Stephen Legomsky’s UN report proposes greater protection to refugees.

A recent report to the United Nations envisions a new legal framework for governing refugee situations throughout the world. Stephen H. Legomsky, the Charles F. Nagel Professor of International and Comparative Law and former director of the School of Law’s Whitney R. Harris Institute for Global Legal Studies, wrote “Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection.”

In the summer of 2002, after having spent several months as a senior visiting fellow at Oxford University and as a senior researcher at the headquarters of the United Nations High Commissioner for Refugees (UNHCR) in Geneva, Legomsky was commissioned to research and write the UN report. It analyzed one of the most pressing problems concerning refugees today—the phenomenon of “secondary” refugee movements. The term refers to the movement of refugees from “third countries”—countries that refugees passed through on their journeys from home— to “ultimate destination” countries.

There are refugees, and then there are refugees. Someone watching TV and seeing long lines of people fleeing a civil war or a natural disaster for the protection afforded by a neighboring country might assume these people on the move are all refugees. Under the UN-sponsored 1951 Convention Relating to the Status of Refugees, they are not. The convention, says Legomsky, defines “refugee” in narrow terms. One must have a “well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion.” A Bosnian Muslim fleeing the former Yugoslavia, for example, might have had a good claim of persecution due to religion or ethnicity. A tribesman fleeing famine in Ethiopia or civil war in Liberia would have a harder time.

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With refugee status come a number of protections guaranteed by the 1951 convention. The most important, says Legomsky, is article 33, which forbids the return of refugees to countries where their lives or freedom would be threatened on any of the five convention grounds.

In the real world, however, the sheer number of refugees has sapped the willingness of receiving nations to welcome them. UNHCR estimates there are today some 12 million “convention” refugees alone.

Many countries have been finding ways to deflect asylum claims. Among the most important are the so-called “third-country restrictions,” which vary from country to country, but are basically of two kinds. As Legomsky explains, “there are the ‘first country of asylum’ restrictions, where the ultimate destination state says ‘if you have already received adequate protection in another country...’”
before coming here, we won’t consider your asylum application. Instead, we’ll send you back there.’ A second kind of restriction is a ‘safe third-country’ rule; the country where you apply for asylum sends you back to a third country you have passed through on route and where, it feels, you should have requested asylum. Both restrictions are ways of saying ‘These refugees are somebody else’s problem.’

“On their face, some of these constraints seem rational,” Legomsky acknowledges. “But the practical effects of returning refugees to third countries can be nightmarish. Traumatized refugees are often bounced from one third country to another and sometimes ultimately returned to the countries from which they originally fled. Frequently they find themselves in places without any of the convention protections—such as South Asia and most of the Arabic countries, which are not signatories. They might be attacked by armed forces or left with no means of subsistence. They might be incarcerated. All that aside, the responsibility for refugee protection tends to fall disproportionately on the developing countries, which, of course, are least able to bear the burden.”

Legomsky particularly notes two aspects: “First, the report formulated a comprehensive set of requirements for sending people back to third countries. Second, it advocates establishing something I call the ‘complicity principle.’ The idea is that no state should be allowed to assist another state to do anything to a refugee that international law would forbid the first state from doing itself. Countries should not send people back to other countries when they have knowledge of impending human rights violations; otherwise, they are accomplices.”

Professor James Hathaway of the University of Michigan, one of the world’s leading refugee authorities, calls Legomsky’s report “a perfect blend of principle and pragmatism” and a “timely and balanced analysis, which has already had a major impact on debates about the future shape of the refugee protection regime.”

“The scientific rigor with which Legomsky examined ‘effective protection’ from all possible angles was, in itself, a lesson to politicians at times too keen to simplify matters and go for quick fixes,” says Jean-François Durieux, the deputy director of UNHCR’s Europe Bureau. Legomsky’s study, he adds, “will remain the basis of UNHCR’s advocacy work on the subject for many years.”

At this writing, UNHCR is continuing to negotiate with individual governments on the final recommendations. Legomsky and UNHCR are optimistic. For one thing, Legomsky says, “Countries don’t like to be seen as inhumane. Even though they often act badly, they’re sensitive to being seen as obstructionist. And secondly, a multilateral understanding would address the collective action problem. No country wants to take on disproportionately refugee resettlement burdens. As countries increasingly accept the principles we discussed in Lisbon, the more likely other countries will accept them as well.”

Legomsky’s UN report proposes criteria for determining when international law and sound policy permit countries to return asylum seekers to third countries without acting on their asylum claims. While Legomsky enjoyed complete academic freedom in doing his research, he well understood that his recommendations would be most useful if they were “politically achievable.”

After approving a draft of the report last fall, UNHCR convened a two-day roundtable in Lisbon for representatives of the UN, national governments, and other interested parties. Legomsky gave the opening address and co-moderated the discussion. The purpose of the roundtable was to forge international consensus on the recommendations in his report, which ran more than 100 single-spaced pages.

Children and young people make up a large percentage of the Afghani refugee population at the Roghani Refugee Camp in Chaman, a Pakistani border town.