees could build homes and establish gardens. According to the camp administration, the plot initiative was designed to promote self-reliance of the refugees (Interview 2).

This positive depiction of this project was echoed in the 1998 UNHCR State of the World's Refugees publication that stated the following:

The Government in Malawi has so far made available 201 hectares of arable land to refugees for residential and agricultural activities to help them settle locally. Plots of land have been allocated to each family that has been granted asylum, and UNHCR will fund the purchase of

⁵³ As mentioned earlier, the road into Dzaleka is very bumpy, filled with potholes and large rocks. During the visits to the camp, the UNHCR drives trucks and four wheel drive vehicles. Although there are taxis in Lilongwe, most would refuse to travel to the refugee camp due to the poor road conditions.

⁵⁴ I am discussing the acquisition of property as a civil right rather than an economic right. The Convention does not stipulate that a state must provide property to refugees, this would be an obligation to respond to an economic entitlement. The Convention stipulates that a state must "accord to a refugee treatment as favourable as possible. . . as regards the acquisition of movable and immovable property" (Article 13). The state therefore has a negative obligation to refugees in the sense that it cannot change laws or enact barriers which prohibit a refugee from acquiring property.

agricultural supplies, tools and some shelter/construction materials to enable the refugees to provide for most, if not all, of their food needs after the first harvest. It is hoped that in April/May 1999, following a successful harvest, the provision of food rations could be discontinued (UNHCR 1998).

The opinion of refugees on the subject of the UNHCR plots of land contrasts the optimistic predictions of the administration and the UNHCR. Ironically (considering the land plot program was initiated to increase the self-reliance of refugees), many of the refugees felt that the move to the plots of land was initiated without any consultation with themselves (Interview 4). Most also argued that they were required to develop the plots without any technical or financial assistance—“we are pushed into huts without any support” (Interview 5). This sentiment was evident in written correspondence from refugees, which stated: “we refugees in Dzaleka, we don’t want to build plots which we don’t have know-how and financial assistance from UNHCR” (Dzaleka refugees 1998).⁵⁵ During one visit to Dzaleka, one man who was trying to cultivate the soil on his plot of land began to laugh as he explained that he was a business person in his country of origin and had little experience with gardening or building a home. Some refugees stated that they were not interested in developing a plot of land that they would never have the chance to own (Interview 5). Others suspected that the plot idea was a ploy initiated by the GoM or the UNHCR to use free labour to develop the land surrounding the camp and a few refugees felt that the land plot program was established simply to keep the refugees occupied (Interview 5).

Other political and civil rights that are not mentioned in the Convention are protected. Dzaleka provides the appropriate protection and security to refugees. Refugees

are expected to follow the laws of Malawi and if these are violated, they are to appear in court or pay fines that are the same as Malawian citizens. In June, the donation of women's clothing by a NGO caused physical fighting between women of different ethnic groups in the camp (Interview 4). The administration responded quickly to this incident, tightening their monitoring of donations into the camp.

One freedom that is also exercised by refugees is the right to speak. During my visits to the camp, refugees were welcome to speak to me, either privately or with GoM or UNHCR officials present. There were also several mediums for expressing grievances about the camp. Residents of the camp were allowed to visit UNHCR offices in Lilongwe (at their own expense, however, resulting in very few people taking this opportunity). Asylum-seekers could also make an appointment at the camp to speak with UNHCR legal and protection officers or the camp administrator on site (Interview 4). Most of the literature written by the GoM and the UNHCR expounds the view that there is ample opportunity for communication between the administrators of assistance and the refugees (Malawi 1995a [?]; Malawi 1995b [?]; UNHCR of Malawi 1995 [?]).

Whether refugees feel that it is worth exercising the right to voice grievances, however, is doubtful. During a visit to the camp, the distrust existing between the administrators of the camp and the asylum-seekers was apparent. After a meeting with the camp administrator, the refugees were eager to speak to me, concerned that the administration of the camp had depicted Dzaleka in a biased way.⁵⁶ After a meeting with

⁵⁵ A photocopy of the original letter is included in appendix 4.

⁵⁶ Although I cannot remember the exact comments, as I left the meeting with administration and was walking across the camp to a central hall where I was meeting with refugees, many of the residents of

the refugees, the administration wished to meet again, concerned that refugees had refuted the previous information that they had given regarding the camp's overall strengths.

Within the camp, evidence suggests that refugees' political and civil rights are respected and upheld. Refugees can associate with whom they wish, say what they desire, travel where they want and practice their religions. That these political and civil rights can only be exercised in a confined place, however, taints the liberty which the refugees experience.

Assistance and Refugees' Social and Economic Rights

With respect to social and economic rights, refugees expressed most grievances with respect to restricted access to education.

A primary school in the camp operates five days a week from Monday to Friday. In July 1998, 162 children above ages five and six were enrolled in grades ranging from one to seven (Interview 2). There was also a preschool for those under five years. There were no facilities for post-primary education and children were not allowed to attend schools outside of the camp (Malawi 1995a [?]).

The main problem expressed with respect to education was that children who had finished grade seven had no opportunity to attend school—this was especially a concern for those who knew children who had been at the camp for over a year. These children

Dzaleka accompanied me immediately after I left the meeting with the administration and made comments such as, 'I am sure they told you this, but . . .'

require more than grade seven, argued one refugee, “primary school is not a strong education” (Interview 5).

Several refugees were frustrated by the lack of opportunity for adult education or technical training (Interview 5). It was mentioned that a few adult refugees took computer courses in Lilongwe but that their participation was “politically unpopular” (Interview 3). (They did not expand on what exactly this meant in terms of access to these courses). One refugee who was visibly upset during the meeting, stated that “education is everything” and that without education past primary school, both the adults and the children would not have many future opportunities (Interview 5).

The other main criticism which refugees expressed, which is relevant to this discussion of social and economic rights, concerned the lack of opportunity to seek employment. According to the UNHCR, refugees “cannot really get jobs because they have to live in the camp” (Interview 3). The inability for refugees to have jobs adds to the feeling of captivity at Dzaleka.

According to a camp administrator, the fact that workers and professionals are “just sitting” at Dzaleka adds to the frustration levels in the camp (Interview 2). At the time of my research, in June 1998, there were refugees in the camp who were bakers, carpenters, mechanics and electricians (there was even one sculptor) in their countries of origin (Sichinga and Phiri 1998, 13). Eighty six refugees in the camp had attended university and seventy-nine had technical degrees (Sichinga and Phiri 1998, 13). Thirty-six said they had an undergraduate degree, six claimed to have masters degrees and one refugee in the camp had a Ph.D. in economics (Sichinga and Phiri 1998, 11). In terms of occupations, there were fifteen qualified accountants, four agronomists, three economists,

four engineers, one geologist, fifteen nurses, two lawyers, ten secretaries and fifty nine school teachers in the camp (Sichinga and Phiri 1998, 12).

Very few complaints were raised by refugees regarding other aspects of social and economic assistance. After arriving at Dzaleka, each refugee is supplied with the necessary basic assistance such as accommodation, food rations and non food supplies like blankets and kitchen ware (Malawi 1995b [?]). This is mostly distributed through a leader of the camp—each ethnic group generally has an informal leader who welcomes in a new refugee of the same ethnicity (Interview 2). Accommodation is structured around ethnic groups (Interview 2). It is allocated by the Camp Administrator but is organized by the refugees. Upon arrival, the administrator refers the asylum-seeker to a leader in the camp with whom the arrival shares the same ethnicity. This person then decides the most appropriate living arrangement for the new-comer and also orients the asylum-seeker to the camp (Interview 2).

The distribution of food and supplies is very structured except for the occasional donation from an NGO in Lilongwe. Food is distributed once a month (Interview 2, 1998). The food is generally standardized, individual food choices depend on local availability. Most items such as blankets and pots are given to refugees upon arrival; others are given when they are donated or become available. Any replacement of items can be done after a minimum of one year, through the Malawi Red Cross Society.⁵⁷

⁵⁷ NGOs have not been discussed in this analysis because the focus of the project is the obligations of states to refugees. States have therefore been the main investigative focus. The only NGO regularly involved at Dzaleka is the Malawi Red Cross. A MRCS representative works daily at the camp. Other NGOs occasionally donate supplies but are not involved in the running of the camp.

For the health needs of refugees, a camp health clinic is situated inside the camp that offers the first intervention in medical care. Those requiring further medical attention are eligible to make hospital visits. Essential amenities such as water, electricity and sanitation are available at the camp. Several people (both refugees and officials) mentioned that the conditions in the refugee camps in Tanzania are far worse than in Malawi. In Tanzania, there is usually no electricity available in the camps and the resources are scarce as a result of over-crowding. According to one official, the refugees were not happy because they had heard about Dzaleka in other, less equipped camps and had traveled to Malawi “with too high expectations” (Interview 2).

Counter to the hypothesis that the response to refugees will prioritize the political and civil rights of refugees over their social and economic rights, evidence suggests that the political and civil rights of refugees, such as the right to free movement and the right to acquire property are just as compromised as the rights of refugees to education and work.

Response from the International Community

Was the assistance given to refugees by the international community motivated by the political and/or economic interests of the states of the international community?

Evidence suggests that the answer to this question is yes.

Assessing the Political and Economic Interests of the International Community

There was little political or economic incentive for states to become involved in the assistance of refugees in Malawi. Politically, Malawi’s refugee population was of

little interest to most states of the international community, even to states bordering Malawi.

One political reason why a state assists a refugee population in another state is if the assistance increases domestic political support. If a state's constituency has heard about abandoned or vulnerable refugees, or has seen photographs of massive refugee movements, it is likely in the government's political interest to respond. States are generally "more interested in assisting the popular and more spectacular refugee situations" (Melander 1990, 143). Media coverage, however, is generally restricted to large-scale refugee populations suggesting that there would be little political incentive in terms of gaining domestic support, to assist refugees in Malawi.

Other political factors that might incline a state towards supporting a particular refugee situation are a state's involvement in the conflict, or a state's perception that the perceived severity of the refugee crisis warrants international concern.

It seems unlikely that the international community will feel equally compelled to protect human life where it has not fought a war, where strategic political interests are less pronounced and where there is less worldwide outrage over the plight of the civilian population (Minear 1992, 4)

The example of Mozambican refugees in Malawi supports the connection between large influx, public awareness and international response. During the influx of Mozambicans to Malawi in the late 1980s and early 1990s, international attention was focused on over a million people, one of the largest refugee movements ever, fleeing violent conflict in Mozambique to nearby Malawi. The international involvement in Malawi was tremendous. In 1989-90, food and non-food refugee assistance comprised 20% of the GoM's revenue (Zetter 1995, 1658).

The presence of non-Mozambican refugees in Malawi, however, was hardly noticed by the international community. Why would the international community be politically or economically interested in two thousand (at most) refugees who had come from sporadic conflicts, and had stayed in Malawi, a land-locked country with a lack of abundant natural resources and accessibility? Unlike the Mozambican influx that was large, intense and “spectacular”, the refugee population in Malawi was generally overshadowed by other larger refugee populations.

Economically, states of the international community have never expressed strong economic interest in either Malawi or sub-Saharan Africa as a whole, obvious from the lack of foreign investment in the area. Therefore, it was unlikely that a response to non-Mozambican refugees in Malawi would fulfill the economic interests of any states of the international community.

The UNHCR has been recently pressured to alter its assistance programs in light of changing interests of donor states. Funding to the UNHCR from donor states has been earmarked for conflict resolution and other programs which stop refugee movements from occurring, resulting in decreased funds for assistance to refugees. In the early 1990s, the UNHCR was forced to cut 20 to 33 percent of its non life-saving expenses including supplementary foods, education, blankets, heating, water programs and provision of tents (Keen 1992, 37). According to one UNHCR official in Ottawa, budget cuts from donor countries which were becoming particularly visible in 1998, were resulting in a decrease

in effectiveness of response by third world countries to refugees, an elimination of special programs⁵⁸ and the closure of several UNHCR offices (Interview 6).

The Involvement of States in the Assistance of Refugees

There was no involvement of individual states in assisting the refugee population in Malawi, in terms of financial, technical or management support. There were also no offers from states of the international community to resettle refugees. However, this lack of involvement is not uncommon. Individual states generally leave the assistance to refugees either up to the host state (in the case of industrial states) or to the UNHCR (in the case of third world states) rather than becoming involved themselves in the response.⁵⁹

States have assisted refugee populations in third world states, by offering to resettle refugees. The moving of a refugee from Malawi to another state as a durable solution, was very rare in Malawi (Interview 3). If resettlement was deemed as necessary for a particular refugee, countries in the surrounding region were explored before contemplating international resettlement. As outlined by the information leaflet which refugees received upon arrival—“unlike voluntary repatriation and seeking asylum, resettlement is not a right of the individual” (Malawi 1995a [?]).⁶⁰ Refugees emphasized on several occasions that they would accept resettlement anywhere—“just tell us, we will

⁵⁸ Special programs include income-generation projects and skill advancement programs in refugee camps.

⁵⁹ There are exceptions to this, such as the response from (mostly NATO) states to refugee from Kosovo in 1999 and the response from western countries to Kurdish refugees in 1991-92. In both these cases, states became involved independently in refugee response as well as by supporting the UNHCR's efforts.

⁶⁰ Unlike resettlement, voluntary repatriation depends upon the refugee's initiative. Before a refugee can voluntarily repatriate, however, the UNHCR must declare the country of origin as secure enough to ensure

go” (Interview 5). One letter from the refugees said the following: “we request NGOs and humanitarian organizations and donor countries to resettle us elsewhere in the world so far Malawi Government refuses to integrate us to Malawi society through reservations” (Dzaleka refugees 1998).⁶¹ Many refugees in Malawi stated that they would be happy to have the option of settling in Malawi. They accentuated their tolerance of being resettled anywhere (Interview 5), wishing to dispel potential suspicion that their refugee status was being used as a strategy for resettlement in industrial countries.

UNHCR’s Involvement in the Assistance of Refugees

As mentioned earlier, the UNHCR presence in Malawi was quite small. The UNHCR of Malawi had a budget of \$600,400US a year and five staff (UNHCR 1998). The contact and involvement of the UNHCR in the lives of the refugees, however, was quite substantial.

According to a UNHCR publication, the UNHCR in Malawi has seven main functions which are either indirectly or directly related to assisting the refugee population.⁶² First, the UNHCR provides the funding for the maintenance of social and community services to refugees, including education, health and shelter. Second, the UNHCR initiates programs that encourage self-sufficiency. Third, the UNHCR assists Governments in refugee legislation reform to reflect international protection principles. Fourth, the UNHCR works at strengthening the relationships and cooperation between

a safe return (Dzaleka Camp Information Leaflet, UNHCR Malawi). Refugees are free to leave the camp at any time, but they are not given UNHCR assistance unless they are repatriating (Interview 3).

⁶¹ This letter is included in appendix 4.

⁶² I will not restate here the functions of the UNHCR which are specific to the refugee determination procedure which were discussed earlier in the paper.

Governments, non-governmental organizations and refugees in order to enhance protection and assistance. Fifth, the UNHCR attempts to build capacity in the Government by offering workshops on providing protection, counseling, assistance and durable solutions to refugees and asylum-seekers. Sixth, the UNHCR raises awareness of refugee and human rights issues in the general public through advocacy and public education to counter xenophobic tendencies and to foster support for refugees among the general public. Seventh, the UNHCR cooperates with regional organizations to promote measures for the prevention of refugee displacements (UNHCR 1998).

Although the UNHCR in Malawi may have fulfilled all of the functions which it mentions in its literature, the ones which the UNHCR were noticeably involved in were as follows: funding programs and services at Dzaleka, initiating self-sufficiency programs (namely the plot scheme mentioned earlier in the paper), lobbying the GoM for legislative reform and the dismissal of reservations to the Convention, and facilitating workshops and meetings to encourage the GoM to take over all activities of the UNHCR. The UNHCR also played an active role in visiting with refugees and administration at Dzaleka. The UNHCR protection officer visited the camp at least once a week, and the legal officer also made frequent visits.⁶³

As mentioned earlier in this project, in June of 1999, the UNHCR field office closed (Interview 7). The bulk of the research for this project was conducted in the summer of 1998 and therefore the implications of the closure can only be speculated on, on the basis of witnessing the preparations for the closure and the reactions to the closure a year prior to the UNHCR's departure. In preparation for the UNHCR withdrawal,

UNHCR officers were training government officials who were taking over their responsibilities (Interview 7). Meetings were also taking place between the UNHCR office in Malawi and other UNHCR offices in Zambia and Tanzania who were anticipated to be playing a larger role in the refugee presence in Malawi once the Lilongwe Branch Office closed (Interview 7).

The overall reaction to the anticipated close was concern. UNHCR officers voiced doubt that Government officials would consistently visit and monitor the camp, giving examples of Government officials not showing up to meetings with the UNHCR scheduled at the camp. Government officials had a general reputation of not visiting Dzaleka.⁶⁴ Refugees were concerned that they would be abandoned. Many felt that xenophobic feelings were prevalent in Government, and were concerned that this would result in increased neglect as the UNHCR office closed. Once the UNHCR left Malawi, Government officials in the Departments of Immigration and Relief and Rehabilitation would have to fit greater monitoring of incoming and outgoing refugees, the management of the camp and the refugee screening process into already busy schedules. There is no Government Ministry that specifically addresses refugee issues which might also decrease the amount of attention directed towards the refugee population in Malawi.

Several aspects of the GoM infrastructure that were evident during the summer of 1998 might also limit the capacity of the GoM to respond effectively to refugees at Dzaleka. Frequent vehicle shortages (and maintenance problems with the vehicles that the

⁶³ Personal observations, June-August 1998.

⁶⁴ Personal communications, July 1998. During one visit to the camp with the UNHCR, we stopped at the Ministry of Relief and Rehabilitation to pick up a government official who was to travel with us to the camp. We waited for an hour and then had to proceed without him.

GoM Ministries possess), lack of computers and other office equipment and an overall lack of funds might limit the ability of the GoM to effectively respond to refugees once the UNHCR office closes.

A recent stated objective of the UNHCR is to “hand over” activities of the UNHCR to “local establishments” (UNHCR 1998). In Malawi, this objective has been met. Whether this handing over is to the benefit of refugees is a question that is, unfortunately, beyond the scope of this paper as a result of the window in which field research was conducted. What is clear, however, is that the handing over of UNHCR responsibilities to the GoM is in line with the political and economic interests of states of the international community who generally express a desire to minimize the assistance to refugees in camps and to direct funds to preventing movements in the first place.

Response from the Host State

Did the involvement of the GoM in assisting refugees in Malawi support the GoM’s political and economic interests? Evidence suggests that the answer is yes. The manner in which the GoM responded to non-Mozambicans can be clearly explained by looking at the political and economic interests of the GoM. This section will draw on literature that discusses both the GoM’s political and economic interests and response to Mozambican refugees (when Banda was in power), as well as information collected first-hand regarding the GoM’s involvement in assisting non-Mozambican refugees. Literature on the GoM’s political and economic interests during the Mozambican influx of refugees is being explored because its contrast with the more recent response of the democratic

GoM to non-Mozambican refugees clearly demonstrates how political and economic interests of a host state can affect assistance granted to refugees.

Assessing the Interests of the GoM

One political interest of the GoM, like all democratic governments, is to maintain domestic support by responding to its constituencies. Because Malawians had generally expressed xenophobic sentiments and overall suspicion of non-Mozambican refugees, it was most likely in the GoM's domestic political interest to assist non-Mozambican refugees as out of the public eye as possible and to keep assistance minimal. Prior to 1994, non-Mozambican refugees were integrated into the host population. During the period of integration, Malawians expressed strong resentment of the cash hand-outs which refugees were receiving from the UNHCR.⁶⁵ This sentiment was still apparent in Malawi in 1998. During a conversation in July 1998, one person who lived beside a refugee family in the early 1990s explained how he would work all day while his neighbour would wake up at noon, relax or sleep during the day and make more money than he did.⁶⁶ One Herald⁶⁷ article voiced the public's criticism that one thousand Somali refugees were being "comfortably accommodated" in up-scale residential neighbourhoods (Nkotima 1996, 4).

⁶⁵ The initial assistance was totaled at 350 Kwacha a month for the head of the household. The spouse of the refugee was eligible for fifty percent of that amount and any child was entitled to twenty five percent (Nkotima 1996, 3). The monthly allowance for the head of household was adjusted to K513 in the early 1990s, resulting in the subsequent increase of other family members (K256 per spouse or adult dependent and K128 per child) (1996, 3).

⁶⁶ Personal communication, July 1998.

⁶⁷ This is one of two national newspapers in Malawi.

The GoM, under Banda, when responding to Mozambican refugees did not have the same pressure to minimize assistance to refugees. This is for several reasons. First, Malawians were not overtly suspicious or resentful of Mozambican refugees. This has been attributed to the ethnic and linguistic similarities between Malawians and Mozambicans.

The interpretation most commonly held by both the United Nations and the Malawian government of the open door policy and practices in Malawi is that of 'traditional African hospitality,' further explained by the fact that refugees and hosts share a common culture and language and belong to the same ethnic group (Callamard 1994, 553).

Second, as a result of Banda's repression of any dissent, even if Malawians did feel suspicion or resentment of Mozambican refugees, it is unlikely it would have been expressed. Since Banda's political downfall, evidence has been uncovered of the murders, disappearances, torture and lengthy detentions (without trial) of political activists (Meldrum 1995, 58). Third, if resentment of Mozambicans was expressed, the GoM would feel no political pressure to respond. Banda had a tight grip of the political situation in Malawi. He openly proclaimed himself president for life (his official title was His Excellency the Ngwazi,⁶⁸ Life President, Dr. Hastings Kamuzu Banda) and either destroyed, imprisoned or exiled any political opponents (Hastings Banda 1997, 92).

With respect to international political incentive, the GoM's response to non-Mozambican refugees has drawn relatively no interest from the international community. Therefore, whether the GoM responds generously or not to non-Mozambican refugees would not greatly impact the GoM's political reputation internationally.

⁶⁸ Ngwazi means the conqueror in Chichewa

In contrast, Banda had strong political incentive to respond generously to Mozambican refugees from both the regional and international contexts. Banda's historical ties with the Apartheid regime in South Africa (who were supporting the RENAMO take-over of the Mozambican government) suggests that Banda would do anything he could to support RENAMO's action in Mozambique.⁶⁹ It was within Banda's political interest to welcome refugees in Malawi "as a means of discrediting the FRELIMO government and its Marxist social reforms, and of destabilizing the regime" (Callamard 1994, 551). "President Banda had always maintained good relations with Portuguese colonialists and may have perceived benefits from supporting RENAMO if they had succeeded in defeating the FRELIMO government" (Zetter 1995, 1654).

In addition to these regional political incentives, Banda also had political incentive from the international community to respond generously to Mozambican refugees. During the early 1990s, Banda's international image was becoming increasingly tarnished as abuses of human rights were becoming well-known to the international community. By generously assisting Mozambicans, Banda may have hoped to improve Malawi's international image and to divert attention from his treatment of Malawian (Callamard 1994, 552).

Evidence also suggests that it was in Banda's economic interest to assist Mozambican refugees. One of the Banda's perceived benefits of supporting RENAMO was the expansion of Malawi to include increased land and coastline. Portuguese colonial rulers in Mozambique persuaded Banda that if he helped them against FRELIMO, he

⁶⁹ There is circumstantial evidence, despite official denials, that Malawi provided shelter and support to the South African backed RENAMO rebels fighting to overthrow the FRELIMO government of Mozambique

could stand to gain the entire northern half of Mozambique (Callamard 1994, 549). Being a landlocked country, Malawi was largely dependent upon Mozambique's access to trade by sea; acquiring coastline would substantially augment Malawi's deteriorating economic situation.⁷⁰

Responding to refugees also meant that Malawi would be entitled to a significant amount of international assistance, assistance that was becoming more vital as regular development aid from donor states was becoming unstable. With the end of the Cold War, and the lack of strategic interest in keeping Malawi as a friend to the West, donors began to withhold foreign aid to Malawi. During a visit to Malawi in 1992, Dan Quayle (then U.S. Vice-President) made it evident that economic relations with Malawi would be reviewed if human rights were not improved (Ihonvbere 1997, 226). European partners were also restricting aid flows to Malawi during the early 1990s.

The UK government cut aid to Malawi in half. Norway terminated its aid programme to Malawi, citing gross human rights abuses as the main reason. . . . When Malawi asked donor nations and the World Bank for nearly \$800 million in balance of payments support, it received an unprecedented shock when the donors meeting in Paris responded by suspending all new aid, except for drought and refugee relief, expressing deep concern about the lack of progress in the area of basic freedoms and human rights (Ihonvbere 1997, 227).

Banda, therefore, had a clear economic incentive to ensure that the flow of international aid to Malawi did not cease by keeping its doors open to refugees (Callamard 1994, 552).

Although the increased economic assistance was a plus for Malawi's economy, there were also significant economic consequences for Malawi's open-door policy to

(Zetter 1995, 1654).

⁷⁰ Similar to this territorial claim, Banda may have also responded with open doors to Mozambican refugees to demonstrate that northern Mozambique was his responsibility. A high court judge in Malawi

refugees. Most of these, however, were absorbed by the Malawian people who were “hardest hit” by the influx—“they [had] been asked to survive on resources seriously overextended, and they [had] to share their food in a time when production [was] low” (Barkley 1989, 346).

Unlike Banda’s Government, the democratic GoM responding to non-Mozambicans could not ignore the economic demands and needs of its citizens, which were extremely significant.⁷¹ In a context of extreme economic pressure and scarcity among the Malawian people, the GoM’s economic incentive was to limit assistance to non-Mozambican refugees. Although the domestic economic context was similar when Banda was in power, it is less likely that he felt pressure to address the concerns of his constituencies. Banda also had an added incentive to respond to Mozambican refugees because of the potential international aid which refugee response would bring into Malawi. The GoM did not have this economic incentive, because the population of non-Mozambican refugees did not attract any significant international attention.

The GoM’s Assistance to Refugees

As discussed throughout this case study analysis, the assistance of non-Mozambican refugees resembled the nine reservations with which Malawi acceded to the Convention. The opinion shared by GoM and UNHCR officials was that Parliament should change the reservations as they were specifically in place to respond to

claimed that Banda had to welcome refugees from the north of Mozambique in order to be consistent with his claim that that region was actually Malawi’s rightful territory.

Mozambican refugees (which involved over a million refugees) and no longer needed to be in place with such a small number of refugees (Interview 2, Interview 4, Interview 1). In the summer of 1998, the reservations had been admitted to Parliament by the Attorney-General of Malawi and were awaiting approval for withdrawal by Parliament (Interview 2). Although this was a hopeful step, the process had been stalled for over a year. The “UNHCR [was] trying to assist, especially with the reservation on education, but they [were] tied” (Interview 2).

Legislative reform is strictly an area of government jurisdiction; the fact that Malawi has retained its reservations to the Convention suggests that the GoM wishes to maintain the flexibility that the reservations afford the GoM in terms of a response to refugees. Judging from the expressed criticism of the Malawian public regarding non-Mozambican refugees and the constant appeals from the Malawian public to provide more education, health care and opportunities for employment to citizens, the GoM has many political incentives to retain reservations.

The economic reasons to keep reservations are not as evident as the political incentives. As a result of the small numbers of non-Mozambican refugees in Malawi, the relaxation of reservations would not significantly impact Malawi’s economy. If the reservations were eliminated, the effect of employed non-Mozambican refugees on unemployment levels or the added cost resulting from their use public education would not be very significant. However, given the extreme scarcity in Malawi, and the fluctuating numbers of refugees, it is in the GoM’s economic interest to retain control

⁷¹ The economic situation of Malawi was discussed in the first chapter. Malawi shares many characteristics with other third world countries such as extreme poverty, high unemployment rate, a balance of payments

over the extent to which refugees are a cost to Malawi's resources. It is very likely, given Malawi's proximity to refugee-producing nations, that it could experience larger influxes in the future.

During the early stages of Malawi's response to Mozambicans in the late 1980s, refugees were encouraged to settle spontaneously throughout Malawi, free to travel and live wherever they desired. The reason suggested for this unorganized response was that Banda wished to discourage any involvement of the international community at this stage of the relief effort. Throughout most of his rule, Banda completely restricted NGO presence.⁷² Concerned with the potential scrutiny of his repression of human rights and political authoritarianism that would result from a presence of NGOs and expatriates, Banda wanted to have minimal international presence in Malawi's borders. One UNHCR official claimed there was "criticism from the international community that Malawi was hiding [the refugee situation], but Malawians thought there was no problem" (Interview 1).

Banda solved the problem of hosting refugees without international support by "consistently impressing on Malawians the importance of accepting and accommodating the refugees" (Zetter 1995, 1658). Protection and assistance for refugees primarily fell under the jurisdiction of Malawian village heads. The local residents usually shared housing, food, water and land with the refugees (Callamard 1994, 527) placing extreme pressure on the already fragile rural health facilities, water supply, schools and social

deficit, as well as overall insufficient health and educational infrastructure.

⁷² In most countries, when a refugee influx occurs, development-oriented NGOs switch their efforts to refugee assistance, encouraging donors and support from overseas. Because there was little expatriate community in Malawi, Banda was able to keep the Mozambican refugee influx relatively under-cover.

welfare services (Zetter 1995, 1658). Because the refugees were sustained by local communities, the visibility of the growing refugee population was minimized, furthering Banda's intention to keep an international presence out of Malawi.

In the late 1980s, however, the increased numbers of Mozambican refugees, Malawi's drought conditions, Banda's worsening reputation internationally and an increased insecurity of foreign aid for national development all encouraged Banda's signing of the Convention. Throughout the GoM's response to Mozambican refugees, therefore, the strategy used to assist refugees appeared to depend upon what would fulfill Banda's economic and political interests.

In contrast, the GoM has few economic or political incentives to pursue any strategy other than minimizing assistance to the non-Mozambican refugee population. The GoM, in spite of the fact that it is responding to a small refugee population, restricts refugees' movement and opportunities, thereby responding to the economic instability of the country and the overall suspicion and resentment of non-Mozambicans. The two case studies of Malawi discussed in this section—Banda's response to Mozambicans and the democratic GoM's assistance to non-Mozambicans both support the hypothesis that the involvement of a state in assisting refugees is motivated by political and economic interests.

Concluding Remarks

The findings from this chapter illuminate two main areas: (1) the implications of the liberal emphasis of the Convention on the response to non-Mozambican refugees and (2) the impact of this response on the well-being of refugees.

Impact of the Liberal Emphasis of the Convention on Refugee Response

Prioritization of Political and Civil Rights?

Civil and political rights of non-Mozambicans are prioritized over social and economic rights throughout the refugee determination procedure. Throughout the overall assistance to non-Mozambican refugees, however, the civil, political, social *and* economic rights of refugees are compromised—civil and political rights are not prioritized over any other rights of refugees during the assistance to non-Mozambican refugees at Dzaleka camp.

The Response of the International Community

The involvement of the international community in the refugee determination procedure in Malawi and in the overall assistance to non-Mozambican refugees appeared to be motivated by the political and economic interests of states.

The Response of the GoM

Evidence of the GoM's involvement in the refugee determination procedure of non-Mozambican refugees countered the hypothesis that a host state's involvement in

refugee response is motivated by economic and political interests. Evidence does suggest that the GoM adhered to Article 1 and 33 in spite of political and economic interests to violate these Articles. Throughout the overall assistance efforts to non-Mozambican refugees, however, the GoM's involvement appeared to be motivated by its political and economic interests.

Table 3 displays the findings mentioned above.

Table 3. Findings

Sub-Hypotheses	Protection⁷³	Assistance
Sub-Hypothesis 1: <i>Did the response prioritize the political and civil rights of refugees over the economic and social rights of refugees?</i>	Yes	No
Sub-Hypothesis 2: <i>Was the response of the international community motivated by the economic and political interests of states of the international community?</i>	Yes	Yes
Sub-Hypothesis 3: <i>Was the response of the host state motivated by the economic and political interests of the host state?</i>	No	Yes

⁷³ Refers to the refugee determination procedure.

The Impact of the Response on Refugees

The above table outlines how the liberal emphasis of the Convention impacts response to refugees. With respect to how this impact on response affects refugees, this chapter puts forth several findings.

Prioritization of Political and Civil Rights?

Evidence suggests that the GoM upheld international protection standards of the Convention throughout the determination process, protecting the political and civil rights of non-Mozambican refugees—those who had suffered violations of these rights were generally granted admission into Malawi. This obviously benefits refugees who have suffered violations of their political and civil rights.

The refugee determination procedure in Malawi did not recognize compromises of social and economic rights as criteria for refugee status. Therefore, conceivably, the prioritization of political and civil rights of non-Mozambican refugees would have negative consequences for those who had suffered violations of their social and economic rights and had arrived at Malawi's borders. In the case of non-Mozambican refugees in Malawi, however, very few refugees appeared to be significantly harmed by the prioritization of refugees' civil and political rights during the refugee determination procedure; on the contrary, the prioritization of political and civil rights may have instilled a sense of importance that increased the protection of refugees who had suffered persecution or violence.

There was no evidence of individuals who had claimed refugee status on the basis of economic or social reasons being turned away at the border. This can be explained in two ways: (1) there are no economic refugees in Malawi or (2) there are economic refugees in Malawi but they have hidden the economic or social reasons for their claim and instead have made a claim on the basis of violence or persecution of their political or civil rights. There was evidence for both of these explanations in this case study.⁷⁴ Regardless of the explanation, however, the prioritization of the political and civil rights of refugees over their social and economic rights during the refugee determination procedure is not resulting in the turning away of refugees. Therefore there is no evidence of this prioritization having negative consequences for refugees in Malawi during the refugee determination procedure.

The Response of the International Community

As evident from table 3, this chapter found that the response from the international community to non-Mozambican refugees was motivated by the political and economic incentive of states of the international community. This has both negative and positive consequences for refugees.

While the UNHCR was in Malawi, it is conceivable that they could have assisted more to refugees if there was strong support from donor states. One GoM official claimed that in order to increase educational opportunities for refugees, the UNHCR would have

⁷⁴ One UNHCR official claimed that Malawi, being a very poor country, does not attract economic migrants who are looking for better opportunities. The administrators of the refugee camp as well as some other UNHCR officials, however, felt that many refugees were either just seeking adventure (Interview 2) or had come to Malawi from very poor regions in order to obtain an entry visa to South Africa (Interview 2, Interview 4).

to pay because the GoM had no money (Interview 3). The lack of significant opportunities for education was a strong grievance of the refugees.

The refugees also expressed that there was a lack of support, both financial and technical, for moving onto plots of land as part of a UNHCR self-reliance program. This program could also have been potentially improved with greater support from the donor community to the UNHCR.

The withdrawal of the UNHCR from Malawi will most likely have negative consequences for refugees. Although the field research conducted for this analysis did not extend to the June 1999 closing of the UNHCR Malawi office, the general sentiment a year before the closing was that the well-being of refugees would be jeopardized by the closure. Also apparent a year before the closure was the significant number of activities and resources that the UNHCR provided for refugees in Malawi. It is unlikely that legal and social counseling, lobbying of the GoM for legislative change, weekly visits to Dzaleka, monitoring of the refugee determination procedure and numerous other services previously facilitated by the UNHCR are being offered to the same extent since the closing of the UNHCR office.

In one sense, however, the lack of economic and political incentive for states to become interested in the refugee determination procedure in Malawi is positive for refugees. Recent agreements between states on refugee determination procedures have generally been for the purpose of restricting or stemming the flow of refugees. Malawi's lack of proximity to industrial states, who have recently made these agreements, as well as its small population, result in a lack of economic or political incentive of states to become involved in Malawi's refugee determination procedure.

In terms of overall protection and assistance to refugees, however, the lack of international involvement most likely has negative consequences for non-Mozambican refugees in Malawi.

The Involvement of the GoM

The GoM's involvement in the refugee determination procedure of non-Mozambican refugees in Malawi was not motivated by the political and economic interests of the GoM. The political and civil rights of refugees were protected by the GoM throughout the refugee determination procedure in spite of evidence that it was not in the GoM's political or economic interest to provide this protection. Although this finding supports the hypothesis that the liberal emphasis of the Convention results in the prioritization of political and civil rights of refugees, it counters the hypothesis that the liberal emphasis results in a response motivated by political and economic interests of the host state.

The GoM's *assistance* to non-Mozambican refugees, as evident from table 3, was motivated by the numerous political and economic interests of the GoM. This resulted in significant negative consequences for refugees. The economic, social, political and economic rights of refugees were violated at the Dzaleka Camp. Main grievances of the refugees were restrictions on employment, overall lack of opportunities for education, restricted ability for refugees to own land and limitations on the right of the refugees to move freely.

The GoM is not obligated by the Convention to address these grievances because it ratified the Convention with reservations on Articles which aim to protect the

opportunity of refugees to seek employment, become educated, acquire property, and move freely. Public outcry regarding the presence of non-Mozambican refugees in Malawian neighbourhoods, xenophobia, public pressure to provide more employment opportunities and social services to citizens combined with the fact that Malawi is a democratic, impoverished nation, proximate to refugee flows all suggest that it is within the GoM's political and economic interest to retain reservations. As long as the reservations remain in place, the GoM is not obligated to address violations of the political, civil, economic or social rights of refugees.

Does the liberal emphasis of the Convention have negative consequences for refugees in a third world context? Evidence suggests that the answer to this question is yes. During the refugee determination procedure, the prioritization of political and civil rights over economic and social rights may result in stronger protection of those eligible for refugee status; however, the lack of binding state obligations to refugees (an aspect of the Convention reflecting liberal ethical norms) has allowed states to base their response to refugees on political and economic interests throughout the assistance efforts.⁷⁵ This has resulted in negative consequences for refugees at Dzaleka.

Malawi—a country which hosts a small refugee population, far away from the borders of industrial states—offers few political and economic incentives for states to become involved in its refugee response. This lack of incentive has been felt most by refugees sitting at Dzaleka. The next and final chapter will reflect on the findings of this

⁷⁵ Evidence from this analysis does not indicate that the Convention causes states to base their response to refugees on their political and economic interests. Evidence does suggest, however, that the Convention allows a response to refugees to be guided by the political and economic interests of those capable of assistance.

chapter and the thesis as a whole, by discussing problems and potential criticisms which could be raised, outlining the overall lessons learned, offering policy implications, and suggesting paths for further research.

CHAPTER SIX CONCLUSION

The hypothesis guiding this paper was that the liberal emphasis of the Convention has negative consequences for refugees in a third world context. Probing this hypothesis provoked an inquiry into the ethics of the Convention itself, investigating linkages between the Convention and ethical theory. This inquiry found that the Convention has a strong liberal emphasis—the Convention protects the rights and freedoms valued by liberal theorists. An investigation of the potential implications of this liberal emphasis resulted in the formation of three sub-hypotheses. These three sub-hypotheses were then used to analyze the implications of the liberal emphasis of the Convention on the response to non-Mozambican refugees in Malawi. The case study analysis of Malawi offered several findings that supported the hypothesis of this project. This chapter now concludes the thesis outlining potential problems and criticisms, reviewing lessons learned, suggesting policy implications and offering paths for future research.

Problems and Criticisms

There were two main problems experienced during the research of this project. First, the information acquired from the refugee camp was mostly from men and therefore is vulnerable to gender bias. Most likely, there were problems at the camp that were only experienced by women that would not necessarily be addressed during the interviews with men. The challenges that the men expressed might also not have been of great concern to the women at the camp.

There are several reasons why most of the information collected at Dzaleka was from men. First, the men at the camp spoke more than the women and initiated more contact. I frequently found myself surrounded by male refugees eager to explain the conditions of the camp. Second, women did not attend group meetings at the camp. Third, women were less available than men. They were generally the primary care-givers of the children and were busy cooking, cleaning and fetching water. Fourth, I was concerned both with intruding into the homes of the women (most meetings were conducted in a public meeting hall at the camp) and with adding to their workload by taking up their time.

Problems accessing the opinions of women could have been remedied by spending more time at the camp. Several logistical challenges, such as broken down vehicles, an overall limited number of vehicles going to the camp and problematic phone lines in order to set up meeting times, limited the amount of time I could spend.

This project is vulnerable to criticisms regarding causality. Asserting causality, such as, that ethical theory was a causal factor in the construction of the Convention, or that the liberalism of the Convention caused Malawi to respond to refugees a certain way, was avoided in this project. By avoiding causality however, the relationship existing between the Convention, ethical theory and actual response to refugees is potentially unclear to the reader and vulnerable to criticism.

The objective of this project was to demonstrate that a relationship does exist between ethical norms, the Convention and response to refugees. However, the liberal emphasis of the Convention does not *cause* a state to respond to refugees in line with its political or economic interests; indeed, a state can choose to offer assistance and

protection “possibly going well beyond the pursuit of [its] own well-being” (Sen 1987, 59). Instead, the liberal emphasis of the Convention *allows* states to base their response to refugees on their political and economic interests. And, in consequence, the liberal emphasis of the Convention *allows* refugees to suffer violations of their human rights.

Lessons Learned

Several lessons can be learned from this project. First, the political and civil rights of refugees are prioritized over the social and economic rights of refugees during the refugee determination procedure but they are not necessarily the priorities of the overall response. Article 1 (the definition of a refugee) and Article 33 (the principle of nonrefoulement) outline the primary state obligations to refugees during a refugee determination process. Both protect the civil and political rights of refugees and both are binding, in the sense that they do not allow reservation. The GoM adhered to these Articles during the refugee determination process. During the overall response, however, the political and civil rights of refugees were not prioritized to a greater extent than the social and economic rights of refugees. This may be explained by the fact that most of the Articles concerning the protection of the civil and political rights of refugees during the overall assistance offer opportunity for reservation.

Second (related to the first), a host state adheres to the *binding* Articles of the Convention, even if adherence is not in its political or economic interest. This finding was evident in the response of the GoM to non-Mozambican refugees—the GoM adhered

to Article 1 and Article 33 even though it was clearly in the GoM's political and economic interest to restrict the movement of refugees into its borders.

A third lesson learned from this project is that states use the flexibility offered by the Convention. In the case of Malawi, the GoM adhered to all the Articles of the Convention that did not allow reservations. When the Convention offered the GoM the opportunity to base its response to refugees on its political and economic interests, (i.e. when the Convention allowed reservation), the GoM took this opportunity.

Similarly, the involvement of the international community in a refugee response is motivated by the political and economic interests of states of the international community. Again, this can be explained by looking at the Convention. By only outlining state obligations to a refugee once she has reached state borders, the Convention grants extensive flexibility to states in terms of their involvement with refugee populations beyond their borders. In the case study of Malawi, the lack of attention offered to the refugee population by states of the international community, the inadequate services offered by the UNHCR and the eventual closure of the UNHCR office were easily explained by looking at the political and economic interests of states of the international community.

These findings born out of the case study are supported by recent literature on the subject of refugee response. According to one author, "refugee law" has been reduced "to its bare core: the protection of nonrefoulement" (Fitzpatrick 1996, 238). Another scholar has argued that "the Convention protects refugees only through its requirement that 'no contracting state shall expel or return a refugee'" (Juss 1998, 312).

The idea that states do respect the binding Articles of the Convention is supported by the fact that recent initiatives in refugee response that have threatened the protection of refugees have worked around rather than violated the definition of a refugee and the principle of nonrefoulement. The introduction of document and visa requirements and the penalization of airlines and shipping companies that carry refugees to potential asylum states, for example, allow a state to avoid violating Article 1 and 33 of the Convention. The shared objective of all of these strategies is to obstruct the ability of asylum-seekers to reach the borders of a potential (usually industrial) host state. The fact that industrial states establish complex and expensive ways to avoid the obligation of nonrefoulement (Article 33) of the individuals protected under the definition of a refugee (Article 1) demonstrates that these obligations are taken seriously. If they were not taken seriously, a state would not take these measures because any refugee that arrived could be simply returned.

The fourth lesson learned from this project is that the findings outlined above regarding the response to refugees are a consequence of the liberal emphasis of the Convention. Three tenets of liberalism prominent in the theories of Rawls, Locke, Nozick and Walzer that are particularly evident in the Convention are: (1) an emphasis on negative rather than positive obligations; (2) an aversion to binding obligations; and (3) a prioritization of political and civil over social and economic rights. The third tenet is secondary to the first two, in the sense that the upholding of political and civil rights of refugees does not have to come at the expense of the liberty of those responding to refugees. The Convention, for example, allows a state to compromise the political and civil rights of refugees, such as the freedom of refugees to movement and to the

acquisition of property. In the case of Malawi, the GoM exercised this opportunity, restricting the refugees to Dzaleka and thereby limiting their freedom to move and acquire property. The first two liberal tenets are evident in the Convention by the absence of any binding positive obligations. In fact, most obligations of the Convention are not binding.⁷⁶

The fifth and final lesson supports the hypothesis that inspired this project—the liberal emphasis of the Convention has negative consequences for refugees. The negative consequences primarily arise from the extensive flexibility of both host states and other states of the international community during a response to refugees. This flexibility, as demonstrated by the case of Malawi, can result in a response motivated by the political and economic interests of states rather than by the political, civil, economic and social rights of refugees.

Policy Implications

The findings of this paper suggest three implications for policy. First, and perhaps most essential, the liberal emphasis of the Convention must be challenged. The rights and liberties that are valued by liberal theorists are generally based on a hypothetical state of nature. This state of nature, however, may not share similarities with either what the world is or what the world should be. The “state of nature. . . integral to the theories of

⁷⁶ As discussed earlier in the paper, most Articles of the Convention allow a host state to reserve its assistance to refugees and to protect the rights of refugees “as far as possible,” thereby enabling a state to choose its response to refugees. With the exception of five, all Articles of the Convention either allow reservations or enable a state to assist or protect the rights of refugees “as far as possible”. The five Articles that are binding protect the civil and political rights of refugees through negative state obligations, obligations of a state to not interfere in a refugee’s life or return a refugee to a place where she faces persecution.

society of Hobbes and Locke” that depicts “humans as naturally competitive and warring, needing a feared power to protect us from one another, portrays only one side of our ‘nature’” (O’Manique 1992, 80). Some liberals themselves concede that the state of nature is an imaginative construct.

A theory of a state of nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons why some persons in any society would violate these moral constraints, and goes on to describe how a state would arise from that state of nature will serve our explanatory purposes, even if no actual state ever arose that way (Nozick 1974, 7).

Although individual freedom should be protected, ethical norms emphasized in international law should take into account other aspects of human nature, that are communitarian, intuitive and cooperative. These aspects are as important and as evident in our state of nature.

The above policy implication may appear to be abstract, weak and impossible to operationalize. Much of the challenging of the liberal emphasis of the Convention, however, would occur by taking one step—calling for a new Conference to establish a new Convention. Unlike the Conference held in 1951 (that resulted in the Convention), a new Conference should include third world states as equal decision makers. It is important to note that the involvement of third world states in the Conference would not necessarily result in a perspective that counters the liberal norms evident in the Convention. Indeed, western ethical norms may prevail within the international system itself, and be espoused by those participating as leaders in this system, regardless of whether they are from industrial or third world countries. This is why the first policy implication, a questioning of liberal ethical norms is essential. Evidence from the OAU

(Organization of African Unity) Convention on Refugees suggests, however, that bringing perspectives from numerous countries with different refugee pressures could result in the challenging of the Convention's liberal emphasis. The freedom from obligation prevalent in the Convention, for example, is not as evident in the OAU Convention. The OAU Convention, for example, specifically articulates the importance of burden-sharing between refugee-producing and refugee-receiving states (Fitzpatrick 1996, 234).

A third policy implication, which may result from carrying out the first two, is the extension and strengthening of state obligations in international law, particularly the obligations of industrial states. Reforms to the Convention should be focussed on increased obligations of industrial states because, in the present refugee context, "the states least capable of handling refugee influxes are forced to bear a major portion of the refugee burden" (Barkley 1989, 321). Refugee movements have generally occurred in third world states "who find it necessary to call on the international community for assistance" (Barkley 1989, 328). In a context such as this, where the hosts of refugees *depend* upon a response from the international community, the idea that a host state is the only country responsible for refugees is clearly unjustified.

Stemming from this, a state's obligations to refugees should not be limited to those who have reached its borders. A new Conference should establish burden-sharing agreements that obligate states to refugees being hosted by other states. This would eliminate the incentive for evasive strategies such as visa requirements that attempt to keep refugees away from the borders of potential host countries. Burden-sharing agreements would also address the unfair weight of response to refugees that is felt by

states closest to countries of origin and least able to afford systematic border controls or technologies of deterrence.

Fourth, the objective of a new Convention should be to respond to the needs of refugees regardless of where the refugees are residing. The case study of Malawi suggests that refugees being hosted in countries that are not of political or economic importance to states of the international community are less likely to receive support from the international community. Size and location appear to be two characteristics that affect international attention of refugees.⁷⁷ By introducing binding state obligations to refugees, the involvement of political and economic interests of states in refugee response would be diminished, thereby ensuring that international law recognized every refugee as equally entitled to human rights.

Paths for Future Research

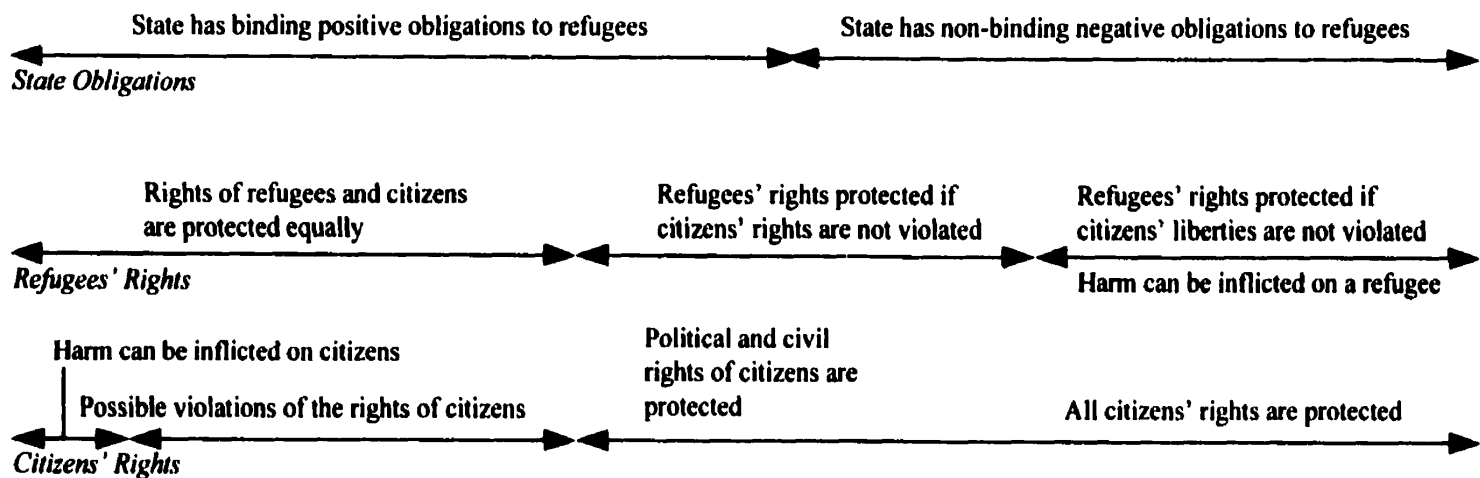
This project demonstrated that the hypothesis inspiring this project is plausible. In the case of Malawi, the liberal emphasis of the Convention had negative consequences for refugees. An obvious path for future research is to test this hypothesis by collecting data on a wide range of responses to refugees. This testing could be facilitated by the three sub-hypotheses introduced in Chapter Three and by Chapter Five's table which displayed the results of the Malawi case study analysis.

Further support for the hypothesis that inspired this project would give strength to this project's demand for a new Convention. A Convention that would base refugee

⁷⁷ It is likely that there are additional characteristics that reduce international support, exploring these would be an interesting path for future research. The emphasis of this paper was on the particular characteristics of Malawi's refugee population.

response on need rather than interest, a Convention that would commit states to each other and to refugees, and a Convention that would be built on the acknowledgment that there is indeed a negative impact of liberty.

Figure 1: Continuum of Philosophical Orientations on the Ethics of Refugee Response



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APPENDIX 1



Redistribution until there are equal entitlements for refugees and citizens

Certain agreed-upon quota of services for refugees

Provide asylum

Cannot return a refugee (non-refoulement)

Refugees are "innocent threats" and may be returned if they threaten citizens' liberties

Can return a refugee if presence not desired by citizens

NOTE: John Stuart Mill is not included on this continuum because utilitarianism requires calculating the utility of response in a particular refugee situation.

APPENDIX 2

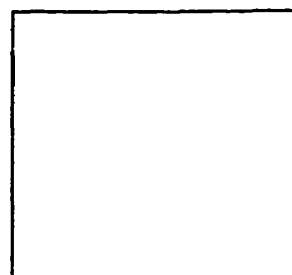
REPUBLIC OF MALAWI REFUGEE ACT (CAP. 15:04) REFUGEE REGULATIONS

APPLICATION FOR REFUGEE STATUS IN MALAWI

(To be submitted to the Chairman, Refugee Committee, Private Bag 301, Capital City Lilongwe 3, Malawi)

Refugee Regulations

1. (a) Family Name:
(b) In the case of a married woman, maiden name:
(c) Forename (s):
(d) Any other name or names used:
2. Present address:
3. Religion:
4. Family status (single, married, widow/widower):
5. Date of birth (day, month, and year):
6. Place of birth (country and locality):
7. Nationality
 - (a) At birth:
 - (b) Any subsequent change of nationality (state reason):
 - (c) Present nationality:
(if different from the (a) or (b) above, state reason:
 - (d) If you are stateless, how did you become stateless:
8. Ethnic group to which you belong:
9. Education:
 - (a) School attended (indicate dates and standards reached):
 - (b) Higher education (university, college, etc. attended—indicate dates and degrees or diplomas obtained):
10. Occupation:
 - (a) Profession or skill:
 - (b) Present occupation:
 - (c) Any further occupation:



photograph of applicant

11. Family members living with applicants:

Name	Sex	Relation of Family	Date/Place of birth	Nationality	Education/Professional Qualification, Skill or other Education
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12. Former place of residence:

- (a) Country of ordinary residence prior to displacement:
- (b) Last place of residence in the country:
- (c) Any other countries in which you have resided (specify dates, if possible):
- (d) Have you applied for asylum or refugee status in any other country? If so, give details:

13. Languages:

- (a) Mother tongue:
- (b) What other languages do you speak?

14. Were you ever registered with any international agency dealing with refugees? If so, give details as follows:

- (a) Name of agency:
- (b) For what services were you declared eligible?
- (c) What assistance did you receive from such agency?

15. Do you at present receive material assistance? If so, from who?

16. Do you own any moveable or immovable property in your country of origin or elsewhere? If so, give brief details:

17. Are you entitled to any pension rights in your country of origin or elsewhere? If so, give details:

18. What documents do you possess?

- (a) Passport: Number: Date of issue:
- Authority and place of issue:
- Valid from: Until:

(b) Any travel document other than passport:

- Specify title:
- Number:
- Date of issue:
- Authority and place of issue:
- Valid from: Until:

- (c) Are you entitled to return to the country of issue of your passport or travel documents? If so, state until what date:

- (d) In the absence of a passport or travel document, indicate any other document you hold certifying your identity:

- (e) Have you been issued with a certificate by any international agency dealing with refugees: (e.g. the International Red Cross or the United Nations High Commission for Refugees?) If so, give details:
19. (a) State any political, military, religion, ethnic, or social organization or grouping to which you or any member of your family belong or previously belonged (or which you actively supported in your home country:
- (b) Describe your (or your family members) activities and responsibilities in any organizations the nature of the incident (s) and your involvement:
- (c) Were you ever involved in incident (s) involving physical violence? If so, describe the nature of the incident (s) and your involvement:
20. (a) When did you leave your home country?
 (b) In what manner did you leave, with or without authorization?
 (c) What means of transport did you use?
 (d) Which countries and towns did you transit?
 (e) What was the duration of your stay in each place in sub-paragraph (d) Hereof:
21. Entry into the Republic of Malawi:
 (a) Date and place of entry:
 (b) In what manner did you enter (clandestinely, with authorization, did you have a passport, travel document, visa, or work contract?)
22. Why did you leave your home country?
 If you do not wish to return there, explain reasons (please give a detailed reply to this question and add an extra sheet, if necessary):
23. Are you registered with a consulate or any other authority of your home country? If so, give details. If not, why not?
24. (a) Have you ever been been convicted for an offence other than a traffic offence? If so, give details of charge and sentence:
 If sentenced, was sentence served?
 (b) Have you ever been arrested or detained? If so, reasons, date (s), and place (s):
25. What is your residential status in Malawi?
26. Any other detail you think will assist in determining whether you are entitled to refugee status?

I hereby declare that the statements made in this application are to the best of my knowledge, true, complete, and accurate.

Date.....

.....
Signature of Applicant

UNHCR
SERVICE

B O/F O/S O
PROTECTION

N°. RW /.....
Date of registration.....
Place of registration.....

**INDIVIDUAL CASE INTERVIEW FORM
(RWANDESE)**

I. GENERAL INFORMATION

Applicant (name, family name

Date & place of birth

Prefecture of origin

Commune of origin

Sector of origin

Cellule of origin

Last address in Rwanda

Marital status: S.....M D S (date, place)

Family details

Members of the family with the applicant

Name, date of birth, place of residence (address) of members of family

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.....

Ethnic group

Parents ethnic group

.....

Religion

Do you have a passport, any other forms of identity?

(specify:

Document N°

Issued by

Date, validity etc...)

II. EDUCATION

Primary school (from/to by year, place)

Secondary school (from/to by year, place)

University (from/to by year, place)

Employment record (starting from last job, date, place)

Government service

III. BACKGROUND INFORMATION

Please specify if you or any member of your family presently belong to or have been a member of any of the following organisations or groups in your country of origin:

Political

Religious

Military

Ethnic

Social

Professional.....

Please describe your responsibilities and activities, or that of any member of your family, in each of the organisations mentioned about

.....

.....

.....

Have you ever been arrested or detained?

If yes, provide reasons, dates & places

.....

.....

Have you ever been condemned by a Court?

If yes, duration of imprisonment, places, nature of offence and conviction, other details

.....

.....
When did disturbances, problems begin in your commune?

.....
What happened in your commune?.....

.....
What was your role?

.....
Have you ever been involved in violent incidents? If yes describe the nature of the incidents and your role in them

.....
Date and place of entry in the present country.....

.....
Reasons to leave your country of origin?

.....
Do you like to return to your country of origin? If no, please describe in details what do you think would happen to you if you were to return, and explain why?

.....
.....
.....
.....
.....

IV. SITUATION OF THE APPLICANT WHILE IN DRC

In which camps were you after departure from your country of origin? (date & place in chronology)

.....
.....

What was your responsibility in these camps (dates & places)

.....
.....

V. SOLUTION

What do you suggest as a solution to your problem?

.....
.....

VI. EVALUATION/RECOMMENDATION

.....
.....
.....
.....

Signature of IC

Signature interviewing officer

Date/1997

Date/1997

To whom it may concern

subject: plots.

Dear Madame sir.

We Refugees in Dzolewa Camp, we don't want.

to build plots which we don't have know-how and financial assistance from U.N.H.C.R. However.

We were like Prisons in Dzolewa therefore

We Request (NGOs) and humanitarian organization and other countries to Resettle us elsewhere in the world so far

Malawi Government:

Refuses to integrate us to Malawi's society through Reservations.

Dzolewa Refugees
in Dzolewa

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