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REFUGEES IN SOMALIA

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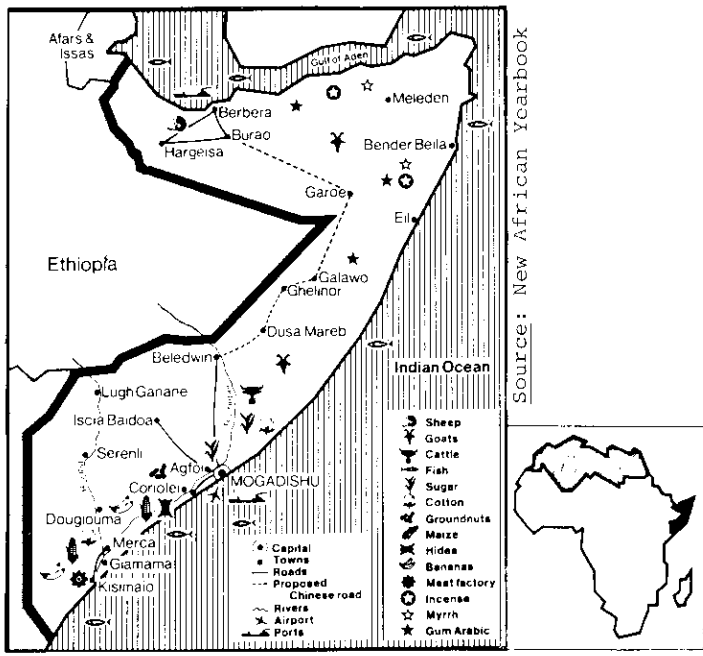
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THE SOMALI DEMOCRATIC REPUBLIC



Area:	637,657 sq.km.
Population:	3.4 million (1978 estimate)
Refugees:	1.1 million (December 1979)
Refugees in camps:	475,000 (December 1979)
GNP per caput:	US\$ 110 (1976)
Capital:	Mogadishu
Principal towns:	Berbera, Kisimaio, Hargeisa, Merca
Date of independence:	1 July 1960
Head of State:	Major-General Mohamed Siyad Barre
Government:	Somalia is a socialist state with a single party, the Somali Socialist Revolutionary Party (SSRP)
Language:	The language of the country is Somali, using a written form with a latin script since 1972.
Religion:	The official religion is Islam. Most Somalis are Sunni Muslims

## 1. INTRODUCTION

Ever since the end of the 1950's the African continent has been faced with refugee problems of enormous magnitude. Today this continent has the largest number of refugees and African countries have been most generous in trying, within their limited resources, to provide hospitality for African refugees.

At present, one of the most acute problems is found in the Somali Democratic Republic, where the question of refugees is a matter of great national urgency, and where the Government has declared a state of emergency as from 11 September 1979 to deal with the serious situation.

The official estimate put the number of refugees to more than one million, of which about 475 000 are in camps (late December 1979), which should imply that the Somali Democratic Republic is the country which has the highest number of refugees in camps. In spite of this high figure the international community has until recently, shown little or no interest in providing assistance to the refugees in Somalia. The burden of refugees has been laid on the country of refuge and its population alone. In a request for assistance for the refugees from the Government it is stressed that "Somalia with limited financial resources cannot alone shoulder the responsibility of providing the basic needs of the refugees in the country. Thus this tragic human problem calls for the concerted efforts of all mankind."<sup>1</sup>

As the refugee situation of the present size is new in the country, little material for a study on the problem is available. Information from documents published within the United Nations, and especially by the Office of the United Nations High Commissioner for Refugees has been used, as well as material which has been provided by the Government of the Somali Democratic Republic. It has also been possible to visit the country in order to study the situation on the spot and to evaluate the information given on the refugee situation.

In view of the rapid change of the refugee problem in Somalia, data on the number of refugees and the relevant assistance activities might be inactual. The main purpose of this survey is, however, to analyse the refugee situation in the country from the legal point of view, i.e., problems which probably are of a more lasting nature.

## 2. THE HISTORICAL BACKGROUND

### 2.1 The Somali people

The Horn of Africa covers roughly three-quarters of a million square miles in the northeast of the continent, consisting largely of eroding, ravine-slashed plateaus, seared bushland, and rubble-strewn volcanic desert. Being a metaphor rather than a political entity, it has no precise boundaries. But it is conventionally thought of as embracing Ethiopia, the Somali Democratic Republic and Djibouti.<sup>2</sup>

The Somali people are classed largely on linguistic grounds, as southeastern Cushites or Hamites. The Somali are devout Sunni Muslims, adhering mainly to the Shafi'ite rite. The Somalis are essentially a pastoral people closely related to the neighbouring Afar and Soho. Farer writes:

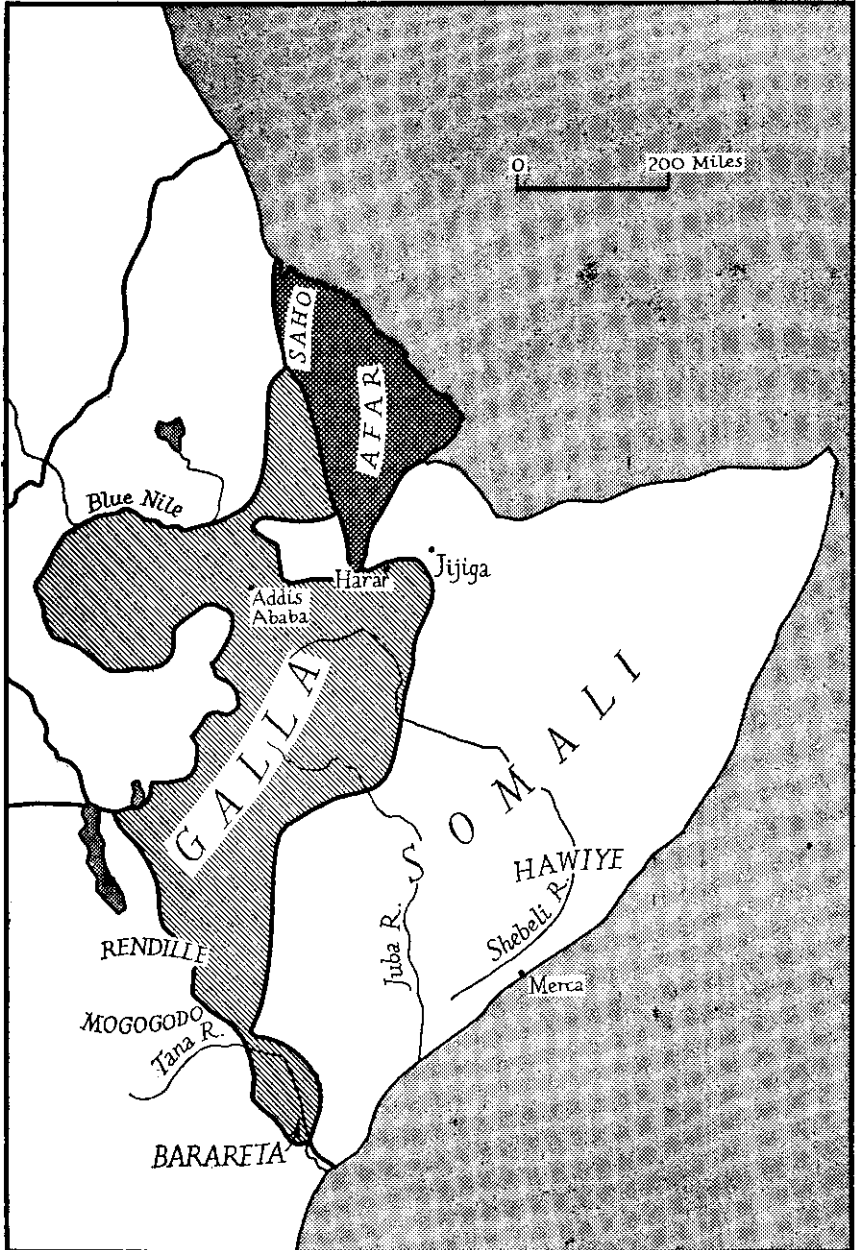
"From Djibouti in the north to Kenya's Tana River in the south, they speak a common language, enjoy a rich oral literature centered on poetic forms, organize communal life around similar, egalitarian social institutions, emphasize a genealogy stretching back to an original Arab ancestor, and manifest a powerful devotion to Islam. These cultural factors as well as the millennial occupation of contiguous territory and at least 500 years of intermittent conflict with the Christian occupants of the Ethiopian plateau make for an indisputable shared sense of nationhood."<sup>3</sup>

However, the international boundaries of Somalia by no means mark the limits of the ethnic Somalis. The majority of the population in Djibouti belong to the Somali Nation. In Ethiopia the province of Ogaden is mainly populated by Somalis and the Northern Frontier District of Kenya is inhabited by c. 250 000 ethnic Somalis.<sup>4</sup> And in the Republic itself about 95 % of the population are Somalis, which in the African context makes the country unique with its unitary population. The international boundaries and the extent of the Somali people is demonstrated in Map I.

MAP I. The Distribution of the Somali People.

Source: Lewis, H. S., *The Origins of the Galla and Somali*, in *Journal of African History*, Vol. 7:1, 1966.

## ORIGINS OF THE GALLA AND SOMALI





## 2.2 The Boundaries of the Somali Democratic Republic

In northwest the Somali Democratic Republic borders to Djibouti, in the south to Kenya and in the west to Ethiopia. The present borders, which are not recognised by Somalia, were drawn up by the former colonial powers of the Horn.

The border to Djibouti was regulated in a treaty concluded between France and Great Britain in 1888.<sup>5</sup> The borderline divided an area in which the Somali Issa-clan lived, and was concluded in contradiction with an assurance by the British Government to protect the interest of the clan and to respect its right to the territory. But the agreement prescribed:

"The Government of Her Britannic Majesty engage to treat with consideration those persons, whether chiefs or members of the tribes placed under their Protectorate, who had previously adopted the French Protectorate. The Government of the Republic, on their part, take the same engagement with regard to the persons and tribes placed henceforth under their Protectorate."<sup>6</sup>

The tripoint between Somalia, Djibouti and Ethiopia was agreed upon in the course of a demarcation in 1932-34, and there is a provision on the subject in a tripartite Agreement of April 18, 1934.<sup>7</sup>

The boundary between Somalia and Kenya goes back to a Treaty of July 15, 1924, between Italy and the United Kingdom.<sup>8</sup> A part of the Kenya Colony (the so-called Jubaland) was ceded to Italy as compensation, when France and Great Britain had increased their colonial territories in Africa at the expense of Germany.<sup>9</sup>

A treaty concluded in 1897 between Great Britain and Ethiopia regulated the frontiers of the British Protectorate on the Somali Coast.<sup>10</sup> In 1932-35 an Anglo-Ethiopian boundary commission carried out a demarcation, and the outcome was an agreed report containing a detailed boundary description.<sup>11</sup>

During and after the Second World War the United Kingdom maintained a military administration in southern and eastern Ethiopia.

In an agreement between the United Kingdom and Ethiopia "relating to certain matters connected with the withdrawal of British Military Administration from the territories designated as the Reserved Area and the Ogaden", concluded in London, November 29, 1954, the full and exclusive sovereignty of Ethiopia over the territories recognised by the Anglo-Ethiopian treaty of 1897, was reaffirmed (Article I).<sup>12</sup>

Italy concluded a treaty in 1897 with Ethiopia according to which the whole of Ogaden was ceded to Ethiopia.<sup>13</sup> The borderline between Ethiopia and the Italian Somaliland was by Italy described as a line some 300 kilometres inside the country, parallel to the coast (the so-called Menelik-line). However, the maps on which the border was demarcated were never produced or have disappeared, and the boundary has accordingly been disputed.

In 1908 it was concluded a "Convention between Ethiopia and Italy settling the Frontier between the Italian Possessions of Somalia and the Ethiopian Empire".<sup>14</sup> The southern sector of the frontier was pushed northward in favour of Italy - after the payment of three million lire. As regards the further demarcation of the border, the 1908 Convention provides (Article IV):

"From the Uebi Scebeli the frontier proceeds in a north-easterly direction, following the line accepted by the Italian Government in 1897; all the territory belonging to the tribes towards the coast shall remain dependent on Italy; all the territory of Ogaden and all that of the tribes towards the Ogaden shall remain dependent on Abyssinia."

In accordance with Article V of the Convention a joint boundary commission was established in 1908 for the delimitation on the spot of the actual line of the frontier, but its work ceased

as it could not agree on the meaning of the provisions of the 1908 Convention.

After the Second World War, when the United Kingdom administered the whole area, the British Government draw an administrative border between Ethiopia and the forthcoming Trust Territory of Somalia. In a letter, dated March 1, 1950, received by the President of the Trusteeship Council, it was underlined that "the arrangement is a provisional one only and without prejudice to the final settlement of this question".<sup>15</sup>

When the Trust Territory of Somalia was established as from April 1, 1950, there was no decision as regards the definite border between Ethiopia and the former Italian Somaliland. Article I of the Trusteeship Agreement, which delimited the territory, reads:

"The territory to which this Agreement applies is the territory formerly known as Italian Somaliland, hereinafter called the Territory, bounded by the Somaliland Protectorate, Ethiopia, Kenya, the Gulf of Aden and the Indian Ocean. Its boundaries shall be those fixed by international agreement and, in so far as they are not already delimited, shall be delimited in accordance with a procedure approved by the General Assembly."<sup>16</sup>

The United Nations Advisory Council of the Trust Territory of Somalia had found that it would suffice if a statement was made before the General Assembly by the representative of the Italian Government that Italy would accept the de facto border until the final boundary was delimited in a procedure fixed by the General Assembly.<sup>17</sup>

In a resolution on the procedure to be adopted to delimit the boundaries of the former Italian colonies in so far as they are not already fixed by international agreement, adopted by the General Assembly it was recommended that the problem should be solved by bilateral negotiations between Ethiopia and Italy as trustee in respect of the boundaries with Ethiopia.<sup>18</sup>  
In order to resolve any differences arising in the course of

such negotiations the parties agreed to a procedure of mediation by a United Nations Mediator to be appointed by the Secretary-General and, further, in the event of the inability of the parties to accept the recommendations of the Mediator, to a procedure by arbitration.<sup>19</sup>

Negotiations in the 1950's failed, as well as the establishment of an arbitration commission as provided for in the above-mentioned General Assembly resolution. When the Trust Territory became independent in 1960 and united with British Somaliland, the provisional border was still applied.

The Somali Government has accepted the present boundaries only on a de facto basis and official publications of the Governments refuse to recognise them as de jure lines.<sup>20</sup> After independence Somalia has claimed the areas populated by Somali people invoking the principle of self-determination. This claim, which includes not only the Ogaden, but also Djibouti and the Northern Frontier District of Kenya, has been said to be contradictory to the OAU resolution "Border Disputes among African States", adopted in 1964 and according to which "all Member States pledge themselves to respect the borders existing on their achievement of national independence".<sup>21</sup> In consequence of this principle the border to Kenya and Djibouti should prevail, viz. those boundaries which were agreed upon by treaties between Italy-United Kingdom and France-United Kingdom respectively.

The boundary dispute with Ethiopia has another dimension both as regards the juridical and the socio-economic aspects. In this particular case it can be argued that the OAU principle on the status quo of the colonial boundaries is not applicable.

In the course of the negotiations in the 1950's between Ethiopia and Italy the Government of Ethiopia maintained that the frontier between Ethiopia and Italian Somaliland was established by the 1908 Convention and that the differences remaining unresolved were differences in the interpretation of

the 1908 Convention. The Government also stressed that it was never a question of establishing new frontiers or revising existing frontiers, but solely of delimiting on the ground the frontiers already established by international agreements.<sup>22</sup>

Italy as trustee, advocated in favour of a solution, whereby the boundary dispute should be solved by the attainment of a final, just, equitable and friendly solution of the problem of the frontier, and suggested that the dispute should be settled by arbitrators acting ex aequo et bono. The solution should not only take into account the 1908 Convention but also other resolutions adopted by the General Assembly with regard to the question of the frontier.<sup>23</sup>

This argument has later been developed by the Somali Government, by stressing that the former colonial powers, United Kingdom, France and Italy, were under an obligation by virtue of prior existing Treaties of Protection to safeguard the interests of the Somali population and the preservation of their independence.<sup>24</sup>

"In addition to the obligation on the protecting state to preserve the independence of the protected people, these treaties of protection did not stipulate the transfer of the ownership of Somali territory. Nowhere did these treaties provide for the alienation of Somali territory to a third party state. It follows, therefore, that under the fundamental principles of law 'Memo dat quod non habet' as long as the protecting powers had no legal ownership of the Somali territory, they could not transfer a valid title to another state, in this case Ethiopia."<sup>25</sup>

The Somali Government has also stressed that the protected Somali population expressly covenanted not to alienate their territory save to the protecting powers. A reciprocal obligation, not to permit such territory to pass under the sovereignty of any other state, implicitly devolved upon the British and Italian Governments. And the Somali people had no knowledge of the colonial agreements under which Ethiopia allegedly acquired Somali territory. Neither had they been consulted in the matter. Finally, it has been argued that the agreements

between Britain, Italy and Ethiopia are in violation of the principle of self-determination which is given expression in the Charter of the United Nations.<sup>26</sup>

As regards the legal issue, Brownlie concludes that the boundary dispute between Somalia and Ethiopia can only be resolved by means of general equitable considerations within the framework of the provisions of the 1908 Convention. To reach this conclusion the principle of self-determination is ignored. However, Brownlie also stresses that the essential difficulty lies in the fact that the question is not simply a 'frontier dispute' but concerns the legal status of the Ogaden, as a parcel of territory.<sup>27</sup>

### 2.3 Greater Somalia

It is difficult to say when the dream of a Greater Somalia emerged. Already the father of Somali nationalism, Sheik Muhammad bin Abdullah Hassan fought the British and the Ethiopians in order to create a unified country, free from foreign domination.

At the time of the establishment of the Italian East Africa and after Italy's defeat during the Second World War when these territories came under British administration, virtually all of Somaliland was united under a single colonial power. When the future of Somaliland was discussed after the war, the British advocated in favour of a Greater Somalia:

"In the later part of the last century the Horn of Africa was divided between Great Britain, France and Italy. At about the time we occupied our part, the Ethiopians occupied an inland area which is the grazing ground for nearly half the nomads of British Somaliland for six months of the year. Similarly, the nomads of Italian Somaliland must cross the existing frontiers in search of grass. In all innocence, therefore, we proposed that British Somaliland, Italian Somaliland, and the adjacent part of Ethiopia, if Ethiopia agreed, should be lumped together as a trust territory, so that nomads should lead their frugal existence with the least possible hindrance and there might be a real chance of a decent life, as understood in that territory."<sup>28</sup>

However, the proposal failed and in 1948, when the British withdrew from the Ogaden the territory was handed over to Ethiopia.

Regardless of the legality or illegality of their position in terms of international law, the view has been expressed that the Somali position is "morally" right.

"The Somali government contends that the whole issue of the Somali territories should be settled on the basis of the right of the inhabitants to self determination. Somalis contend that on ethnic, cultural and historical grounds they are entitled to form a nation-state, and that neighbouring Somalis under Ethiopian rule have a right to self-determination. They further maintain that the homogeneity of their nation establishes a compelling and unique criterion for the exercise of the right of self-determination without evoking precedents elsewhere in Africa."<sup>29</sup>

But it is not pure nationalism behind the idea of a Greater Somalia. It is also a desire of the Somali Government to protect the Somali people living in the Ogaden from discriminatory measures carried out by the Ethiopian Government, and there are numerous reports about harassments against the Somali people in the Ogaden.

A United Nations Visiting Mission to Trust Territories in East Africa, 1954, reports that the border question was raised in nearly every discussion with the local population, and that it was evident that it was a matter of anxiety and urgency. The Mission's attention was also drawn to continuing incidents along the frontier, the hardships resulting from the division of certain tribal groups by the border and the cutting-off of stock from traditional sources of water and pasturage.<sup>30</sup> The Mission continues:

"The present provisional administrative line has also the same disadvantages of earlier lines in not being able to alleviate any of the difficulties resulting from the physical separation of the border tribes and the displacement of grazing grounds and wells.

The problem is not merely the question of a line on a map or even of fixing a line on the ground. It has many other equally important aspects. Water is probably the most serious cause of tribal conflicts in the border area, and access to pasture lands is another important cause of struggles between tribal groups."<sup>31</sup>

Neither is the present situation the first time that Somalia has been faced with a refugee problem. There has more or less been a yearly influx of refugees into Somalia, i.a. from Ethiopia, since 1950 when the British withdrew from Ogaden. In view of the limited number of refugees the UNHCR has only seldom been asked to provide assistance to the refugees, and many of the refugees have had the possibility to return.

The provisional border between Somalia and Ethiopia has also turned out to be most unsuitable from an ecological point of view. In the report of a UN Mission visiting the Trust Territories in East Africa in 1951 it was pointed out that the provisional administrative line debarred certain tribes from access to their traditional wells and grazing lands. The report continues:

"Life in the northern sections of the Territory is exceedingly harsh, and survival depends on access to water supplies and pasture on a year-round basis. With the sudden creation of a barrier in the form of a political frontier, the seasonal migratory cycle is broken and a group adversely affected tends to intrude on the lands of other groups... The Mission feels that inter-tribal tension and population pressure, which are typical of the north, are problems requiring solution in the very near future."<sup>32</sup>

And the ecological balance in Somalia has been seriously altered by the influx of refugees and has caused environmental deterioration which could result in permanent damage.<sup>33</sup>



### 3. THE INFLUX OF REFUGEES TO SOMALIA

Since the independence of Somalia there has been an influx of refugees from Ethiopia to Somalia in the course of frictions between the two countries. In previous years their number has been low, and the Somali Government was only in need of limited international assistance to alleviate the situation for the refugees.

The military success in spring 1977 of the Western Somali Liberation Front, whose aim is to achieve independence for those parts of Eastern Ethiopia populated with Somalis, led to the so-called Ogaden War in 1977-78, in which also regular Somali troops took part. The war came, however, to an abrupt end after the intervention by Soviet and Cuban troops on behalf of Ethiopia.

The flow of refugees into Somalia followed immediately after the withdrawal from Ogaden of the Somali troops in early 1978. By mid-1978 the Government estimated that their number had increased to over 500 000, of whom approximately 85 000 lived in 21 refugee camps, and the others were scattered among the local population. In the following twelve months the refugee influx continued, and by mid-1979 the number of refugees in camps was estimated to 220 000.<sup>34</sup> In October the Government claimed that there were at least 350 000 refugees in camps requiring assistance, and about 650 000 others scattered among the local population.<sup>35</sup>

The monthly influx of refugees in camps in 1979 to Somalia is shown in Table I.

Table I. Monthly Influx of Refugees in Camps in 1979

Month	Influx	Total number of refugees
January		100 000
February	14 000	114 000
March	12 000	126 000
April	44 000	170 000
May	25 000	195 000
June	35 000	230 000
July	40 000	270 000
August	40 000	310 000
September	21 000	331 000
October	21 000	352 000
November	39 000	391 000
December	84 000	475 000

No detailed explanation of what is happening behind the de facto border is available. It has been reported that the local population in certain areas of Ogaden have been driven away from their villages by Ethiopian troops. The refugees themselves state that Ethiopian warplanes use napalm bombs against the villages. Those who try to escape are shot at by the warplanes or by Ethiopian troops. The Ethiopian Army is guarding the water-holes upon which the nomads depend, and if they arrive with their herds, the livestock are slaughtered.

A Newsweek journalist who visited the Ogaden in October 1979 reports:

"In a trip that covered nearly 400 miles into and around Ogaden, I saw not one sign of an Ethiopian administrative presence - no schools, no police posts, no Ethiopians at all. 'The enemy is very near, but he never comes here', said Deria Migag, 70, in the Ogaden town of Cross, 40 miles into Ethiopia. 'He is very afraid of our boys'.

The Ethiopian and Cuban troops rarely leave their garrisons. Their main battle strategy, according to Western diplomats in the Somali capital of Mogadishu, is to eliminate the threat

of insurrection by making the Ogaden uninhabitable. Refugees who stream into Somalia tell of indiscriminate bombing of villages by Ethiopian warplanes, of bombed or poisoned water holes, slaughtered cattle, rape and murder."<sup>36</sup>

Other foreign journalists who recently have visited the area have reported that there are villages which are completely abandoned. They have also seen some villages devastated and bombed by napalm.

There are no signs that the flow of new refugees will decrease. The UN Inter-Agency mission, visiting Somalia in December, 1979, noted that in the two areas where large increase in the number of refugees had occurred, recent arrivals had, in many cases, come very long distances. Indeed, some of the refugees informed members of the mission that they had spent twenty-five and thirty days on the road. The mission concludes that there is still a large number of people who might wish to seek refuge in Somalia.<sup>37</sup>

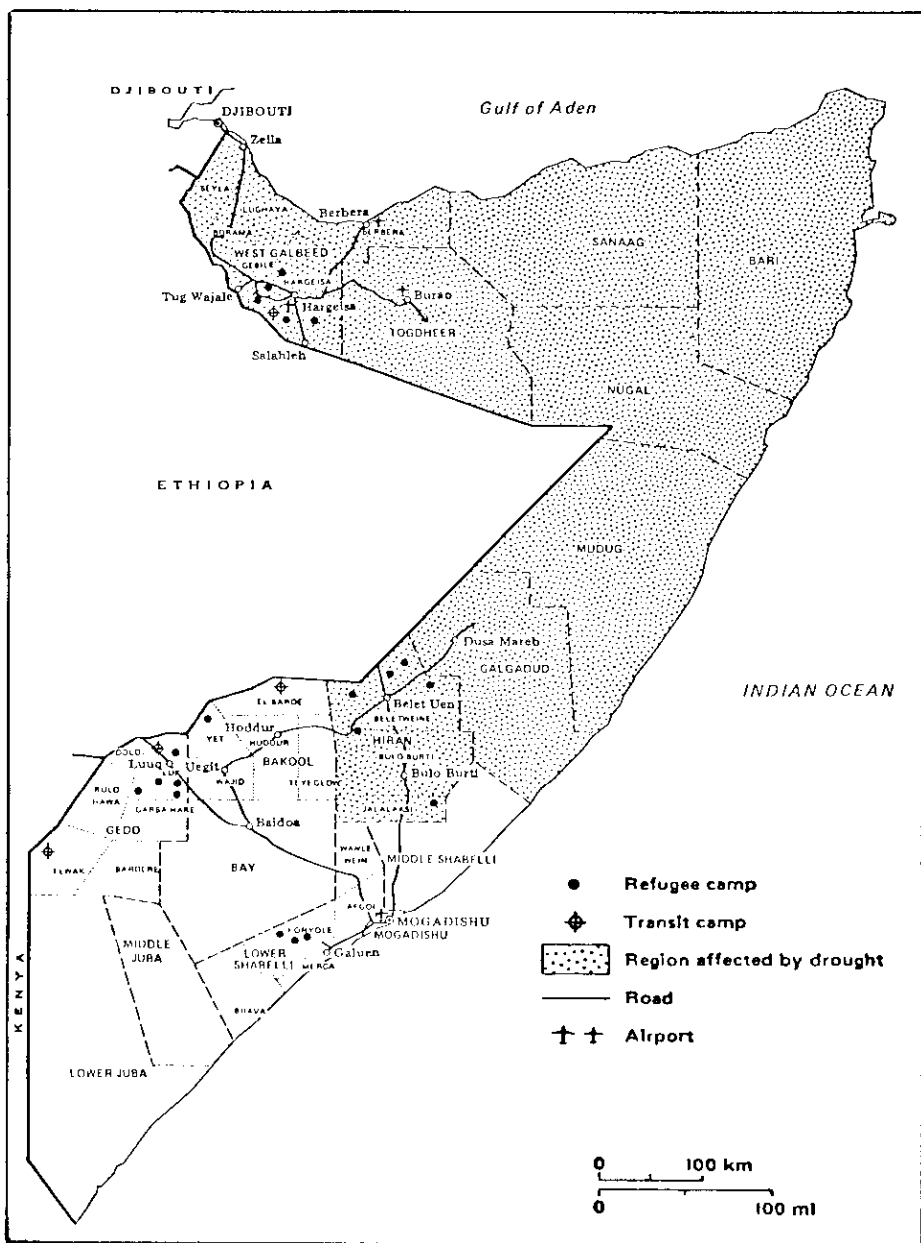
In the last half of 1978 the daily increase of the refugee camp population amounted to 100. The influx into the camps increased sharply in the fourth quarter of 1979 and at one period, refugees were entering the camps at the rate of nearly 4 000 every day.<sup>38</sup>

The number of refugees in camps as of 10 December, 1979 is shown in Table II. As reported by the UN Inter-Agency mission, an extraordinary feature of the camp population is the almost total lack of men among the refugees. Approximately sixty-one per cent are children and thirty per cent are women, and men constitute only nine per cent of the camp population. The mission noted that a large proportion of the men were elderly, ill or incapacitated. This particular age and sex distribution of the camp population creates relatively high requirements for international assistance and makes it extremely difficult to design and organize programmes to allow the refugees to become even partially self-sufficient.<sup>39</sup>

Table II. Total Number of Refugees in Camps

Region	Camps	Date	Children		Adults		Total
			0-6 Yrs	7-15 Yrs	Men	Women	
<u>Northwest:</u>	Arabsio - Agabar -	<u>27/11/79</u>	25,412	18,766	8,603	17,495	70,276
	Hargeisa Dam -Tug	<u>10/12/79</u>	31,320	22,084	9,134	20,278	82,816
	Wajale	<u>31/12/79</u>	N/A	N/A	N/A	N/A	91,665
<u>Hiran:</u>	Lug Jelow - Crash	<u>27/11/79</u>	36,492	34,318	13,345	35,076	119,231
	Programme-Qooqane	<u>10/12/79</u>	38,829	36,685	13,506	37,112	126,132
	- Guriye Awl - Jijalow-Jalalaqsi	<u>31/12/79</u>	N/A	N/A	N/A	N/A	126,998
<u>Bakool:</u>	Shimbirale	<u>27/11/79</u>	4,896	4,186	1,913	4,687	15,682
		<u>10/12/79</u>	6,898	6,194	2,237	6,690	22,019
		<u>31/12/79</u>	N/A	N/A	N/A	N/A	33,625
<u>Cedo:</u>	Ali Matan-Borseed	<u>27/11/79</u>	38,144	38,183	6,719	51,602	134,648
	- Halbe - Helgan - Shidley - Bur Dab	<u>10/12/79</u>	46,568	44,890	8,123	59,436	159,017
	- Marbray	<u>31/12/79</u>	N/A	N/A	N/A	N/A	170,123
<u>Lower Shabelli:</u>	Qorioley	<u>27/11/79</u>	19,023	16,689	3,367	11,988	51,067
	(3 camps)	<u>10/12/79</u>	19,281	16,984	3,392	12,212	51,869
		<u>31/12/79</u>	N/A	N/A	N/A	N/A	51,875
<u>Totals:</u>	21 Camps	<u>27/11/79</u>	123,967	112,142	33,947	120,848	390,904
		<u>10/12/79</u>	142,896	126,837	36,392	135,728	441,853
		<u>31/12/79</u>	153,015	137,057	40,663	143,551	474,286
		(%)	32	29	9	30	100

MAP II. Somali Refugee Centres



Various explanations have been given for the low proportion of men in the refugee camps. It has been said that the men are still in the Ogaden or in Somalia outside the camps, taking care of the livestock. Some of the men are said to have joined the Western Somali Liberation Front in its struggle against the Ethiopian forces, and some are said to have been killed. There are also indications that there are more men in the refugee camps than those registered, i.e. the men arrived at a later stage but did not bother about registering.

The registration procedure carried out by the authorities of new arrivals to the refugee camps, is carried out with great exactitude and the official figures of the refugees in camps seems to be reliable.<sup>40</sup> In this respect the UN Inter-Agency mission reports:

"The mission visited seven of the refugee camps and held discussions with people who had visited the remainder. On the basis of these visits, and the information provided to the mission from Government and other sources, the mission concluded that the Government's estimate of the number of refugees in the camps - 475 000 - was broadly correct."<sup>41</sup>

The official estimation of the number of refugees outside the camps is some 650 000 individuals. This figure is a very rough calculation, but has not been contested. In this respect the UN Inter-Agency mission reports that the mission could not assess with any accuracy the number of refugees among the local population. The population of some towns, particularly Hargeisa, had clearly increased and many temporary dwellings had been erected around the outskirts. Food imports and food sales from Government stores, which would provide some indication of the numbers outside the camps, were only available for the period ending in October 1979. These indicators suggested, however, that there were large numbers of refugees outside the camps, but no accurate estimate could be made on the basis of the data available. In addition, it was not known how many of the refugees in the rural areas were relatively self-sufficient pastoralists who had been able to bring enough of their livestock with them to meet their immediate needs.<sup>42</sup>

#### 4. ASSISTANCE TO REFUGEES IN SOMALIA

The situation in the refugee camps is devastating. The health situation is catastrophic and various diseases like malaria, TB, bilhartsia, pneumonia and other infectious diseases are widespread, but there are almost no possibilities of assisting the refugees, as practically no medicine is available. The food situation is alarming. The Government and various organizations are providing basic food, but the rations are too small and there are obvious signs of undernourishment and malnutrition. Water supply and sanitation creates enormous problems and is a matter of first priority for the refugee camps.

In a speech to the UNHCR Executive Committee in October 1979, the Minister of Local Government and Rural Development, H.E. Maj.Gen. J.M. Ghalib, appealed to the international community for assistance.

"For the pressures triggered off by this influx are fast affecting the country as a whole, and especially the nomadic life of inhabitants, particularly in terms of grazing and water, for over-grazing in the countryside will automatically affect the vegetation, thereby endangering the ecological balance, which in turn threatens the existence of livestock, the main national resource, which may develop into famine. I need not continue to itemize the innumerable mammoth problems triggered off by thousands of refugees and displaced persons, who arrive hungry, thirsty, without shelter, and with no more possessions than they can carry on their backs, and who have to be fed, housed and provided with emergency medical needs if epidemics (which could also affect the local population) are to be avoided."<sup>43</sup>

The immediate need of assistance to the refugees is undeniable. The precarious situation in the refugee camps is also the direct cause for the declaration of emergency made by the Government as from 10 September, 1979.

The UN Inter-Agency Mission summarizes its findings in the following way:

"Somalia is faced with massive problems as a result of accepting a refugee population of around one-quarter of its population. The country cannot carry out the heavy burden involved. - - -

The refugees are short of food, water and medicines. At all camps, there is a need for clothes, shoes, soap, blankets, tents, utensils and tools. The health situation in the camps is particularly serious."<sup>44</sup>

The refugees in Somalia have not been completely without assistance. The Government responded to the need immediately upon arrival and could, as far as administration is concerned, make use of the experience of the drought catastrophe in 1974-75. Being one of the poorest countries in the world, the resources of the Government are certainly limited. However, also the international community has responded to the need of the refugees, although this assistance has been of a too limited extent.

A UNHCR Chargé de Mission was appointed in April 1978 in order to co-ordinate the assistance for the refugees. Originally the implementation of the assistance programme was carried out by the Somali Red Crescent Society. As from September 1978 this function has been taken over by a National Commissioner for Refugees, who is responsible to a fully fledged National Commission, chaired by the Vice-President of the Somali Democratic Republic.

Following a request for assistance from the Government in early 1978, the UNHCR in consultation with the authorities, formulated a programme of assistance estimated at US \$ 4,875,000 to cover the basic requirements of the 150 000 most needy persons. In view of the continued influx and the destitute condition of most new arrivals, considerable relief assistance has been required and is still called for. The allocation for 220 000 refugees in 1979 amounted to US \$ 3,547,000 and in 1980 to US \$ 5,800,000.<sup>45</sup> These allocations, however, do not take into account that the number of refugees has increased considerably since mid-1979, and neither additional allocations which already



might have been decided upon. In this connection it should be added that the Secretary-General of the United Nations has made a general appeal to Governments in order to raise additional funds on behalf of refugees in Somalia.<sup>46</sup>

In October 1979 the total value of the assistance for the refugees in Somalia amounts to US \$ 16 million. This figure includes the contribution from the Somali Government (US \$ 6 million) and from inter-governmental organizations, governmental and non-governmental agencies (US \$ 10 million). The contribution from the Somali Government does not include salaries for 300 students working as teachers for the primary education in the refugee camps.

The refugee situation in Somalia has not drawn the attention of the international community and the assistance to these refugees is insufficient, both as regards direct economic contributions and as regards personal resources. In October 1979 only 18 persons, connected with various relief organizations, were assisting the Somali Government in the refugee camps.

The expenditure per caput on the refugees in Somalia is low in comparison with refugee assistance in other countries of asylum. Table III shows the total UNHCR expenditure in a number of countries, the estimated number of refugees, and the expenditures per caput. Certainly it is difficult to compare the conditions and the costs in various countries of asylum and there are a number of sources of error. Direct and bilateral assistance is not accounted for. The degree of self-sufficiency varies between refugee populations as well as the cost of living. The proportion of urban and rural refugees in a country of asylum lead to a varying need of assistance, etc. The calculation is based upon information reported by the Office of the UNHCR.<sup>47</sup>

Table III. Assistance to refugees per caput

Country of Asylum	Estimated expenditures in 1979	Number of refugees	Expenditures per caput
Somalia	3,547,500	220 000	16,1
Djibouti	1,698,700	16 000	106,2
Sudan	3,744,300	330 000	11,3
Mozambique	5,374,800	120 000	44,8
Tanzania	4,085,800	160 000	25,5
Malaysia	35,636,800	172 000	207,2

The difference as regards international assistance to the refugees is significant. For instance, the refugee situations in Djibouti and in Somalia have the same causes, the refugee population has equal origin and in both countries the refugees are mostly rural people. However, in Djibouti UNHCR assistance amounts to US \$ 106.2 per caput, while the corresponding figure in Somalia is only US \$ 16.1.

The refugees in Tanzania arrived in the 1960's and in the beginning of the 1970's. Assistance is focused to organized rural settlements, and a great part of the refugees in the old settlements are self-sufficient. Assistance per caput in Tanzania is US \$ 25.5.

Refugee assistance to Malaysia has a resemblance to the assistance in Somalia in the respect that in both instances emergency assistance is at stake. A difference is that in Malaysia assistance is not needed the whole year, as refugees will be transferred to other states. A considerable part of the expenditure has, however, been used for transportation.

The comparison gives the impression that Somalia is receiving far too little international assistance, which also explains the obvious need in the refugee camps.

As from 11 September 1979 the Government of Somalia has declared a state of emergency to deal with the serious situation, maintaining that the country with its limited financial and national resources cannot alone shoulder the responsibility of providing all the basic needs of the refugee population.

On 10 October 1979 the Minister of Rural Development and Local Government made an appeal for immediate emergency relief and international assistance. In spite of the fact that the Executive Committee of the UNHCR allocated US \$ 5.8 million for 1980, the assistance required for the refugees in terms of food, clothing, medicine, shelter and other basic necessities as well as for self-help activities, far exceed the proposed allocation by the UNHCR.

By mid-November 1979 no Government, no inter-governmental organization and no voluntary agency had answered to the appeal. The only change has been a further influx of some 140 000 refugees - and a visit of the UN Inter-Agency Mission. But still it is the South East Asian issue which draws the attention of mass media.

## 5. THE LEGAL STATUS OF REFUGEES IN SOMALIA

### 5.1 General Remarks

The Somali Democratic Republic has acceded to the 1951 Refugee Convention as well as the 1967 Refugee Protocol. Upon accession to these instruments a reservation was made, reading as follows:

"The Government of the Somali Democratic Republic acceded to the Convention and Protocol on the understanding that nothing in the said Convention or Protocol will be construed to prejudice or adversely affect the national status, or political aspiration of displaced people from Somali Territories under alien domination.

It is in this spirit, that the Somali Democratic Republic will commit itself to respect the terms and provisions of the said Convention and Protocol."<sup>48</sup>

On the national level the Somali Constitution contains an article on "Extradition and Political Asylum". Recently, a refugee legislation has been promulgated, according to which a refugee determination procedure has been established.

### 5.2 The 1951 Refugee Convention and the 1967 Refugee Protocol

As has been stated, the majority of the refugees in Somalia are Somalis, i.e., they belong to the same people as the population of the country of asylum. In view of this it has been argued that the refugees of Somali origin cannot be considered as bona fide refugees, as they are not outside their country of nationality (cf. the 1951 Refugee Convention, Article 1 A 2.).<sup>49</sup>

According to the new Constitution of 1979 the Somali People are one, and the Somali Nationality is indivisible. It is also prescribed that the modes of acquiring and losing the Somali citizenship should be determined by law.<sup>50</sup> The Law on

Somali citizenship dates from 1962, and according to this law any person is entitled to acquisition of citizenship by operation of law, if he is "a Somali residing in the territory of the Somali Republic or abroad and declares to be willing to renounce any status as citizen or subject of a foreign country" (Article 2). The following article defines a Somali:

"For the purpose of this law, any person who - by origin, language or tradition - belongs to the Somali Nation, shall be considered a Somali."

The mere presence of a person of Somali origin in the territory of the Somali Democratic Republic does not make him or her a citizen of the country. Some kind of legal act must follow, it might then be a formal decision on acquisition of citizenship or the issuance of a Somali passport. Apart from the few cases when this is at stake, refugees of Somali origin cannot be excluded from refugee status by arguing that they are not outside their country of nationality.

A refugee of Somali origin who is entitled to Somali citizenship can, however, be excluded from refugee status according to the 1951 Refugee Convention and the 1967 Refugee Protocol by virtue of the so-called con-national clause in Article 1 E. This provision reads:

"This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."

The purport of this provision was originally to exclude from the scope of the Convention Volksdeutsche, i.e., refugees of German ethnic origin, who had found refuge in the Federal Republic of Germany. Also other groups of con-national refugees have in the course of the years been excluded from refugee status by virtue of this provision.

It is interesting to note that the wording of the German

Constitution and the German Nationality Act bears strong resemblance to the present legislation in Somalia. The German Constitution, Article 116, paragraph 1, reads:

"Deutscher im Sinne dieses Grundgesetzes ist... wer die deutsche Staatsangehörigkeit besitzt oder als Flüchtling oder Vertriebener deutscher Volkzugehörigkeit oder als dessen Ehegatte oder Abkommling in dem Gebiete des Deutschen Reiches nach dem Stande vom 31. Dezember 1937 Aufnahme gefunden hat."<sup>51</sup>

And Section 6 subsection 1 of the Citizenship Act of 1965 provides for the admission of ethnic German refugees and expellees to full citizenship:

"Wer auf Grund des Artikels 116 Abs. 1 des Grundgesetzes Deutscher ist, ohne die deutsche Staatsangehörigkeit zu besitzen, muss auf seinen Antrag eingebürgert werden, es sei denn, dass Tatsachen die Annahme rechtfertigen, dass er die innere oder äussere Sicherheit der Bundesrepublik oder eines deutschen Landes gefährdet."<sup>52</sup>

It will be noted that a refugee of German ethnic origin will not automatically be recognized as a German citizen, but that he has to claim naturalization. However, he has a right of being naturalized, only subject to considerations of national security. Should the person's claim be rejected, the claimant will lose his status as a 'German' as soon as the rejection becomes final. It follows that such a person will then no longer fall under the terms of Article 1 E of the Refugee Convention, and he may therefore claim refugee status if he satisfies the criteria laid down in Article 1 A and B and does not fall under any other exclusion or cessation clause.<sup>53</sup>

It is not the possibility for an asylum seeker to obtain citizenship in the country of residence which makes the Refugee Convention inapplicable. The decisive point is whether the person is entitled to the "rights and obligations which are attached to the possession of the nationality". However, refugees of Somali origin, residing in Somalia, have the rights and obligations equal to Somali citizens. They have

equal access to the employment market, they have access to public education and public relief, they have freedom of movement, etc. In this connection it must be taken into account that Somalia is one of the poorest developing countries in the world, which makes the economic, social and cultural rights of limited importance also for the local population.

A pertinent question is whether an asylum seeker should be denied Convention refugee status if he has found refuge in a third state, as for instance, the case of a refugee of Somali origin who is residing outside Somalia. In practice this problem is of greater relevance in Western European states, and in any other country which cannot accede to the 1969 OAU Refugee Convention.

Once again it is possible to draw a parallel with the German case. In some countries, for instance in Austria, refugees of German ethnic origin have been recognized as Convention refugees, although they could have been said to fall under Article 1 E of the Refugee Convention. But there are other countries like France and Sweden, where the outcome has been the opposite.<sup>54</sup>

To conclude, there seem to be good reasons to state that by virtue of the con-national clause, refugees of Somali origin can be denied Convention refugee status, if they have found refuge in Somalia. Whether the same applies when the applicant resides in a third country is an open question and subject to various interpretation in Contracting States.

### 5.3 The 1969 OAU Refugee Convention

The definition of the term "refugee" in the 1969 OAU Refugee Convention, as well as its exclusion and cessation clauses, has been formulated with the wording of the 1951 Refugee Convention as a pattern. Thus, for instance, the cessation clause in Article 1 C has been expressed in the OAU Convention in an

unchanged form (Article I, paragraph 4). However, there is no reference in the African Convention to the con-national clause, and there are good reasons to conclude that the omission of this paragraph has been intentional, and that the drafters considered this to be of importance and one of the special aspects of the African refugee problem.

In this connection it should be mentioned that the international borders in Africa, which mainly have been drawn up by the colonial powers, have not had the same significance as on other continents. In certain areas the population constantly have moved over the borders, and on several occasions the nationality of refugees is undetermined without this being a hindrance for the refugees to be assisted. To be sure, the definition of the term "refugee" in Article I, paragraph 2, of the African Convention does not only contain a reference to the "country of nationality" but also to the "country of origin".

Provided they fulfil the other criteria for refugee status under the 1969 OAU Refugee Convention, and provided that no exclusion or cessation clause is applicable, refugees of Somali origin should be considered as refugees under this Convention. This makes it a legal obligation for countries having ratified this Convention, to accept them as refugees.

#### 5.4 The UNHCR Mandate

The Mandate of the UNHCR as defined in the Statute of the Office of the United Nations High Commissioner for Refugees<sup>55</sup> has been formulated almost identically with the definition of the term "refugee" as contained in the 1951 Refugee Convention, as amended by the 1967 Refugee Protocol. There are minor discrepancies between the instruments, but these are of no relevance in this context. The Statute of the UNHCR also contains a con-national clause, and accordingly it can be concluded that a refugee, having the rights and obligations which are attached to the possession of the nationality, as



for instance in the case of refugees of Somali origin, are not falling under the Mandate of the UNHCR strictu sensu. Consequently, there is a discrepancy between the Statute of the Office of the UNHCR and the term "refugee" as described in the 1969 OAU Refugee Convention, not only as regards the inclusion clause in Article I, paragraph 2, but also as the latter is lacking the con-national clause.

However, over the years this discrepancy has been eradicated by various resolutions adopted by the General Assembly. Originally the mandate was enlarged through various resolutions by which the High Commissioner was authorized to lend his "good offices" to refugees "who do not come within the competence of the United Nations".<sup>56</sup> This procedure, which has had the greatest importance in Africa, can be regarded as well established by the adoption of a resolution in 1961, when the General Assembly

"requests the United Nations High Commissioner for Refugees to pursue his activities on behalf of the refugees within his mandate or those for whom he extends his good offices."<sup>57</sup>

After the adoption of this resolution the High Commissioner stated at the following session of the Executive Committee of the UNHCR, that

"the good offices procedure, now part of UNHCR's normal activities, has introduced into the already long-established structure of the mandate an element of flexibility and dynamism which meets the requirement of the present situation."<sup>58</sup>

The "good offices resolutions" and those adopted in the 1970's in which reference was made to the High Commissioner's "special humanitarian tasks" give the High Commissioner a vague and undetermined basis regarding who should be considered as a refugee. There are good reasons to conclude that these resolutions at least cover the situations and the conditions prescribed for in the 1960 OAU Refugee Convention, Article I.<sup>59</sup>

Originally, the good offices resolutions were meant to authorize the High Commissioner to provide assistance but not protection to the new categories of refugees. In view of the fact that later resolutions do not specify what kind of measures can be taken by the High Commissioner, it is an open question whether the High Commissioner is competent to give protection to refugees outside his original mandate. In this respect no clarification was made by the High Commissioner in his statement to the Third Committee of the General Assembly in 1979, when he touched upon the enlargement of his mandate:

"During these past years, world events have given rise to refugee problems of considerable magnitude. The original UNHCR Mandate, as embodied in the UNHCR Statute, applies to persons who are outside their own countries and have a well-founded fear of persecution. This has been the framework for what we call today the traditional activities of UNHCR and these, indeed, continue to be a most important aspect of our work. But, as new humanitarian problems arose in the world, the Governments, the Secretary-General of the United Nations and the General Assembly turned to UNHCR in what has been referred to as 'refugee-like situations'. These relate to persons who have been displaced inside and outside their country, following internal disturbances or strife, as well as to large groups of former refugees who repatriated of their own free will and who need rehabilitation assistance upon their return.

Under pressure of events, the General Assembly has progressively adopted the competence of UNHCR to evolving needs making this Office one capital instrument of its humanitarian policy with regard to refugees and displaced persons."<sup>60</sup>

The relation between the UNHCR Mandate and the definition of the term "refugee" in the 1951 Refugee Convention as amended by the 1967 Refugee Protocol, was discussed at the Pan-African Refugee Conference in Arusha, Tanzania, in May 1979. After a short debate the Conference unanimously adopted the following recommendation, which later was endorsed by the OAU Council of Ministers in Monrovia, in July 1979:

"The Conference, - - -

Recommends that the 1969 OAU Refugee Convention, the regional complement in Africa of the 1951 Convention relating to the Status of Refugees, be applied by the United Nations and all its organs as well as by non-governmental organisations in dealing with refugee problems in Africa, and requests the OAU, through its normal channels, to take all necessary steps

during the Thirty-fourth Session of the General Assembly to ensure that the present recommendation be incorporated in a General Assembly resolution."<sup>61</sup>

The adoption by the General Assembly of a resolution in lines with the above-mentioned recommendation would have meant an addendum to the UNHCR Mandate. The Office of the UNHCR would have been responsible for material assistance to all refugees falling under the scope of the 1969 OAU Refugee Convention. Such a resolution would also have brought in a new element in that those qualifying for refugee status also would have been entitled to protection by the Office of the UNHCR and the uncertainty in this respect could have been removed.

However, the General Assembly adopted a resolution which considerably weakened the Arusha recommendation and which does not give any answer to the problems arising out of the vagueness of the previous General Assembly resolutions. It is true that the General Assembly fully endorsed the recommendations adopted by the Arusha Conference. But the important part of the above-mentioned recommendation, dealing with the work on behalf of refugees by the "United Nations and all its organs", has been replaced by the following operative paragraph:

"The General Assembly, - - -  
Appeals to all Governments, international organizations and non-governmental organizations to intensify their activities and programmes in support of African refugees."<sup>62</sup>

There is no mentioning of the 1969 OAU Refugee Convention in the General Assembly resolution.

### 5.5 National Legislation

Article 35 paragraph 2 of the 1979 Constitution of the Somali Democratic Republic contains a provision on political asylum, reading as follows:

"The Somali Democratic Republic may grant political asylum to a person who has fled his country or another for political

reasons while struggling for the interests of the masses, human rights or peace."

Firstly, it should be underlined that the provision does not contain an unconditional right for refugees to be granted asylum. Instead, it is emphasized that the granting of asylum is the prerogative of the state.

A more interesting aspect is, however, the definition of an asylum seeker. In view of the fact that the Constitution has been adopted as late as in 1979, it is noteworthy that there is no reference to the definition of the term "refugee" contained in the 1951 Refugee Convention and the 1967 Refugee Protocol, or that there are no common elements with those definitions. Instead, the wording bears a certain resemblance with constitutional provisions on the granting of asylum in the socialist states of Eastern Europe.<sup>63</sup>

Quite recently a refugee legislation has been enacted in Somalia. The new law prescribes for the establishment of a Refugee Committee in order to determine refugee status in Somalia. This procedure does not, however, apply in situations of a mass influx of refugees.

The Committee consists of six members, viz.

- (1) a judge, appointed by the President of the Supreme;
- (2) a representative of the Office of the Chief State Counsel;
- (3) the National Commissioner for Refugees;
- (4) a representative of the Ministry of Health;
- (5) a representative of the Ministry of Foreign Affairs;
- (6) a representative of the National Security Service.

The Representative of the UNHCR in Somalia is entitled to participate in the capacity of observer. The Committee should have been established in November 1979.

The new law defines a refugee by referring to Article 1 of the 1951 Refugee Convention as amended by the 1967 Refugee Protocol as well as Article I, paragraph 2, of the 1969 OAU Refugee Convention. It should be noted that the term "refugee" as defined in the 1969 OAU Refugee Convention was incorporated into national legislation before Somalia ratified that Convention. It should also be noted that there is no reference to the reservation to the 1951 Refugee Convention and the 1967 Protocol, made by Somalia upon accession to these instruments.

The Refugee Committee shall consider applications for refugee status and adopt such decisions as it may deem appropriate, in conformity with the relevant provisions of the 1951 Refugee Convention. It shall also deliberate on the loss of refugee status.

According to the law an appeal procedure has been established. Any person who has been aggrieved by a decision of the Committee has a right to submit an appeal to the Judiciary Review Commission, established under the Presidency. It is explicitly prescribed that the Committee may consider appeals submitted by persons affected by measures envisaged under article 31, 32 and 33 of the 1951 Refugee Convention.<sup>64</sup>

The procedure for the determination of refugee status in Somalia fulfils the criteria laid down by the Executive Committee of the High Commissioner's Programme on the 28th Session in 1977,<sup>65</sup> and in this respect Somalia come out as a model in the African context. It is true that procedures also have been established in other parts of Africa, for instance in Senegal and in Zambia. These procedures do not, however, to the same extent satisfy the suggested criteria. However, the practical application of a refugee determination procedure is more important than the procedure itself. In this respect it is too early to evaluate the Somali procedure, as the legislation has been promulgated quite recently.

## 6. THE FUTURE

As has been stated in various contexts the best solution to any refugee problem is voluntary repatriation. This solution was put forward already in a recommendation adopted by the Conference on the Legal, Economic and Social Aspects of African Refugee Problems, held in Addis Ababa in 1967.<sup>66</sup> A special article of the 1969 OAU Refugee Convention deals with voluntary repatriation and the responsibilities for the country of refuge and the country of origin to facilitate the implementation of this solution (Article V). The Pan-African Refugee Conference in Arusha in 1979 emphasized the importance of this provision of the OAU Refugee Convention and pointed at voluntary repatriation as a solution to refugee problems.<sup>67</sup>

The Somali Government has stressed that the permanent solution to its refugee problems lies in the voluntary repatriation of the refugees to their country of origin. The willingness of the refugees in Somalia and the preparedness of Ethiopia to readmit the refugees seems, however, uncertain. It is interesting to note that in his speech to the Executive Committee of the UNHCR in 1979 the observer for Ethiopia touched the problem in a most careful way.

"Inspired by the constructive spirit that had prevailed at Arusha and convinced that voluntary repatriation offered the most effective and durable solution to the refugee problems in Africa, his Government announced that it would grant full amnesty to all Ethiopian refugees in Djibouti, that it was prepared to co-operate with the Government of the Republic of Djibouti and the High Commissioner to work out arrangements for their repatriation and that it would spare no effort to resettle repatriated refugees and reintegrate them into the community. To that end it had already requested UNHCR to provide financial assistance and had also proposed that the High Commissioner and the Ethiopian and Djibouti Governments should undertake a tripartite preliminary study on the repatriation of those refugees. It was also prepared to co-operate with any country in the voluntary repatriation of Ethiopian refugees, on the understanding that the refugee problem was approached from a purely humanitarian point of view"<sup>68</sup>

At present the refugees in Somalia seem far from willing to return to their country of origin. The UN Inter-Agency Mission to Somalia concludes:

"An early solution to the fundamental problems which have resulted in the large number of refugees entering Somalia does not appear likely. Therefore, the refugees are likely to remain in Somalia for four or five years. Members of the mission were assured by the refugees that they wish to return home as soon as possible, and this wish was also expressed by the Government of Somalia. However, the Government made it clear that the return of the refugees would have to be voluntary and that the refugees would continue to be welcome however great the economic difficulties this caused for Somalia."<sup>69</sup>

There is a continuous influx of new refugees from Ogaden - the UN Inter-Agency Mission calculates that the total number of refugees in camps would approach 840 000 by the end of 1980 - and the short-term as well as the long-term planning will have to take this into account.

The short-term solution calls for immediate needs such as food, shelter, clothing, medical facilities, education, etc. The problem facing Somalia can only be tackled effectively through a comprehensive and systematic approach, which includes a long-term solution. In his address to the Executive Committee of the UNHCR the Somali Minister of Local Government and Rural Development stated:

"It is also extremely important to focus attention on long-term requirements, such as the creation of agricultural settlements. In this connection, external assistance will be required for the supply of agricultural machinery and of other financial aid, to cover vital local expenses required for the implementation and running of projects."

An important aspect when it comes to the long-term planning is that this also must take into account those refugees who are now scattered among the local population. At present - when assistance to refugees still is in the emergency phase - these refugees will be assisted by the population. But they might at a later stage impose too heavy a burden on the country and the refugees will be in need of international assistance.

## 7. CONCLUSIONS

In Africa, with its four to five million refugees, it is possible to differ between various causes for the presence of refugees in neighbouring countries. Without any aspiration of being exhaustive, it is possible to find at least the following situations:

(1) Refugees from countries under white minority rule, as, for instance, refugees from South Africa and Namibia.

(2) Refugees who have left their country of origin because of internal disorder, ethnic rivalries etc., as in Rwanda, Burundi, Zaire, Angola.

(3) Refugees fleeing from gross violation of basic Human Rights. This was the case in Uganda under Amin, in Equatorial Guinea under Maçias and in the Central African Empire under Bokassa.

(4) Refugees who have left their country of origin, where the former white colonial power has been replaced by another foreign non-white occupation power. This has been the case in the former Spanish colony, Spanish Sahara, over which Morocco now has a territorial claim.

When it comes to refugees from Ethiopia it is not easy to refer the situation to one of the foregoing categories. There are those who claim that the refugees are fleeing from a colonial situation, where a non-white minority regime oppresses the majority population.<sup>70</sup> From this point of view the refugee situation bears a strong resemblance with the last mentioned category, the Saharouis.

However, it has also been said that the refugees are victims of a liberation struggle, whereby part of a country, *viz.* Ogaden and Eritrea, wants to achieve independence, if not as a sovereign country, so at least as a federal state with more or less far-reaching self-determination. If this is the correct picture as regards the causes of the refugee problem in Somalia, it bears a certain resemblance with the situation in Zaire.

What complicates the situation still more as regards the refugees in Somalia, is the membership of the same ethnic group



as prevailing in the country of asylum, together with the fact that most of the refugees are entitled to Somali citizenship.

However, in most respects the problem of the refugees in Somalia has similarities with the problem of the Saharouis refugees. In both instances the refugee problem has caused frictions between the country of origin and the country of asylum, and the OAU machinery for the settlement of international disputes has turned out to be ineffective. It is also symptomatic that in such a case the country of origin denies the existence of a refugee problem and that there are other reasons for a mass migration. Another common factor is the difficulty to get assistance and the unwillingness of the African and the international community to offer assistance.

The refugees in Somalia should, however, be considered as refugees under the 1969 OAU Refugee Convention. They are also eligible under the Mandate of the UNHCR, and consequently entitled to material assistance. In spite of this, Somalia and the refugees in the country are receiving an unproportionally small part of the international assistance to refugees. It must never be forgotten that assistance to refugees is a responsibility of the international community and that refugee problems can only be solved in a spirit of international solidarity. It must also be remembered that assistance to refugees should be carried out irrespective of any political evaluations.

## NOTES

1. Somali Democratic Republic, A Request for Assistance from the Government of the Somali Democratic Republic for the Refugees, Mogadishu October, 1979, p. 1.
2. Farer, "Dilemmas on the Horn", Africa Report 1977, p. 2.
3. Op.cit., p. 4.
4. Africa Contemporary Record 1977/78, p. B. 387.
5. British and Foreign State Papers, Vol. 83, p.672. British and Foreign State Papers, Vol. 100, p.493.
6. Cit. from Brownlie, African Boundaries, p. 769.
7. The Agreement constitutes Annex X of the Anglo-Ethiopian Boundary Commission Agreement dated March 28, 1935.
8. United Kingdom Treaty Series No. 29 (1925); League of Nations Treaty Series, Vol. 36, p.379.
9. Cf. Treaty of London, April 26, 1915, Article 13; de Martens, Nouveau recueil général de traités, 3e Sér., Vol. 10, p. 329.
10. United Kingdom Treaty Series, No. 2 (1898), C. 8715. Brownlie, African Boundaries, p. 830.
11. Agreement of the Commission appointed to Demarcate the Boundary between the Empire of Ethiopia and the British Protectorate on the Somali Coast, signed at Addis Ababa, March 28, 1935. See Brownlie, African Boundaries, p. 837 ff.
12. United Nations Treaty Series, Vol. 207, p. 283; Brownlie, African Boundaries, p. 843.
13. de Martens, Nouveau recueil général de traités, 2e Sér., Vol. 28, p. 435.
14. The Convention is published in translation in British and Foreign State Papers, Vol. 101, p. 1000; de Martens, Nouveau recueil général de traités, 3e Sér., Vol. 2, p. 21. See also Brownlie, African Boundaries, p. 835.
15. UN Doc. T/484. United Nations, Official Records, Trusteeship Council, 6th Session, Annexes and Supplements, p. 112.
16. GA Res. 442 (V) of 2 December, 1950; United Nations Treaty Series, Vol. 118, p. 256.
17. UN Doc. A/AC.33/W.27.

18. See Report of the Interim Committee of the General Assembly, United Nations, Official Records, Fifth Session, Suppl. No. 14, Doc. A/1388; Report of the Ad Hoc Political Committee, United Nations, Official Records, Annexes, Fifth Session, Agenda item 21, Doc. A/1723.
19. GA Res. 392 (V) of 15 December, 1950.
20. Somali Government. The Somali Peoples' Quest for Unity, p. 13. See also Somali Government. The Portion of Somali Territory under Ethiopian Colonization, p. 41 ff. Cf. Cebede, "The Legal Aspect of Ethiopian-Somali Dispute", Horn of Africa, Vol. 1, p.26.
21. OAU Doc. AHG/Res.26/II.
22. United Nations, Official Records, General Assembly, 14th Sess., Agenda item 40, A/4323, para. 8.
23. In a Draft Compromis presented by the Italian Delegation for the establishment of an Arbitration Tribunal, it was proposed that the Tribunal should apply: "International deeds and instruments concluded by each of the two Parties with third countries, which are relevant for the purpose of settling the difference."
24. At the time of the colonization of the Somalis a number of "Treaties of Protection" were concluded between the European powers and Somali chieftains and dignitaries. According to Greenfield a typical agreement, dated 14 July 1884, reads: "Whereas the garrisons of His Highness the Khedive are about to be withdrawn from Berbera and Bulhar and the Somali Coast generally, we, the undersigned Elders of the Habr-Awal tribe, are desirous of entering into an agreement with the British Government for the maintenance of our independence, the preservation of order etc..." Greenfield, "An Historical Introduction to Refugee Problems in the Somali Democratic Republic", The 'Halgan' Symposium, Somalia and the World, Mogadishu, 15-20 October 1979, p. 8. Cf. Brown, "The Ethiopia-Somaliland Frontier Dispute", International and Comparative Law Quarterly, 1956, p. 247.
25. Somali Government, The Portion of Somali Territory under Ethiopian Colonization, p. 42.
26. Op.cit. p. 42. Cf. Kebede, "The Legal Aspect of Ethiopian-Somali Dispute", Horn of Africa 1978, Vol. 1, p.26.
27. Brownlie, African Boundaries, p. 849.
28. Hansard, June 4, 1946, Cols. 1840-41. Cited from Reisman, Self-determination in Western Somalia in International Legal Perspective.

29. Kebede, "The Legal Aspects of Ethiopian-Somali Dispute", Horn of Africa 1978, Vol. 1, p.27.
30. United Nations, Official Records, Trusteeship Council, 16th Sess., Suppl. No. 2, Report on Somaliland under Italian Administration, p. 9.
31. Op.cit. p. 10.
32. United Nations, Official Records of the Trusteeship Council, Eleventh Session, Supplement No. 4, T/947, para. 173. See also UN Doc. A/C.4/277 and Official Records of the Trusteeship Council, Sixteenth Session, Supplement No. 2, T/1143.
33. UN Inter-Agency Mission to Somalia, Report of the Mission to Somalia, 10-16 December 1979, p. 10.
34. UN Doc. A/AC.96/564, p. 57.
35. Somali Democratic Republic, A Request for Assistance from the Government of the Somali Democratic Republic for the Refugees, Mogadishu October 1979, p. 1.
36. Proffitt, "A Nasty Little War", Newsweek, December 10, 1979.
37. UN Inter-Agency Mission to Somalia. Report of the Mission to Somalia, 10-16 December 1979, p. 14.
38. Op.cit., p. 13.
39. Op.cit., p. 15.
40. A detailed account of the registration system is found in Melander-Nobel, Refugees in the Somali Democratic Republic, p. 8f.
41. UN Inter-Agency Mission to Somalia. Report of the Mission to Somalia, 10-16 December 1979, p. 11.
42. Op.cit., p. 12.
43. Statement delivered by H.E. Jaalle Major General Jama Mohamed Ghalib, Minister of Local Government and Rural Development of the Somali Democratic Republic to the Meeting of the Executive Committee of the United Nations High Commissioner for Refugees on the Refugee Situation in the Somali Democratic Republic, Geneva, Wednesday, 10 October, 1979. Cf. UN Doc. A/AC.96/SR. 307.
44. UN Inter-Agency Mission to Somalia, Report of the Mission to Somalia, 10-16 December, 1979, p. 4.
45. UN Doc. A/AC.96/564, p.61.

46. Letter from the Secretary-General of 11 February, 1980.
47. UN Doc. A/AC.96/564.
48. United Nations, *Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions*, 1978, p. 131.
49. See, for instance, Bergman-Andersson, *Somalia - en land-beskrivning*, Stockholm 1979, p. 6.
50. Similar provisions were found in the Constitution of 1960, Article 1 paragraph 1 and Article 2 paragraph 2.
51. "Unless otherwise provided by law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich, as it existed on 31 December 1937, as a refugee or expellee of German stock or as the spouse or descendant of such person".
52. "A person who is German on account of art. 116, para 1 of the Constitution, without holding the German citizenship, has upon application the right to be naturalized, unless there is indication that he implies a hazard for the external or internal security of the Federal Republic or one of its "Länder"."
53. Grahl-Madsen, *The Status of Refugees in International Law*, Vol. I, p. 268.
54. Op.cit. p.268.
55. GA Res. 428 (V) of 14 December, 1950.
56. About the "good offices procedure", see Melander, "The Protection of Refugees", *Scandinavian Studies in Law* 1974, p. 161 ff. Cf. Aiboni, *Protection of Refugees in Africa*, p. 52 ff.
57. GA Res. 1673 (XVI) of 18 December, 1961.
58. Report of the 7th Session of the Executive Committee of the High Commissioner's Programme, United Nations, General Assembly, 17th Session, Supplement No. 11, Report of the United Nations High Commissioner for Refugees, p. 32.
59. It is interesting to note that the second edition of the *Collection of International Instruments concerning Refugees*, published by the Office of the UNHCR contains the following footnote in connection with the Statute of the UNHCR: "In addition to refugees as defined in the Statute, other categories of persons finding themselves in refugee-like situations, have in the course of the years come within the concern of the High Commissioner in accordance with the subsequent General Assembly and ECOSOC Resolutions: - - -", p. 5.

60. Statement by the UN High Commissioner for Refugees to the Third Committee of the General Assembly, Monday, 12 November, 1979.
61. Emphasis added. The Pan-African Refugee Conference, Recommendation REF/AR/CONF/Rec.8.
62. GA Res/34/61 of 29 November 1979.
63. See, for instance, the Hungarian Constitution of 1949, Article 58 para. 2, which reads; "Foreign citizens, persecuted for their democratic attitude or their activities in the interests of the liberation of the peoples, enjoy the right of asylum in the Hungarian People's Republic." Cf. Lieber, Die neuere Entwicklung des Asylrechts im Völkerrecht und Staatsrecht, p. 256 ff.
64. These articles deal with Refugees unlawfully in the country of refuge, Expulsion and Prohibition of expulsion or return, respectively.
65. UN Doc. A/AC.96/549.
66. Recommendation IV. For text, see Melander-Nobel, International Legal Instruments on Refugees in Africa, p. 352.
67. REF/AR/CONF/Rec.6.
68. UN Doc. A/AC.96/SR.308, para. 54.
69. UN Inter-Agency Mission, Report of the Mission to Somalia, 10-16 December 1979, p. 17.
70. Reisman, "Self-Determination in Western Somalia", The 'Halgan' Symposium, Somalia and the World, Mogadishu, 15-20 October, 1979, p. 21.