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**THE INFLUENCE OF
INTERNATIONAL NORMS AND INSTITUTIONS ON
HUNGARIAN REFUGEE POLICY**

by

NATALIE ZEND, B.A. Hons.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

Master of Arts

Norman Paterson School of International Affairs

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ABSTRACT

This thesis examines the internationalization of Hungarian refugee policy between 1987 and 1996. At the international level, the United Nations-based refugee regime, which focuses on refugee protection and assistance, is gradually being undermined by an emerging European refugee regime that treats refugees as a security threat. The analysis suggests that Hungary's policy has shifted in a similar direction. This development results from the changing convergences of international influences and domestic imperatives related to nationalism and Hungary's place in the world. The argument is supported by discussion of the interplay of international and national objectives and institutions, and their effect on the state's choice of policy instruments. Drawing upon policy analysis literature and regime theory, the study takes an historical approach, relying heavily on primary sources. It concludes that the policy change signifies a shifting of the refugee burden to less capable states, with a corresponding erosion of refugee protection.

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CHAPTER ONE

INTRODUCTION

CONTEXT AND ANALYTICAL FRAMEWORK

Context

The collapse of the Iron Curtain has brought profound and wide-ranging change to the countries of East-Central Europe. For Hungary and its neighbours, it has meant a fundamental restructuring of economic and political systems, shaped by a rupture with the Eastern-oriented Communist past and a rapid opening to international Western dominated influences. Until 1989, Hungary had been largely isolated economically, politically, and culturally from the Western world. From that year on, it was suddenly and extensively affected by the forces of globalization. These have become increasingly pervasive in the last fifteen years in the non-Communist world: the accelerating international integration of markets, the opening of economic borders, faster and tighter global transportation and communications links, and greater interdependence among nations for handling a growing array of transnational issues.

These changes in the overall conditions in which governments function have led to the “internationalization” of the public policy process over that period in Western countries, and over the past seven or eight years in the former East Bloc. This internationalization is the “process by which various aspects of policy or policy making are

influenced by factors outside national territorial boundaries”.¹ Forces outside the borders of the individual state, such as international financial institutions, transnational corporations, banks, and multilateral institutions and fora and international non-governmental networks, increasingly exert influences on governmental policy. This has been documented by the recently published *Border Crossings: The Internationalization of Canadian Public Policy*, in which a number of authors examine a range of Canadian policy fields from banking and investment to agriculture, foreign affairs and welfare.² The present thesis proposes to extend this discussion to a post-Communist country, Hungary, by examining the evolution of Hungarian policy-making in the area of migration and refugees from 1988 to 1996.

Until 1987, Hungarian refugee policy had been largely unaffected by international norms or institutions. In fact, it would be an exaggeration to claim that Hungary even had a refugee policy, as understood in the international arena, at all. It had been essentially a source of emigrants fleeing the Communist regime and seeking better opportunities in the capitalist democracies of the West.³ There were only three notable exceptions to this rule: the influx of ethnic Hungarians who found themselves outside the new post-Trianon

¹ Bruce Doern, Leslie Pal and Brian Tomlin, “The Internationalization of Canadian Public Policy,” *Border Crossings: The Internationalization of Canadian Public Policy*, Bruce Doern, Leslie Pal and Brian Tomlin, eds. (Toronto: Oxford University Press, 1996), 3.

² Doern et al., eds. *passim*.

³ Approximately 3000 to 6000 Hungarians emigrated per year in the period between 1948 and 1989. About 550 were naturalized per year, and a maximum of 1500 settled but did not request citizenship. Boldizsár Nagy’s calculations, based on statistics of the Citizenship and Change of Name Branch, Ministry of Interior, “Menedék és remény: Magyarország helye a nemzetközi vándorlásban” [Refuge and Hope: Hungary in International Migration], *Jönnek? Mennek? Maradnak?* [Are They Coming? Going? Staying?] (Budapest: MTA Politikai Tudományok Intézete, 1993).

borders after 1919,⁴ Greek communist refugees from the 1949 civil war, and a few hundred Chilean communists who sought refuge after Allende's fall in 1973.⁵ When Hungary did take such refugees, they were admitted by the Central Committee of the Communist Party on purely political and ideological, rather than humanitarian, grounds. Section 67 of the Constitution, in force from 1949 to 1989, provided that "everybody who is persecuted for his democratic behaviour, or for his activity to enhance social progress, the liberation of peoples or the protection of peace, may be granted asylum."⁶ The definition was not influenced by pre-established international norms, rules or principles, nor was the decision monitored by the international community. Indeed, Hungary, like its Communist neighbours (except for Yugoslavia⁷) boycotted the international regime, largely on the grounds that it gave priority in protection to Soviet bloc dissidents.⁸

The isolation of Hungarian refugee policy from international influences was reversed in 1989 through the combined effect of a number of factors, including external migration pressures, domestic opinion, and Hungary's transition to capitalism and

⁴ The Treaty of Trianon of 1919 reduced Hungary to about one third of its previous size, as large territories were awarded to neighbouring countries, in particular Romania, Slovakia, and Yugoslavia.

⁵ There were 3200 Greeks and 1200 Chileans, according to Peter Timoranszky, ed., *A nemzeti kisebbségek és a menekültek jogai* [National Minorities and the Rights of Refugees] (Budapest: 1989), qtd. in Boldizsár Nagy, "Hungarian Refugee Law", *The Genesis of a Domestic Regime: The Case of Hungary*, Howard Adelman, Endre Sik and Géza Tessényi, eds. (Toronto: York Lanes Press, Inc., 1994), endnote 2, 62. See also Tóth Pál Péter, "Refugees, Immigrants and New Citizens in Hungary, 1988-1992," *Refugees and Migrants: Hungary at a Crossroads*, Maryellen Fullerton, Endre Sik and Judit Tóth, eds. (Budapest: Institute for Political Science of the Hungarian Academy of Sciences, 1995), 69-82.

⁶ Act XX of 1949, after amendment of 1972, paragraph 67, in Nagy, "Hungarian Refugee Law", 50.

⁷ Boldizsár Nagy, "Changing Trends, Enduring Questions Regarding Refugee Law in Central Europe," *Refugees and Migrants*, 32.

⁸ See Jim Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), 6-8.

democracy and reorientation toward the West. The initial policy challenge posed to the Hungarian government was a massive influx of mainly ethnically Hungarian Romanians who had been escaping ethnic discrimination under Nicolae Ceaucescu's regime since 1984, and in greater numbers since 1987. But this time the policy response was shaped not only by domestic prerogatives and the existing nationally determined legal and political structures, but by factors and agents outside its borders as well. Thus we can mark 1989 as the beginning of the internationalization of Hungarian state refugee policy. The most notable influence at first was the international United Nations-directed refugee regime for the protection of refugees. And since 1991, the emerging Western European asylum regime has had an increasingly prominent impact. Keith Banting comments that "powerful changes in the circumstances" within which governments operate "transform the intellectual and institutional screens that public policy ... pass[es] through".⁹ Hungary's political and economic transition has indeed had this effect.

Framework and Research Questions

It is these transformations, caused by the impact of international factors on domestic policy-making, that will form the main focus of this study. A central research question will therefore be how internationalization has affected Hungarian refugee policy. More specifically, to what extent and how have the international refugee regime, on one hand, and the regional--European--refugee regime, on the other, worked their way through the Hungarian government's policy process over time to influence the final outcomes?

⁹ Keith G. Banting, "Social Policy", Doern et al., 35.

However, to focus exclusively on how states' policies are increasingly determined by factors outside national territorial boundaries is to present a one-sided and likely simplistic view of reality. This is perhaps the greatest failing of writers who, applying dependency theory to the the former Soviet bloc, posit that what has been hailed as democratisation and the end of economic nationalism is in fact the colonization of East by West. This view, while convincingly argued by authors such as Peter Gowan, leaves little room for the influence of domestic factors or for self-determined action by Eastern European states.¹⁰ Thus it excludes an important part of the picture, since, even if the influence of external factors is increasing, domestic factors continue to play a role.

Indeed, the state is anchored both in "domestic society and in the international system"¹¹ and must "mediate and balance the pressures from these two domains".¹² In light of that, this paper will attempt to analyse Hungary's refugee policy within an analytical framework that leaves room for the bi-directional interplay between domestic and international forces. As Banting writes,

In part, the state seeks to protect domestic interests in the wider global context, seeking to nudge international developments in directions compatible with domestic interests. But in part, the state also conveys pressures emanating from the wider global context to domestic society, adapting public policy and domestic interests to international conditions that it cannot alter.¹³

¹⁰ Peter Gowan, "Neo-Liberal Theory and Practice for Eastern Europe", *New Left Review*, No. 213 (September/October 1995), 3-60. See also John Walton and David Seddon, "The Politics of Economic Reform in Central and Eastern Europe," *Free Markets and Food Riots: The Politics of Global Adjustment* (Cambridge, Mass.: Blackwell Publishers, 1994), 288-330.

¹¹ T. Skocpol, *States and Social Revolutions* (Cambridge: Cambridge University Press, 1979), 32.

¹² Banting, "Social Policy," 27.

¹³ *Ibid.*

Accordingly, this paper will take into account both the influence of domestic interests and actors and that of external--international *and* regional--pressures on the evolution of the Hungarian government's refugee policies. It will pay attention primarily to government responses to changing international and domestic pressures and constraints, yet without neglecting the ways in which Hungarian government officials have sought to shape international systems and events, or to adapt to those pressures in ways which suit their purposes.

The analysis will thus attempt to uncover the mix of interests that have motivated the Hungarian government to make the policy choices it made, concentrating on the interrelationships between the government and each of three key sets of actors. These are (1) the United Nations High Commissioner for Refugees (UNHCR), (2) Western European states and institutions, and (3) Hungarian civil society. An underlying assumption of the analysis is that the convergences and collisions of these actors' interests with those of the government are what determine policy outcomes and their evolution. Policy is presumed to be the product of these interlinked agents exerting and undergoing power, conditioning and constraining the conditions in which the others operate and thus influencing each other in a dynamic process. Foucault's definition of power aptly expresses the mutual, dialectic power relationships that inform policy choices:

Power is employed and exercised through a net-like organization. And not only do individuals [or in this analysis, collective actors] circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power. They are not only its inert or consenting target; they are always also the elements of its articulation.¹⁴

¹⁴ Michel Foucault, "The Juridical Apparatus," *Legitimacy and the State*, William Connolly, ed. (New York: New York University Press, 1984), 212-213.

Thus the process through which Hungarian refugee policy has developed is conceived as the result of the interaction between the specified actors pursuing their own ends, which are defined in part by the other actors within the overall political, economic and practical context.

Hypothesis

In accordance with the analytical framework outlined above, this thesis will argue that the focus of Hungarian refugee policy changed from refugee protection and assistance between 1987 and 1991 to migration control after 1991 as a result of the changing convergences of international/ regional influences and domestic imperatives.

The internationalization of Hungarian refugee policy has not impacted on policy ideas, processes, or outcomes in a cohesive or unified way. Instead, two often competing international influences--the international refugee regime and the emerging European asylum regime--have frequently pushed and pulled Hungarian policy-makers in diverging directions. On one hand, the international regime has promoted the development of a humanitarian refugee policy geared toward protecting and assisting refugees. It exerted the greatest influence during the development of a first generation of refugee-related laws and policies from 1989 to 1991. On the other hand, Western European policy trends have increasingly influenced refugee-related policy-making in ways that "profoundly transform... the traditional system of political asylum and weaken... the principles, norms,

rules and procedures of the international refugee regime.”¹⁵ The latter are becoming increasingly dominant.

The change corresponds to a worldwide transformation in the context in which refugee policy is envisioned. From a Cold War focus on protecting dissidents from enemy states, Western states have moved to a concern with the threat of increased migration assumed to be an inevitable concomitant of globalized markets and communications. This has transformed the policy field “from a question of human rights to a problem of domestic and international security and cultural identity.”¹⁶

However, the change in policy focus also coincides with evolving domestic pressures in the face of changing patterns of migration. Specifically, Hungary’s policy has been shaped by an overall concern to secure the nation’s ethnic and cultural identity by excluding non-Hungarians, and especially non-Europeans, and including members of the Hungarian diaspora when necessary. Initially favourable toward the largely ethnic Hungarian Romanian refugees, public opinion was less enthusiastic about an increased proportion of non-Hungarian refugees who appeared between 1991 and 1995 as a result of the war in Yugoslavia from 1991-1995. The growing number of refugees and irregular migrants from the East and especially from outside Europe failed to arouse the same compassionate public response. Indeed public fear within the domestic polis militated for

¹⁵ Sandra Lavenex, “Transgressing borders: The emergent European refugee regime and ‘safe third countries’”, Paper prepared for the International Science Association conference (Toronto: 18-20 March, 1997), 2.

¹⁶ Lavenex, 20

policies to restrict such flows, and human rights NGOs have been too weak and disunified to successfully fight xenophobic attitudes.

The overarching argument will be made through the examination of the ways in which international pressures, co-acting with domestic ones, have transformed the “intellectual and institutional screens that public policy pass[es] through”.¹⁷ Thus the paper will first examine the way in which the ideas embodied by the two regimes have interacted with the aspirations of the state to set the policy agenda and define the issues. Next, it will focus on interaction and cooperation between Hungarian government actors and (1) UNHCR, (2) European decision-making fora, and (3) Hungarian civil society, evaluating the institutional reasons for their relative impact on Hungarian refugee policy. Finally, it will show how the interplay of international, regional, and domestic actors and interests have played themselves out over time in the government’s choice of policy instruments.

METHODOLOGY AND SOURCES

In order to investigate the impact of internationalization on Hungarian refugee policy, this thesis will employ an historical approach, seeking to observe and analyze changes in the policy from 1987 to 1996 and the factors that account for them. As will be detailed in the section on structure below, for each section of the thesis, information gathered from primary and secondary source material will be evaluated in the light of the relevant bodies of policy analysis and regime theory literature.

¹⁷ Banting, 35.

Conclusions will be based on analysis and synthesis of secondary source material, including articles and books on subjects such as the international refugee regime, European refugee policies, and Central/East Europe's political and economic transition. Other relevant secondary sources deal with influxes of refugees and migrants to Hungary; Hungary's refugee, immigration, and border control laws and policies; and the institutions that devise or implement them. Primary material will also form an important source of information and insights. This includes texts of international and regional conventions and agreements, as well as information gathered over three months of field research in Hungary. Among these are: texts of laws and regulations; reports of surveys; conference and meeting minutes; budget proposals; program reports; public information documents, and statistics. The study will also make use of semi-structured interviews conducted with government officials, staff of international organizations and non-governmental organisations (NGOs), academics, and refugees themselves. Direct observation of the provision of assistance in refugee camps, detention centres, municipalities, and during repatriation will also inform the analysis.

CONCEPTS AND OBSERVATIONS

Before moving on to a preview of the arguments presented in each chapter and the theoretical material that will inform them, it may be helpful at this point to make some preliminary observations about the two international policy influences to be analyzed : the international refugee regime and the emerging European refugee regime.

The International Refugee Regime

Hungary initially opened itself to international influence on the question of refugee policy in October 1989, when it became the first satellite country to break with the traditional Communist position and accede to the international refugee regime. The regime's 'principles, norms and rules' are specified in a body of international law comprising a number of sources, primarily international conventions and international custom, and secondarily, judicial decisions and the teachings of academics.¹⁸ The centrepiece of the regime is the 1951 Geneva Convention relating to the Status of Refugees¹⁹. This binding international convention provides a universal definition of refugees which all signatory states are obliged to follow in determining entitlement to protection and assistance. According to Article 1 of the Convention, a refugee is:

Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality [or habitual residence] and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.²⁰

The key to the definition is the "persecution standard", according to which the applicant must show a "well founded fear" of persecution based on one of the five grounds. Victims of civil war, foreign domination, or human rights violations are not considered refugees according to the Convention unless they face a personal threat. War criminals, refugees

¹⁸ This is the classification and analysis provided by Atle Grahl-Madsen, in *The Status of Refugees in International Law*, Vol. 1: *Refugee Character* (Netherlands: A.W. Sijthoff-Leiden, 1966), 28-52.

¹⁹ United Nations *Treaty Series*, vol. 189, p. 137.

²⁰ Art. 1, A(2), 1951 Geneva Convention Relating to the Status of Refugees, in Office of the United Nations High Commissioner for Refugees (UNHCR), *Collection of International Instruments Concerning Refugees* (Geneva: UNHCR, 1988), 11.

already given asylum in a host country, and refugees receiving aid from other UN agencies are excluded from refugee status. Those who have obtained protection from their state of origin or a host state, and those whose causes for flight have vanished, cease to benefit from refugee status.

The heart of the international regime is the principle of *non-refoulement*. This principle dictates that no person should be sent or returned to a country where (s)he faces a threat of persecution. Furthermore, expulsion is also prohibited, save on the grounds of national security or public order (Ch. 5, Art. 32). This means that states must individually assess refugee claimants before sending them back to countries where they could face such a threat. Thus although the Convention does not explicitly establish any right to asylum, these norms imply that at least temporary asylum must be granted by states in which refugees find themselves, until they are able safely to return home or find haven in another country.

The Convention also obliges state signatories to provide refugees with the same standard of treatment as other nationals with regards to access to courts, rationing, primary education, and public relief, among others (Chs. 2-5). They must provide equally favourable treatment compared to other aliens in such areas as property rights, rights of association, wage-earning employment, self-employment, housing, and freedom of movement (Chs. 2-5). Originally the Convention limited the scope of mandatory international protection to refugees whose flight was motivated by a pre-1951 event in Europe, but the 1967 Protocol relating to the Status of Refugees removed these limits.²¹

²¹ United Nations *Treaty Series*, vol. 606, p. 267.

Provisions of other agreements also have a bearing on the treatment of refugees. These include conventions on related issues like refugee seamen²² and statelessness,²³ human rights,²⁴ and humanitarian law, crucial to the protection and assistance of refugees in situations of war.²⁵

At the centre of this legal regime is UNHCR, an intergovernmental organization founded in 1950 with a mandate to provide “international protection to refugees” and to seek “permanent solutions for the problem of refugees”.²⁶ It is the main organ to promote compliance with international refugee law, particularly the 1951 Convention. On the international level, it is the central locus of ‘decision-making procedures,’ the final element of an international regime. It has no power or mechanisms to *enforce* the compliance of states, but it does *promote* such compliance in various ways. For example, it encourages international information exchange; trains the public, NGO and UNHCR staff, and public officials in refugee law. It also counsels refugees and asylum seekers, drafts guidelines for

²² Hague Agreement relating to Refugee Seamen of 23 November 1957, in Grahl-Madsen, vol. 1, 33.

²³ Convention relating to the Status of Stateless Persons of 28 September 1954, United Nations *Treaty Series*, vol. 360, 117; United Nations Convention on the Reduction of Statelessness of 30 August 1961, United Nations *Treaty Series*, vol. 11, 1090, in Grahl-Madsen, vol. 1, 34.

²⁴ Because the 1951 Convention bases its refugee definition on “a well-founded fear of persecution”, and one type of persecution is the gross or cumulative violation of human rights, human rights instruments are a crucial basis for refugee law. In addition, promotion and monitoring of respect for human rights is an essential way to prevent refugee flows. For these and other refugee-related instruments, see UNHCR, *Collection*.

²⁵ Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, United Nations *Treaty Series*, Vol. 75, 287, in Grahl-Madsen, vol. 1, 35; Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, in UNHCR, *Collection*, 96-98.

²⁶ Statute of the Office of the United Nations High Commissioner for Refugees, Annex to General Assembly Resolution 428 (V), adopted on December 14, 1950, in UNHCR, *Collection*, 5.

the protection of specific groups of refugees, consults with governments, and sends *notes verbales*. In addition, it coordinates the assistance, settlement and repatriation activities of state agencies and NGOs, and monitors state action in many refugee-related areas.²⁷ The 1951 Convention obligates states to “co-operate with [UNHCR]...in the exercise of its functions.”²⁸

In sum, the core elements of the international regime are the principle of international cooperation for the protection of refugees, the norms laid out by the treaty, notably that of *non-refoulement*, and the rules and decision-making procedures laid out by the UNHCR’s Executive Committee. The regime contributes to the internationalization of Hungarian refugee policy in much the same way as Andrew Cooper and Leslie Pal contend human rights regimes do to human rights policy: it is an “attempt, through foreign policy, to establish a definition or history of recognized rights that has its source in international law; and [an] attempt, through domestic policy, to ensure that that definition or list governs domestic programs and practices.”²⁹

The Emerging Western European Asylum Regime

Less prominent during most of the Romanian refugee crisis which began in 1987, the emerging European refugee regime has been increasingly influential for Hungarian refugee policy since 1991. While the international regime is driven largely by humanitarian

²⁷ See UNHCR, “Note on International Protection”, Executive Committee of the High Commissioner’s Programme, 45th session (7 September 1994) A/AC.96/830 for more details on UNHCR activities.

²⁸ Chap VI, Art. 35.

²⁹ Andrew F. Cooper and Leslie A. Pal, “Human Rights and Security Policy,” *Border Crossings*, 209-210.

goals, this regional European regime originated as an externality or by-product of economically motivated efforts to facilitate the free movement of goods and people within Europe by abolishing internal border controls. States deem it necessary to find ways of compensating for the threat of an increase in dangerous cross-border activity raised by the prospect of an internal market. They are also concerned about the cost to each state of treating asylum claims.

The regime's principles, norms and rules are embodied in three main regional agreements: first, the Schengen Implementation Agreement of June 19, 1990, implemented by seven of nine members in 1995; second, the Dublin Convention on the State Responsible for the Examination of an Asylum Claim of June 15, 1990, together with the draft Convention on the Crossing of External Borders; and third, the Treaty on European Union (Maastricht Treaty, effective January 1, 1993).³⁰ The first two converge in implementing a system to minimize the number of asylum determination procedures. They do this first by restricting entry into signatory states through (1) enhanced border controls, (2) visa requirements, (3) travel document requirements, and (4) carrier sanctions, whereby airline companies pay fines for or return any passengers arriving without proper travel documents. Second, they establish a system to determine which member state has unique responsibility for processing a particular asylum claim.

³⁰ Louise Drücke, "Refugee Protection in the Post Cold War Europe: Asylum in the Schengen and EC Harmonization Process," *Les accords de Schengen: Abolition des frontières intérieures ou menace pour les libertés publiques?: Actes du colloque tenu à Luxembourg les 18 et 19 juin 1992 [The Schengen Agreement: Abolition of Internal Borders or a Threat to Public Liberties?: Papers from a seminar held in Luxembourg, June 18 and 19, 1992]*, Alexis Pauly, ed. (Maastricht: European Institute of Public Administration, 1993), 126.

Within the framework of the Third Pillar of the Maastricht Treaty, the London Resolutions of November 30/December 1, 1992³¹ follow the same logic as Schengen and Dublin, in that they aim to limit access to refugee status determination procedures. First, they provide for accelerated procedures or a higher burden of proof for “manifestly unfounded” refugee claims, when claimants’ fear of persecution in their country is clearly ungrounded, their claim unrelated to the Convention definition, or their credibility highly questionable. Second, they apply the “safe third country” rule to all countries, including those outside the European Union (EU), designated as “safe”. This means that the Schengen and Dublin measures to assign sole responsibility to one signatory state, generally the first state entered by the claimant, are now extended to a large number of non-Community states including Hungary and its Eastern European neighbours. Thus, if asylum claimants have passed through (however briefly) a country where they could theoretically have submitted an asylum application, they may be returned to that country without examination. Third, they foresee accelerated procedures for claimants originating from “safe countries of origin”, which are to be listed by signatories according to common criteria. In addition, other similarly restrictive policies can be increasingly observed within specific states. These include suppressing appeal procedures, limiting health and social assistance and prohibiting work, increasing the number of deportations, and choosing a narrow interpretation of the Convention refugee definition.³²

³¹ Conclusions of the Meeting of the Ministers Responsible for Immigration, 10518/92, London 30.11.-1.12.1992, cited in Lavenex, 7.

³² This section is based on Lavenex, 3-9; Mike King, “The Impact of EC Border Policies on the Policing of ‘Refugees’ in Eastern and Central Europe,” *Innovation*, Vol. 5, No. 3 (1992), 7-21; François Crépeau, “Regional Agreements: Protection of Refugees or Protection of States?”, *Globalism and Regionalism: The Challenge of Population Movements*, *Proceedings of the 1995 Conference of the*

The core of the regime, as Sandra Lavenex summarizes it, is “the institutionalization of a system of negative redistribution based on the principle of ‘safe third countries’, which aims at the relief of domestic asylum procedures in the EU Member States through the limitation of access and the adoption of responsibility rules.”³³ Some of the devices adopted within this emerging regime, such as carrier sanctions and visa and travel document requirements, fail to distinguish genuine refugees from economic migrants. Others, such as the “manifestly unfounded claim” and “safe country of origin” rules, bar asylum seekers from having their claims heard according to the requirements of international refugee law. Finally, the “safe third country” rule transfers state responsibility for processing asylum claims without ensuring harmonized asylum rules and procedures. In these ways, the emerging European refugee regime profoundly challenges the core principle of the international refugee regime, *non-refoulement*, as well as its other norms, rules and procedures.

THESIS STRUCTURE

To show how these two regimes, interacting with domestic influences, have influenced the evolution of Hungarian refugee policy since 1987, this thesis will examine their impact on domestic ideas related to refugee policy, their institutional interaction with relevant government agencies as well as non-governmental actors, and their effects on the

Canadian Council of International Law: Globalism and Regionalism: Options for the 21st Century (1995), 168-176; Crpeau, “Refugee Policies are Globalized and They Must Be Improved,” *Refugee Update*, No. 29 (Summer 1996), 1-3, and Roel Fernhout, “‘Europe 1993’ and its refugees,” *Ethnic and Racial Studies*, Vol. 16, No. 3 (July 1993), 492-505.

³³ Lavenex, 6.

government's choice of policy instruments. The analysis will be conducted as described below.

Following this introduction, the second chapter will study the policy effects of the interaction between the ideas embodied in the international and regional regimes, social attitudes toward foreigners, and domestic aspirations related to nationalism and Hungary's place in the world. Two sets of factors-- relating respectively to nationalism and to security--have contributed to Hungary's mix of generous and restrictive refugee policies. First, the humanitarian ideas promulgated by the UNHCR were adopted when they were taken to symbolize Western values and when they meshed with societal concern to preserve and protect the Hungarian nation. When the proportion of ethnic Hungarian refugees diminished and group identification based on ethnicity, culture and language was narrowed to exclude non-citizens, as Csepli and Sik argue,³⁴ the utility of the international regime in achieving Hungarian policy goals diminished.

Second, as commentators such as Myron Weiner contend, the concept of security has broadened in European discourse to include societal factors such as migration and refugees.³⁵ As a result of a combination of pre-existing public xenophobia, real economic and international constraints, and a process of internalization of European ideas, Hungarian policy-makers have now largely adopted this understanding of refugee flows and the accompanying restrictive policies. These changes in circumstances and the

³⁴ György Csepli and Endre Sik, "Changing Content of Political Xenophobia in Hungary--Is the Growth of Xenophobia Inevitable?", *Refugees and Migrants*, 121-128.

³⁵ Myron Weiner, "Introduction: Security, Stability and International Migration," in *International Migration and Security*, Myron Weiner, ed. (San Francisco: International Migration and Security, 1993.), 1-35.

“securitization” of refugees have helped to delegitimize the international regime while validating the European one.

This chapter will draw upon theoretical works such as Sikkink and Goldstein’s³⁶ pieces about the impact of ideas on policy, Cobb, Ross and Ross’ typology of agenda building processes,³⁷ and Weiner³⁸ and Loescher’s³⁹ works about the security implications of migration. Primary sources will include government speeches, public information documents, and interviews with government officials, public opinion surveys, and minutes of parliamentary meetings.

The third chapter will turn to institutional issues, examining how policy institutions, namely those of the international and the regional refugee regimes, and policy networks in civil society have interacted with the Hungarian government in the policy process. It will first examine conflict, cooperation, and co-action between the UNHCR and the government over the years. The organization’s influence, it will be argued, has been greatest when its agenda and the interests of the government meshed, and only minimal otherwise, because the HCR has neither the leverage nor the enforcement power to impose compliance with its rules. This analysis supports the “modified structural”

³⁶ Kathryn Sikkink, *Ideas and institutions: Developmentalism in Brazil and Argentina* (Ithaca, N.Y.: Cornell University Press, 1991), and Judith Goldstein, “The impact of ideas on trade policy: The origins of U.S. agricultural and manufacturing policies,” *International Organization*, Vol. 43 (1989), 31-71, summarized in Albert Yee, “The Causal Effects of Ideas on Policies,” *International Organization*, Vol. 50, No. 1 (1996), 88.

³⁷ R. Cobb, J.K. Ross and M.H. Ross, “Agenda Building as a Comparative Political Process,” *American Political Science Review*, Vol. 70, No. 1 (1976), 12, qtd. in Howlett and Ramesh, 105.

³⁸ Weiner, “Introduction.”

³⁹ Gil Loescher, “Refugee Movements and International Security,” *Adelphi Papers* 268 (Summer 1992), 37.

approach to regimes adopted by such authors as Stein, Keohane, Jervis, Ruggie, Lipson, and Cohen.⁴⁰ In this view, regimes affect state behaviour only when state objectives cannot be achieved through self-help alone. UNHCR internal reports and interviews with UNHCR officials, as well as information on government policies, will form the primary sources for this section.

Next, the chapter will turn to the growing participation of Hungary in regional and continental decision-making processes. In contrast to the UNHCR, it will argue, the Western European regime is equipped to influence Hungary with both carrots: the prospect of joining the EU, and sticks: the threat of becoming Western Europe's dumping ground for migrants and asylum-seekers. At the organizational level, this leverage is what accounts for the European regime's effectiveness relative to the UN-based regime. Secondary sources on European cooperation, government reports, speeches, internal documents, and interviews with government officials will inform the analysis.

A third section will examine the evolution of refugee-related NGOs in Hungary and their relationships with the Hungarian government. It will argue that NGOs had an important role in setting the initial "humanitarian" agenda and thus in facilitating the influence of the international refugee regime. They were initially part of what policy analysts such as Katzenstein and Howlett and Ramesh call a policy network, in which they

⁴⁰ See Arthur Stein, "Coordination and collaboration: regimes in an anarchic world", 115-140; Robert Keohane, "The demand for international regimes", 141-172; Robert Jervis, "Security Regimes", 173-194, John Gerard Ruggie, "International regimes, transactions, and change: embedded liberalism in the postwar economic order", 195-232; Charles Lipson, "The transformation of trade: the sources and effects of regime change", 233-272; and Benjamin J. Cohen, "Balance-of-payments financing: evolution of a regime", 315-336), in *International Regimes*, Stephen D. Krasner, ed. (Ithaca and London: Cornell University Press, 1-21).

were joined with the state in formulating and implementing policy.⁴¹ However, as the government took over refugee assistance from the civil sector, NGOs lost much of their influence. They continued to supplement government assistance programs. However, they lacked unity as a group as well as resources and qualified personnel, and were now opposing, rather than supporting, the dominant trends in state refugee policy. As a result, they were unable to rebuild a policy network. This impeded them from effectively combatting the European influence and inciting the government to adopt protection-oriented policies. Conclusions in this section will be based primarily on interviews with NGO staff and NGO internal and public information documents.

The fourth chapter will evaluate the extent to which the Hungarian government's choice of policy instruments in the field of asylum reflects the principles, norms and rules of the international refugee regime, or those of the regional regime, or, in some cases, a combination of the two. It will show that while, initially, Hungary's chosen policy instruments were largely congruent with those promoted by the UNHCR, those chosen more recently have been more similar to those adopted in Western Europe. Throughout, nationalism--the initial desire to privilege ethnic Hungarians and later to exclude foreigners--also informed policy choices. The result is a policy with a combination of liberal and restrictive elements, but where the clear trend is toward the latter. A number of selected instruments will be discussed in detail in an attempt to uncover the domestic and international forces that led to the adoption of each element. This will be achieved

⁴¹ Peter Katzenstein, "Conclusion: Domestic Structures and Strategies of Foreign Economic Policy," *International Organization*, Vol. 31, No. 4 (1977), and Howlett, Michael and M. Ramesh. *Studying Public Policy*. Toronto: Oxford University Press. 1995.

partly by examining the historical processes by which these instruments were chosen, and partly by comparing the instruments to the norms, principles and rules of each of the two regimes.

Three categories of instruments will be discussed: (a) those relating to the legal definition of the term “refugee” and the procedure for determining refugee status under the 1951 Convention, (b) those connected to the temporary protection of war refugees from former Yugoslavia, and (c) those involving the treatment of potential refugees entering illegally. Chapter four will draw on secondary sources on the international regime, the regional regime, and Hungarian policy, as well as on texts of laws, state and UNHCR documents, government statistics, and interviews.

The final chapter will summarize the findings presented. It will then seek to explore their implications for our understanding of the impact of the internationalization of the policy-making process. Finally, it will draw out the implications for the future protection and assistance of refugees. This introduction has attempted to lay out the context and analytical framework, hypotheses, methodology and structure of this study. In the following chapter, a broad picture will be painted of the contradictory influences and changing direction of Hungarian asylum policy between 1987 and 1996, through a discussion of the ideas which shaped it.

CHAPTER TWO

THE INTERPLAY OF INTERNATIONAL INFLUENCES AND DOMESTIC IMPERATIVES

This chapter will provide a broad chronological overview of the period under study. It will examine the domestic interests that drove refugee policy as well as shifts in the realities of migration flows. As circumstances changed, it will argue, the ideas embodied in the international regime became less appealing, while the attraction of the European regime's grew. Policy-making in the period can roughly be divided into two phases. In the first, up to 1991, humanitarian policies compatible with those of the international refugee regime prevailed. In the second, from 1991 on, refugees were increasingly treated as a security threat, in harmony with trends in Western Europe. In both periods, nevertheless, the same two overarching goals were the driving forces behind refugee policy. On one hand, the government sought to secure national identity. On the other, it wished to see Hungary become part of the Western world. What changed from one period to the next were not the state's ultimate objectives, but the circumstances in which those were to be achieved.

In the first phase, it will be argued, accession to the international regime was the means to achieving both objectives. It served the first aim by facilitating a generous response to the influx of ethnic Hungarians from Romania, and the second, by demonstrating Hungary's commitment to Western ideals about human rights. In the second phase, following the policies of the European regime became a more effective way

of achieving those same goals. As economic and social conditions worsened, public interest in receiving the Romanian refugees diminished. With larger numbers of non-Hungarian refugees, keeping foreigners out became the way to secure national identity instead, while joining the European Union became the way to reach the second goal.

REGIME IDEAS AND STATE OBJECTIVES

Each of the two refugee regimes that affect Hungarian refugee policy contains a set of ideas. The UN-based regime focuses on humanitarian values, and privileges such concepts as “refuge”, “asylum”, “protection” and “assistance”. The European regime, in turn, is centrally concerned with the notions of “security” and “control”.⁴² As Kathryn Sikkink and Judith Goldstein argue, sets of ideas are “encased” and “embedded” within international institutions.⁴³ Indeed, regime theory implies that a central component of international regimes is the ideas, in particular, the principles and norms, which they embody. This is because regimes are most commonly defined as sets of “implicit or explicit *principles, norms*, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations.”[my emphasis]⁴⁴ In

⁴² For a summary of both sides of the debate, see Béla Jungbert, “Refugees on photos: on paper and alive”, *Menekültek Magyarországon II/Refugees in Hungary II* (Budapest: Office for Refugees and Migration Affairs, 1996), 23.

⁴³ Kathryn Sikkink, *Ideas and institutions: Developmentalism in Brazil and Argentina* (Ithaca, N.Y.: Cornell University Press, 1991), and Judith Goldstein, “The impact of ideas on trade policy: The origins of U.S. agricultural and manufacturing policies.” *International Organization*, Vol. 43 (1989), 31-71, summarized in Yee, 88.

⁴⁴ Stephen D. Krasner, “Structural causes and regime consequences: regimes as intervening variables,” in *International Regimes*, Stephen D. Krasner (Ithaca and London: Cornell University Press, 1983), 2.

Hungary's case, these sets of ideas gained acceptance only when they corresponded to Hungary's interests.

In 1989, when Hungary acceded to the international refugee regime, the relevance of the ideas encased within it was being deeply questioned in the West by academics and refugee advocates. Yet despite this, Hungary initially espoused those ideas. Changes in causes and patterns of refugee flows, Western commentators argued, had rendered the regime inadequate to coping with current refugee problems. Thomas Franck argues that rules in international law can be made to lose their legitimacy under altered conditions, and this is indeed what has been happening to the 1951 Convention.⁴⁵ Yet in Hungary's case, as will be shown, the Convention *did* help the state cope with the flood of refugees from Romania. Only later did Western criticisms become relevant to Hungary. The principal such critique has been that the regime was originally intended to aid European refugees displaced by Nazi persecutions and affected by Communist repression. The Convention refugee definition adopted in this situation--with its emphasis on individualized persecution--has been critiqued as woefully inadequate in the face of involuntary migration caused by wars, internal violence, or massive violations of human rights.⁴⁶ Critics have also pointed out UNHCR's inability to enforce the regime's norms (see Chapter Three) and its lack of resources for the direct provision of adequate assistance and protection.

⁴⁵ Thomas Franck, *The Power of Legitimacy Among Nations*.

⁴⁶ Much critical literature has been produced on the international refugee law and the UNHCR. See for example, Jack I. Garvey, "Toward a Reformulation of International Refugee Law," *Harvard International Law Journal*, Vol. 26, No. 2 (Spring 1987), 483-500; Guy Goodwin-Gill, "UNHCR and International Protection: New Directions," *World Refugee Survey* (Washington: 1993), 14-19; Kjaerum Morten, "Temporary Protection in Europe in the 1990s," *International Journal of Refugee Law*, Vol. 6 (1994), 444-456.

Many commentators have called for stronger, more inclusive and more appropriate norms and procedures for the protection of refugees. Yet at the same time, most protection literature implicitly acknowledges that asylum and resettlement are no longer panaceas. Among academics, NGOs and even in UNHCR circles, increasing emphasis is placed on countries of origin--rather than of asylum--and the need for prevention and a focus on repatriation as the durable solution of choice. This delegitimization of the outdated norms of the Convention, however, has tended to complement an increased focus on keeping asylum-seekers out of potential host countries and transferring responsibility to countries of origin. Thus the ideas encased in the regional regime have been gaining legitimacy since the early to mid-1980s. This is despite the current High Commissioner's belief that attention to prevention and solutions is no substitute for an ongoing commitment to protection through temporary or permanent asylum when necessary.⁴⁷

Given that the ideas of the UN-based regime were already in the process of being discredited in this way by many, it is interesting that Hungary nevertheless focused originally on the humanitarian core of the international regime. It was not until migration flows changed in their ethnic composition and other characteristics that the state became more receptive to the influence of Western European migration policies. The influence of each of the two regimes thus has had much to do with the varying fit between the policy ideas it embodies and the domestic economic and political circumstances of the time as

⁴⁷ Sadako Ogata, *Report of the Executive Committee of the UNHCR, 46th session (A/AC.96/SR.499)*.

they affect state objectives. As Hall asserts, “persuasiveness [of a policy idea] is an inherently relational concept.”⁴⁸

HUNGARIAN REFUGEE POLICY, PHASE I (1987-1991)

Initially, in the period from 1987 to 1991, corresponding to the first two “waves” of refugees (from Romania and Germany), Hungary’s refugee policy largely accorded with the humanitarian ideas encased in the international refugee regime.⁴⁹ Indeed, it will be shown that from 1989 onward, the ideas of the regime were adopted by Hungarian policy-makers, on the initiative of nongovernmental groups, because they fit well with state objectives under the political circumstances of the time. First, accession to the regime was in itself a powerful political symbol of Hungary’s “liberalization” and democratization, demonstrating the state’s newfound commitment to Western ideas. Second, the regime’s focus on protection fit well with public and official concern to help ethnic Hungarian refugees escaping persecution in neighbouring countries, particularly Romania. Public authorities, it will be argued, have in fact used membership in the regime in order to pursue the nationalist goal of protecting ethnic Hungarians from neighbouring countries.

⁴⁸ Peter A. Hall, “Introduction and Conclusion,” *The Political power of economic ideas: Keynesianism across nations*, ed. Peter A. Hall (Princeton, N.J.: Princeton University Press, 1989), 372. qtd. in Yee, 93.

⁴⁹ As will be explained, one can only speak of a *state* refugee policy from 1989 on. Until that year, responses to the influx of refugees took place exclusively within civil society.

A Humanitarian Approach in the Spirit of the International Refugee Regime

Hungary's response to the Romanian and German influxes indeed corresponded to the humanitarian orientation promoted by the international refugee regime. Romanians had been migrating illegally to Austria and Sweden through Hungary since the early 1980s. When those countries imposed visa requirements in early 1987, many of the Romanians were forced to remain in Hungary. Hungary made their flight possible by unilaterally and unofficially suspending a bilateral agreement which required the automatic return of Romanian citizens arriving without state exit permits.⁵⁰ Yet it was not until 1988 that the influx became part of the government's policy agenda. Up to that time, the state largely ignored the phenomenon, because according to the policies of the Socialist era, (a) refugee status could be granted only to those who fought for the socialist cause, and (b) citizens of the Warsaw Pact countries could cross the Hungarian border with valid tourist passports and stay without visas.⁵¹ Moreover, the state-controlled media initially spoke of "foreigners temporarily residing in Hungary", only later adopting the term of "Transylvanian refugees" widely used in civil society.⁵² An emerging network of NGOs and church groups, however, responded immediately by caring for the newcomers' basic needs.

⁵⁰ Hungarian Ministry of Foreign Affairs, "Activities of the Republic of Hungary Regarding International Refugee Matters and Migration," *Fact Sheets on Hungary 1993*, No. 3 (Budapest: MTI, 1993), 1.

⁵¹ Endre Sik and Judit Tóth, "The Role of Governmental and Nongovernmental Organisations in Hungarian Refugee Policy," *The Genesis*, 66.

⁵² Géza Tessényi, "The Development of Immigration and Refugee Policy in a New Host Country: The Case of Hungary," *The New Refugee Hosting Countries: Call for Experience—Space for Innovation*. R. Baer and G. Tessényi, eds. (Utrecht: SIM, Special No. 11), 112.

These groups in civil society, along with the public and the growing political opposition, pressed the government to take responsibility for the newcomers and establish a state-run support system.⁵³ In this way, the state policy agenda was set according to what Cobb, Ross and Ross call the “outside initiation model”, in which “issues arise in nongovernmental groups and are then expanded sufficiently to reach, first, the public [systemic] agenda and, finally, the formal [institutional] agenda.”⁵⁴ Gradually, the state took over responsibility from civil society for supporting the asylum seekers.

The first sign of the government’s intentions to take a humanitarian approach to the issue was a declaration in January 1988 that it would provide shelter to the newcomers. In March, Parliament established a “Settlement Fund” allocating money from the budget for welfare, education, health care, housing and administration for the refugees. It also established the Interministerial Coordinating Committee and its local affiliates, which was run by the Ministry of Internal Affairs and included several relevant ministries, mayors, the Red Cross, the police and the State Office of Church Affairs. The committee was to spread information, bridge legal gaps, coordinate activities, allocate the Fund, and discuss policy matters.

In March, 1989, the state signed onto the international refugee regime, signalling that it accepted international standards of refugee treatment. Then, basic legal rules were issued on the process of asylum, the distribution of the Settlement Fund, the operation of the three refugee centres opened at that point, and the legal status of refugees. The

⁵³ Ibid.

⁵⁴ R. Cobb, J.K. Ross and M.H. Ross. “Agenda Building as a Comparative Political Process.” *American Political Science Review*, Vol. 70, No. 1 (1976), 12. qtd. in Howlett and Ramesh, 105.

Ministry of Interior then established a Department of Refugee Affairs, overriding the Interministerial Coordinating Committee.⁵⁵ The state further showed its adherence to humanitarian ideas by granting the asylum seekers residence and work permits without preconditions, and allowing them full freedom of movement within the country. In addition, authorities simplified the administrative procedures for certifying professional qualifications and taking bank loans.⁵⁶ Overall, the state response focused on assistance and protection to the approximately 30,000 Romanian asylum seekers that had arrived by the end of 1989.⁵⁷

Hungary's response to the "second wave" of 10,000 East German refugees similarly conformed to humanitarian ideas. When East Germans began pouring across the border in the late summer of 1989, Hungarian authorities took no steps to block the "visitors", who as citizens of a Warsaw Pact country did not require entry visas if they entered as tourists.⁵⁸ NGOs and the general public responded generously with short-term assistance for the refugees, but the government realized that it would be incapable of coping with the influx much longer. In a landmark historical move, the Hungarian government--at the initiative of Gyula Horn, then foreign minister--unilaterally opened the border with Austria in September 1989, allowing these people ultimately to enter West

⁵⁵ Sik and Tóth, "The Role," *passim*.

⁵⁶ Boldizsár Nagy, "The Refugee Situation in Hungary: Where Now?" *Acta Juridica Hungarica* (1993), Vol. 35, No. 3-4, 197.

⁵⁷ ORMA statistics, cited in Géza Tessényi, "The Development," 111.

⁵⁸ *Ibid*.

Germany. This decision had important ramifications as it contributed both to the German unification process and to the collapse of the iron curtain.⁵⁹

The Aspirations Which Led to the Adoption of this Approach

The humanitarian approach outlined above corresponded well with the letter and spirit of the international regime. The real motives behind this policy, however, were domestic objectives and the ideas underlying them: namely the desire to join the West and a nationalism which initially favoured integration of the Romanians. These are what made Hungarian officials and policy-makers receptive to the ideas encased in the regime.

1) Hungary to "Join" West

The symbolic value of Hungary's response to both of these waves was arguably one of two major factors in Hungary's adoption of a refugee discourse focused on humanitarianism and human rights. Commentators stress the connection between this discourse (and connected policies) and the country's political liberalization. The adoption of a humanitarian refugee policy was at once a result of this liberalization, and a symbol of it. It manifested a clear reorientation in Hungarian foreign relations away from the East and toward the West.

The fact that NGOs were taking an active role in determining the policy agenda was itself a sign of Hungary's liberalization. In the past, the formation of opposition groups and NGOs would have been repressed by government agencies. However Mikhail

⁵⁹ Judith Pataki, "The Recent History of the Hungarian Refugee Problem," *RFE/RL Research Report*, vol. 3, no. 24 (June 17 1994), p.35; Jantsits Agnes, Head, International Department, Hungarian Red Cross, Personal Interview (Budapest: July 17, 1996).

Gorbachev's policies of *glasnost* and *perestroika* and the concomitant weakening of Soviet control over the satellite states allowed these voices to be heard and heeded by the government. Conversely, adopting a liberal refugee policy was taken to be a powerful symbol of Hungary's democratization, of its commitment to respect civil and political rights and humanitarian standards in accordance with Western norms. It was seen as a clear indication that Hungary was no longer considered by Western Europe and North America to be a producer of refugees, but was itself a receiver of them. By taking in citizens of other Eastern Bloc countries, namely Romania and East Germany, at the expense of its bilateral relations with them, it successfully distanced itself from the repressive policies those countries continued to pursue.⁶⁰

2) Nationalism: *The Politics of Inclusion*

Another major factor in a shift from denial of the Romanian problem to espousal of humanitarianism related to domestic ideas around the integrity of nationhood.⁶¹ Of the 50 000 refugees that had arrived in Hungary by June 1991, 80% were Romanian, and about 80% of those were ethnic Hungarians.⁶² As one author states, the public and later the government treated the Transylvanians as "members of the Hungarian nation who had lived in a minority position in Romania but chose to join the motherland."⁶³ Policy makers

⁶⁰ Tessényi, "The Development," 4, and Elzbieta Gozdzia, "East to East: Refugees From Rumania In Hungary," Issue Paper (Washington, D.C.: Refugee Policy Group, March 1989).

⁶¹ Interestingly, similar processes occurred in Germany, Hungary, and Russia (see also footnote 84).

⁶² Danièle Joly with Clive Nettleton and Hugh Poulton, *Refugees: Asylum in Europe?* (Boulder: Westview Press, 1992), 75.

⁶³ Nagy, "The Refugee Situation," 197.

explicitly stated that ethnic Hungarians were in a different category from other migrants and deserved special treatment. For instance, the Minister of Interior clearly implied in the following statement that Hungary's initial humanitarian approach to "refugees" was related to their ethnicity:

It shall be seen our country has no ability to admit a mass influx of migrants due to our economic capacity, service and infrastructure level. Naturally, this does not extend to ethnic Hungarians because assuring a home for them is our moral, human obligation at all times.⁶⁴

Here, a politician explicitly stated the nationalist goal of protecting the security of the Hungarian nation at home and abroad. His words reinforce the argument that when Hungary acceded to the 1951 Convention, policy-makers had given little thought to the obligations this might entail toward non-Hungarians. A geographical restriction ensured that it would not have to handle non-Europeans at all.

The resettlement of ethnic Hungarians from neighbouring countries was clearly a qualitatively different phenomenon from the flight of non-Hungarian refugees and asylum-seekers.⁶⁵ To begin with, the Romanian "refugees" did not fully correspond to what are generally defined as forced migrants. While forced migrants are motivated to leave mainly by "push factors" such as persecution or civil war, the Romanians were prompted to enter

⁶⁴ *Parlamenti Napló* [Parliamentary diary: Hansard equivalent], Expose of the Minister on No. 9337, 5. in Judit Tóth, "Who are the Desirable Immigrants in Hungary under the Newly Adopted Laws?" *Refugees and Migrants*, 59.

⁶⁵ Kőszeg Ferenc, Free Democrat MP and head of the Hungarian branch of the Helsinki Committee, argues that it should be viewed differently, in "Jegyzőkönyv az Országgyűlés emberi jogi, kisebbségi és vallásügyi bizottságának 1995. szeptember 20-án, szerdán 14 órai kezdettel az Országgyűlés delegációs termében megtartott üléséről" [Minutes of the Meeting of the Parliamentary Committee on Human Rights and Ethnic and Religious Minorities, held on Wednesday, September 20th, at 2:00pm in the parliamentary delegation hall], *Táborlakók, diaszpórák, politikák* [Camp Dwellers, Diasporas, Policies], Endre Sík and Judit Tóth, eds. (Budapest: MTA Politikai Tudományok Intézete, 1996), 224.

Hungary by both push and pull factors. In a survey conducted in 1989, Transylvanian respondents claimed to have been pushed to leave because of the situation in Romania (26%), cultural and linguistic limitations (18%), harassment (15%), and handicaps in the work place (15%). However 15% also cited the hope of a higher living standard, and 11% cited family reasons. Personal contacts played an important role in influencing the decision to emigrate as well. Further, 85% of refugees had decided to stay in Hungary at any cost, whereas refugee experts commonly claim that almost all refugees would return home if the situation permitted.⁶⁶ Had these migrants not been ethnic Hungarians, it is debatable whether Hungary would have classified them as refugees at all.

That Hungary did choose to adopt the humanitarian discourse of the international regime with reference to them arguably has a great deal to do with the migrants' desirability to the Hungarian public and policy-makers. As shown in Table 1, in a 1989 survey of Hungarians, Hungarians in Romania rated very highly among groups preferred for reception as refugees. Hungarians from neighbouring countries also ranked highly, while other ethnic groups from neighbouring countries, and particularly those from other countries, ranked far lower.⁶⁷

⁶⁶ Endre Sik, J. Tarjányi and Tibor Závecz, "Sociological Characteristics of Refugees and Their Flight from Transylvania," *The Genesis*, 25-38.

⁶⁷ György Csepeli and Tibor Závecz, "Conflicting Bonds of Nationality in Hungary; National Identity, Minority Status, and Ethnicity," *Innovation*, Vol. 5, No. 2 (1992), 87.

Table 1 . 1989 Public responses to the question: Which groups would you prefer for reception? (Respondents were asked to number groups from 1 to 8 in order of preference. The average rating is indicated here).⁶⁸

Hungarians leaving Hungary in the past	2.8
Hungarians in Romania	3.3
Hungarians coming from not neighbouring country	3.4
Hungarians in Czechoslovakia	3.9
Hungarians in Yugoslavia	4.0
Hungarians in Soviet Union	4.2
Others from neighbouring country	6.3
Others from other countries	7.1

A number of reasons might be cited for this preference. At the most practical level, it was assumed that with the same racial, linguistic and cultural backgrounds as the dominant community, ethnic Hungarians would be easier to integrate than other newcomers. Furthermore, Hungarians could “easily identify” with the Romanians’ “background, culture, and painful predicament.”⁶⁹ Television programming encouraged sympathetic feelings by highlighting the persecution of Hungarian minorities in neighbouring countries, while the government adopted an anti-Romanian tone.⁷⁰ In a series of opinion polls, Hungarians also stressed that the Hungarian Romanians increased “national feelings” and had a positive effect on Hungarian demographics.⁷¹ Gil Loescher

⁶⁸ Ibid.

⁶⁹ Judith Pataki, “Recent History,” 34, 38.

⁷⁰ György Csepeli and Endre Sik, “Changing Content of Political Xenophobia in Hungary--Is the Growth of Xenophobia Inevitable?” *Refugees and Migrants*, 124.

⁷¹ Ibid., 123.

theorizes, indeed, that “some population movements are seen as contributing to the host state’s power base, national self-confidence or dominant ethnic community.”⁷²

These sentiments are best understood in the wider historical context. As a result of the Treaty of Trianon (1920), in which Hungary conceded defeat in World War I, historic Hungary lost 71.4% of its territory and 63.6% of its population. A third of those who considered themselves Hungarians were left under foreign rule.⁷³ The “shock of Trianon” left an indelible mark on the Hungarian psyche, serving to define nationalist sentiment.⁷⁴ Irredentist efforts to regain the lost territories through allegiance with Nazi Germany led to disaster, and the issue of Trianon was officially repressed during the Socialist period. But this did not eradicate public feelings of hostility and national frustration. Indeed, the collapse of state-Socialism re-intensified popular nationalist tendencies, which were inherently tied up with a sense of attachment to the lost territories and people.⁷⁵

In sum, then, Hungarians had defined the Hungarian Romanians as part of their nation, of the “in-group”, based on kinship and a common language and culture. On this basis, they initially classified them as desirable, and pursued a humanitarian policy toward them. The ideational forces motivating Hungarian refugee policy were thus fundamentally related to nationalism. The humanitarian ideas embodied in the international regime,

⁷² Gil Loescher, “Refugee Movements and International Security,” *Adelphi Papers* 268 (Summer 1992), 37.

⁷³ Steven B. Vardy, “The Impact of Trianon upon Hungary and the Hungarian Mind: the Nature of Interwar Hungarian Irredentism,” *Hungarian Studies Review*, Vol. X, No. 1 (Spring 1983), 39.

⁷⁴ *Ibid.*, 22.

⁷⁵ Csepeli and Závecz, “Conflicting Bonds”, 78.

which in no way privilege certain races or ethnic groups, were not initially the principal underlying factor in Hungary's approach, though they did influence it later on to some extent. Instead, they were the *means* to a more nationally-based end.

Accordingly, the decision to join the regime was based on a number of utilitarian, rather than idealistic, motives. Hungary's accession was not preceded by any parliamentary debate. It was introduced, unplanned, onto the agenda by the then foreign minister Gyula Horn.⁷⁶ As observers such as Judit Tóth, Agnes Jantsits and Géza Tessényi contend, however, the underlying reasons for the accession were intimately related to the desire on the part of the public and policy-makers to receive the ethnic Hungarians as well as possible.⁷⁷ Acceding to the Convention would support this in several ways. First, it would help to resolve the tension between Romanian pressure to respect the bilateral agreement according to which Hungary was to return the refugees, and domestic pressure for a humanitarian response. The Convention would legally oblige Hungary not to repatriate the refugees who applied for Convention refugee status. It also was thought to pre-empt diplomatic tensions by explicitly stating that to receive refugees was not an unfriendly gesture toward the sending country.⁷⁸ Second, the Convention would also mean diplomatic support from the West in the event of a dispute between the

⁷⁶ Boldizsár Nagy, "Before or After the Wave? Thoughts on the Adequacy of the Hungarian Refugee Law," *International Journal of Refugee Law*, Vol. 3, No. 3 (1991), p. 531.

⁷⁷ Judit Tóth, refugee policy expert and employee at the Ministry of the Interior in 1989, personal interview (Budapest: July 3, 1996); Agnes Jantsits, Head, International Department, Hungarian Red Cross (Budapest: July 17, 1996); Tessényi, "The Development".

⁷⁸ Judit Tóth reported that she was requested to locate this passage in the text of the Convention. Personal interview (Budapest: July 3, 1996).

countries.⁷⁹ Finally, and perhaps most importantly, it would result in international financial assistance to cope with the largely ethnic Hungarian refugees.⁸⁰

This analysis confirms the conclusions of some postmodernists that “the need to constitute and sustain national self-identity prompts policymakers to pursue policies required to construct relationally different others and indeed to develop an appropriate supply of them.”⁸¹ What we have in this first phase is half of the equation: the way in which popular constructions of “self” have influenced policy. As the next section will show, in the second phase, the other half of the equation--constructions of the “other”--became more prominent.

HUNGARIAN REFUGEE POLICY, PHASE II (1991-1996)

From 1991 to 1996, a second phase in Hungarian refugee policy saw a move away from the humanitarian approach to the Romanian and German waves. Instead, the public and policy-makers increasingly adopted the emphasis on security and control promoted by the European refugee regime. However this has not signalled a fundamental ideational shift. Under changed circumstances, adhering to the regional regime became the more effective way of pursuing the very same goals and ideas that had prompted adherence to the international regime. As will be explained in a first subsection, the first goal--to promote the integrity of the Hungarian nation--came to require different means in the face

⁷⁹ Giuliano Bonoli. *The Integration of a New Country in the European Refugee Regime: The Case of Hungary*. M.A. Dissertation (Leeds-Lugano: University of Leeds Department of Politics. 1993). 56.

⁸⁰ Tessényi, “The Development,” 116.

⁸¹ Yee, 101.

of economic difficulties coupled with diminished popular identification with cross-border Hungarians, increased inflows of non-Hungarians, and the growing salience of illegal migration. The second goal—to join the Western world—came to be synonymous in this period with aiming for membership of the European Union, which entails harmonization with European migration policies. As a final subsection will argue, it was in this context that the Hungarian public and policy-makers were won over by Western Europe's redefinition of migration as a security threat.

A Changed Context for Policy

1) Nationalism: The Politics of Exclusion

While the nationalism that had promoted a humanitarian approach to the Romanians remained a decisive force, in this period it led to an increased focus not on taking in members of the in-group, but on excluding the out-groups. Xenophobia toward both ethnic Hungarians and other immigrants, fed by economic motives, quickly overshadowed initial feelings of “national brotherhood” as a principal determinant of refugee policy. Interestingly, as early as 1990, the cultural and ethnic nationalism which defined Hungarian Romanians as part of the Hungarian nation began to give way to a more restrictive national identification which included only citizens of Hungary. This led to what Csepeli and Sîk call “political xenophobia” toward ethnic Hungarians who lack Hungarian citizenship.⁸²

⁸² Csepeli and Sîk, 121.

These authors argue, based on a series of public opinion polls, that one-time members of the in-group were transformed, in the public psyche, into outsiders.⁸³ As Figure 1 shows, initially favourable perceptions of cross-border Hungarians diminished, while the prevalence of negative attitudes increased.⁸⁴ Hungarians increasingly viewed ethnic Hungarian refugees as “traitors to the Hungarian community across the border.” They also “accused them of stealing jobs from native citizens, of posing as ‘real Hungarians’, and of causing shortages of commodities.”⁸⁵ Another poll, the 1991 Times-Mirror Study,

showed more Hungarians (40%) with a negative opinion toward ethnic Hungarians from Transylvania than toward Rumanians (30%). It seems that the Hungarians’ ethnic solidarity with their long-lost brothers in Rumania rubbed off once they were faced with thousands of Hungarians from Transylvania on the streets, hawking their folk crafts and seeking employment in substandard ways.⁸⁶

⁸³ In the German case, left-wing thinkers feared that efforts to repatriate ethnic Germans from Russia would strengthen German nationalism, but the opposite happened. Instead, the immigrants’ backward ways gave rise to anti-German feelings. Growing opposition to their repatriation coincided with a rise in unemployment. In Poland, the idea that members of the Polish diaspora in the Soviet Union might be repatriated was initially greeted with enthusiasm in the late 1980s. Public attitudes, however, quickly turned negative at the first confrontation with reality. In Russia, likewise, public attitudes toward the repatriation of ethnic Russians (since the early 1990s) have become increasingly negative.

⁸⁴ A number of works point to the same conclusion. Please see for example: Tibor Závecz, “Csökkenő rokonszenv (A magyar társadalom ítéletei, vélekedései a menekültekkel kapcsolatban)” [Diminished Sympathy (Hungarian society’s judgements and opinions on the refugees)], and Endre Sík, “A menekültekkel kapcsolatos előítéletesség növekedésének elkerülhetetlensége a mai Magyarországon” [The undeniability of the growth in prejudice against refugees in today’s Hungary], in *Menekülők, vándorlók, szerencsét próbálók* [Refugees, Migrants, Fortune Seekers] (Budapest: MTA Politikai Tudományok Intézete, 1992); Róbert Kovács, “Az ‘idegenek’ Magyarországon: Települések és menekültek” [“Aliens” in Hungary: Villages and Refugees], and “A polgármesterek és az ‘idegenek’” [Mayors and “aliens”], in *Utkeresők* [Roadseekers] (Budapest: MTA Politikai Tudományok Intézete, 1993).

⁸⁵ Csepeli and Sík, 122.

⁸⁶ Paul Hockenos, *Free to Hate: The Rise of the Right in post-Communist Europe* (London, New York: Routledge, 1993), 142-3, qtd. in *ibid.*, 124.

Figure 1. *The change of attitudes of Hungarian citizens toward ethnic Hungarian refugees from Transylvania*

With the diminishing public preoccupation with assisting the Transylvanians, the utility of the international regime to Hungary also began to lessen.

Nevertheless, the decline of ethnocentric nationalism and a heightened awareness of citizenship did not result in a decrease in xenophobia toward racial and ethnic minorities. Indeed, a post-1991 decrease in the proportion of ethnic Hungarians among newly arrived refugees was a second factor contributing to Hungary's adoption of the Western European view of migrants as a security issue. Until that year, the first large wave of refugees had mainly consisted of young, male, educated ethnic Hungarians who either went back, resettled in the West, or integrated into Hungarian society with relative ease. The second wave of East Germans had remained in Hungary for a very short duration and had helped the state demonstrate its political reorientation.

In contrast, the "third wave" consisted of war refugees from the former Yugoslavia, a greater proportion of whom were not Hungarian, and many of whom could

neither return rapidly nor move Westward. Between 1991 and 1995, these asylum seekers totalled 75 000 registered and an unknown number of unregistered (estimated at 20 000 in 1994). Almost 50 000 arrived between June and December of 1991, mainly from the Baranya triangle and later from Eastern Slavonia, both in Croatia. Many of these returned in 1992 after the diplomatic recognition of Croatia. However that same year a new wave of about 15 000 arrived, first mainly ethnic Hungarian draft dodgers from Vojvodina (Serbia), and later Bosnian Muslim refugees.⁸⁷ Please see Figure 2 for a month-by-month indication of newly arrived registered refugees and asylum seekers. The figure shows overall numbers, as well as a break-down by citizenship and ethnicity.⁸⁸

Overall, in 1991, the proportion of ethnic Hungarians among new arrivals had diminished to 65% of the total, and in 1992, it was further reduced to 36%.⁸⁹ Among the ex-Yugoslavs, in 1991-92, only 28% were ethnic Hungarians, while Croats constituted 52%, Bosnians 15% and other ethnicities 5%. In 1993-95 the proportion of Croats diminished to 43%, while that of Bosnians grew to 20% as “ethnic cleansing” continued, and Hungarians constituted 32%.⁹⁰ The changing proportion of ethnic Hungarians among

⁸⁷ Office for Refugee and Migration Affairs, internal document, 1996.

⁸⁸ Figure copied from International Organization for Migration (IOM), *Transit Migration in Hungary* (Budapest: IOM Migration Information Programme, December 1994), 20.

⁸⁹ Agnes Ambrus and József Bors, *Refugees in Hungary* (Budapest: MTI 1993), 4, and Ministry of Foreign Affairs, “Activities”.

⁹⁰ Judit Tóth, “A désláv válság miatti migráció jogi-igazgatási kezelése és néhány biztonsági összefüggése” [The legal and administrative handling of migration caused by the Yugoslav war and some implications for security], manuscript (Budapest, 1996), 3. Please note that statistics provided in the literature are disputed. Official data collected by the Office of Refugee and Migration Affairs presents a number of unresolved inconsistencies. Please refer to graph of arrivals and ethnic origin, .

new arrivals is shown in Figure 2.⁹¹ The non-Hungarian majority spoke different languages, and in the case of the Bosnians, practised another religion. In addition, the refugees were largely from rural areas, relatively uneducated, and about 80% were women, children, elderly, weakened, ill and disabled people.⁹² Many hoped to resettle in Western Europe but were refused admission; most expected to return home shortly. Few expected to remain in Hungary for any length of time.

As will be further discussed in subsequent chapters, Hungary's response to this wave of refugees was something of a middle ground between norms of the international regime and the restrictive policies increasingly being adopted by the West. The state, like many others in Western Europe, offered the ex-Yugoslavs temporary protection. This meant asylum for the displaced persons, but without the benefits of refugee status as stipulated by the 1951 Convention. That status was conferred on only about 1000 displaced persons (DPs), most of whom were ethnic Hungarians. By its very nature, temporary protection led to a policy approach that focused on the short term. In principle the goal was to encourage repatriation as the optimal durable solution, but in practice Hungary did little to help create safe conditions for return.

The government directed most of its assistance to DPs in camps, although the large majority (about 88% in 1994 and 66% in 1996) lived outside the camps. Privately accommodated DPs lived mainly in Southern Hungary (especially in Pécs, Mohács, Harkány and Siklós) with host families or in small motels and pensions. The government

⁹¹ IOM, *Transit*, 20.

⁹² *Ibid.*

Figure 2. Change in the numbers of registered refugees and asylum-seekers in Hungary, 1988-1994

cash allowance of 1050 Ft. a week per person was not tied to inflation or housing costs, and represented only about 30% of the minimum subsistence level determined by Hungarian authorities. Medical treatment and schooling in children's native language were provided. However temporarily protected persons were accorded no legal status. Nor were they given the right to work legally, unless no Hungarian was available for the job.⁹³

The growth of illegal migration activities, and particularly the increased presence of non-Hungarian and non-European migrants, was a third contextual factor making Hungary more open to European security discourse. According to Border Guard officials and the International Organization for Migration, the number of illegal border crossings began to "mushroom" in the early 1990s, in part because of the influx of Romanians. Between 1988 and 1993, they increased fourfold.⁹⁴ As Table 2 shows, the number of registered illegal border crossings more than doubled from 1990 to 1991, due in part to the massive influx of Croatian refugees. Since then, however, the figure has declined each year. As indicated in Table 3, other illegal activities have increased overall since the beginning of the recorded period. Document fraud increased by over 50% between 1992 and 1995. Recorded instances of human trafficking went from 40 in 1990 to 221 a year later, and have fluctuated between 82 and 285 since then. Car theft, arms smuggling (to

⁹³ This paragraph draws information from: Internal document, Office for Refugee and Migration Affairs, 1995; Frank Laczkó, "Temporary Protection and Ex-Yugoslav Refugees in Hungary," *Refugees and Migrants*, 177; and United Nations High Commissioner for Refugees (UNHCR), Branch Office for Hungary, "Situation Report" (Aug. 1994; May 1996).

⁹⁴ István Morvay, Titular Secretary of State, President of the Office of Refugee and Migration Affairs of Hungary, Head of the Hungarian Observer Delegation, "Statement" (Madrid: Conference on Migration and International Cooperation: Challenges for the OECD Countries, 29-31 March, 1993), 2.

and from the former Yugoslavia), and abuse of drugs have appeared as problems since 1992, and have grown in magnitude since then. (See Table 3 for details.)⁹⁵ The border guard cites drug trafficking and car theft, in particular, as growing problems.⁹⁶

It is clear also that the number of African, Asian and Arab transit migrants grew as well, as Table 4 shows. The number of illegal border crossers from Asia and from Africa grew almost eightfold and sevenfold, respectively, between 1990 and 1991. Interestingly, however, after this peak, the number diminished drastically from 3979 Asians in 1991 to 634 in 1993. The number of Africans, meanwhile, went from 1487 in 1991 to 177 in 1993. However, non-Europeans are held responsible for a disproportionately large use of false documents and human traffickers.⁹⁷ Although the numbers are minimal compared to the total border traffic and to legal migration figures, the amount and the composition of this migration led to the perception of illegal migration and Third World migrants as a significant phenomenon. It was what made the European securitization discourse applicable and relevant to Hungary.

⁹⁵ IOM, *Transit*, 16.

⁹⁶ Natalie Zend, "presentation by Colonel Károly David, regional Border Guard Headquarters at Orosháza (Romanian border)", *Report on Visit of Canadian Expert Delegation to Hungary in the Context of Bilateral Immigration and Refugee Cooperation Arising Out of the Bilateral Letter of Intent Between Canada and Hungary, March 13-16, 1995* (Budapest: March 24, 1995).

⁹⁷ IOM, *Transit*, 16.

Table 2. Registered Illegal Border Crossings into and out of Hungary, 1990-May 1996⁹⁸

	1990	1991	1992	1993	1994	1995	01-06, 1996
All registered border crossings (in thousands)	112 087	102 005	98 532	113 008	115 138	112 534	42 425
Total registered <u>illegal</u> border crossings (in thousands)	14	29	20	15	13	12	5

Table 3. Selected Other Registered Illegal Border Activities, 1990-May 1996

	1990	1991	1992	1993	1994	1995	01-06, 1996
Document fraud	-	-	2135	4812	3732	3694	1358
Human trafficking	40	221	123	82	138	285	146
Assistance in violating frontier	116	254	458	296	172	181	57
car theft	-	-	41	461	430	523	234
arms smuggling	-	-	18	16	39	54	8
abuse of drugs	-	-	6	13	21	17	2
goods smuggling	45	68	145	84	46	89	31
total other illegal border activities⁹⁹	14 244	29 831	13 925	17 552	24 200	22 724	9 214

⁹⁸ Hungarian Border Guards, internal document, "Kimutatás a jogsértő cselekményekről, 1990. január 01.-1996. június 30" [Table on illegal activities, January 1 1990-June 30, 1996]; "Kimutatás a személyforgalom alakulásáról" [Table on Passenger traffic]. With thanks to Dr. Zoltán Csentes, Chief of Department and Chief councillor of Border Guards, for providing this information and taking the time to explain the abbreviations on the statistical charts. Nineteen-nineties' statistics, presented in figures 4 and 5 cannot be compared with earlier statistics, as these are not available.

⁹⁹ Including some not listed in the table.

Table 4. Registered Illegal Border Crossings and Attempts of Foreign Nationals by Continent of Citizenship, 1990-April 1994¹⁰⁰

Country of citizenship	1990	1991	1992	1993	Jan-Apr 1994	1990-1994
Romania	10 108	18 058	13 525	11 340	3 148	56 179
Former Yugoslavia	84	575	1666	4601	1670	8 596
Other European countries	2264	4161	4055	2461	780	13 721
Asia	502	3979	1800	634	114	7 029
Africa	234	1487	481	177	111	2 490
States of the Arab League	348	393	652	244	95	1 732
America	6	108	63	85	15	277
Other, unknown	89	5	123	174	92	553
TOTAL	13 635	28 836	22 365	19 716	6 025	90 577

While Hungary's preoccupation with excluding these illegal migrants has intensified, there has been little discussion about how to ensure protection for asylum seekers in the presence of such measures. For example, during the 1995 visit to Hungary of a Canadian delegation to discuss migration and refugees, there was no mention of the need to protect refugees entering illegally. Presentations about the Budapest Group forum on illegal migration and on illegal entry at the border treated the issue of migration control as if it were in no way connected to refugee protection. And when officers of the Border Guard in Oroshaza described a particularly tragic case of human trafficking, they not once considered whether the 102 Turkish Kurds would have faced persecution in Turkey following their rejection at the border.¹⁰¹

¹⁰⁰ IOM, *Transit*, 17.

¹⁰¹ Presentation by Bela Jungbert (President of the Budapest Group) and Zsuzsanna Vegh (Lieutenant Colonel, Division Head, Ministry of the Interior) on the Budapest group during working lunch (March 14, 1995); "Tour of the regional Border Guard HQ, Oroshaza, and presentation on its activities", Colonels David and Danko, (March 15, 1996); "Presentation of the activity of the Nagylak border crossing with Romania" (March 15, 1996); "Presentation of the activities of the Roszke border crossing station (Yugoslavian border)" (March 15, 1996), *Report on Visit*.

2) *Hungary to Join European Union*

Added to changes in the composition of refugee and migration flows and public conceptions of nationhood that changed with them, the desire to join the Western world was another factor contributing to Hungary's shift to an approach to migration focused on control and security. In the first years of political transition, this desire, among other things, moved Hungary to demonstrate its belonging to the West by following a humanitarian migration policy and signing the Geneva Convention. As time passed, however, joining the West increasingly meant joining Western Europe.¹⁰² The region itself, as explained in the introduction, was moving away from the refugee framework of the international regime toward a more restrictive approach. The Socialist-Liberal coalition which took power in 1994 explicitly made "integration with Euro-Atlantic institutions [particularly EU and NATO] as soon as possible" one of its three foreign policy priorities.¹⁰³ As Hungary prepares for EU membership, it is increasingly interested in ensuring that its policies--in migration as well as other areas--conform to European norms and practices.¹⁰⁴ Indeed in 1994 the Ministry of Interior explicitly asked EU member states to cooperate with Hungary to control illegal migration and international crime.¹⁰⁵

¹⁰² Hungarian Government, Prime Minister's Press Office. *Midway through a Term* (May 1992).

¹⁰³ Adam Le Bor, "Facing the Future: A Talk with Hungarian Foreign Minister László Kovács on the Eve of the CSCE Summit," *The Budapest Airport Magazine* (June, 1994), 18.

¹⁰⁴ This was stated by Gabor Világosi, Political Secretary of State, Ministry of Interior, and Béla Jungbert, Director General of the Office of Refugee and Migration Affairs, in personal interviews (Budapest: July 26, 1996).

¹⁰⁵ UNHCR, "Situation Report." (Sept. 1994).

This sub-section has sought to lay out the context for a significant shift in Hungarian refugee-related policy--related both to migration flows and ideas about national identity and Hungary's place in the world. The next will explore how this shift is gradually taking place.

The Securitization of Refugees in the Spirit of the European Refugee Regime

By arguing that Hungarian refugee policy is increasingly being influenced by changing concepts of security, this thesis draws on new approaches to security studies. Works by Buzan, Campbell, Goldstein and Keohane, and Katzenstein, for example, define security not in the traditional military and strategic terms, but see it rather as a social construct.¹⁰⁶ As Lavenex writes, "according to this understanding, there are no objective threats to societal security. Threats are rather constructed in public discourses of "danger" which shape a given group's perceptions with regard to its own identity."¹⁰⁷

In the European discourse, migrants and refugees have been constructed as a threat to internal security. For example, at the Budapest Ministerial Conference in February 1993, the ministers noted that uncontrolled immigration constitutes a menace to security and stability.¹⁰⁸ The result has been restrictive reform of asylum policies in Western Europe and increasingly, it is argued here, in Hungary as well. As the Director of

¹⁰⁶ See Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (New York and Boulder: Lynne Rienner, 1991); David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Minneapolis, 1992); Judith Goldstein and Robert Keohane, eds. *Ideas and Foreign Policy* (Ithaca, 1993); Peter J. Katzenstein, *The Culture of National Security: Norms and Identity in World Politics* (New York, 1996), cited in Lavenex, 2.

¹⁰⁷ Lavenex, 3.

¹⁰⁸ Jonas Widgren, "Vers une coopération européenne face aux mouvements de population.," Doc. 51 (Strasbourg: Groupe de travail)

the Hungarian Office for Refugees and Migration (ORMA), Béla Jungbert, writes, “for Hungary, migration in general, illegal migration, and the protection of minorities and refugees have all become a security issue.”¹⁰⁹ International migration has appeared in two government programs under the clause of “Public Security”, and has been treated in the context of police administration, rather than as a social issue.¹¹⁰ In Western European host societies, and increasingly in Hungary, four main security threats are identified: 1) refugees as a threat to the host country’s cultural identity; 2) refugees as a social and economic burden; 3) refugees as criminals, and 4) refugees as a source of instability due to xenophobia.¹¹¹

1) Non-Ethnic Hungarian Refugees as a Threat to the Host Country’s Cultural Identity

As mentioned above, the first fear--that refugees would pose a threat to Hungary’s national identity--was a major factor in the securitization of the refugee issue which took place as the proportion of ethnic Hungarian newcomers diminished. As Gil Loescher argues, “refugee movements ... can ... frequently threaten intercommunal harmony and undermine major societal values by altering the ethnic, cultural, religious and linguistic composition of the host populations.”¹¹² This fear also helps to explain the initial warm

¹⁰⁹ My translation. Béla Jungbert, “Menekültek fotókon: papíron és élőben” [Refugees in Photos: on paper and alive], *Refugees in Hungary II*, 6.

¹¹⁰ UNHCR, “Refugees: Not a Single Word in the Government Program,” internal document (1994).

¹¹¹ These are compiled from the relevant threats identified by Gil Loescher, “Refugee Movements”; Myron Weiner, “Stability, Security, and International Migration,” *International Security*, Vol. 17, No. 3 (Winter 1992-1993), 91-126; and Monica den Boer, “Moving between bogus and bona fide: the policing of inclusion and exclusion in Europe,” *Migration and European Integration: The Dynamics of Inclusion and Exclusion*, R. Miles and D. Thränhardt, eds (London: 1995), 92-111, qtd. in Lavenex, 3.

¹¹² Loescher, 41.

reception accorded the Transylvanians, as well as continued preferential treatment for ethnic Hungarians. Owing to their familiarity with Hungary's language, culture, and religions, these migrants are believed to be more easily integrated into the local community. The Bosnians are assumed, on the other hand, to "have difficulty integrating into a country with a different culture."¹¹³

There is also fear that Hungarian refugees might import their ethnic tensions, shift the local ethnic balance and involve domestic minorities of the same ethnic origin in conflict. This fear apparently motivated the secret services to collect data on the activities of the minority self-government of Baranya county (starting in July of 1992). The services also monitored inhabitants of refugee camps, as well as citizens with Yugoslav connections, from as early as 1991. Interestingly, when the intelligence gathering became publicly known in June, 1996, the ensuing scandal received far more media coverage than any other security-related aspect of the war. In the public discourse, this identity-related social threat was a more important security issue than a bomb that exploded in Barcs, mine-related accidents along the frontier, and military vehicles coming and going near the Southern border.¹¹⁴

2) Refugees as a Social and Economic Burden

The second perceived threat--that refugees place heavy economic and social burdens on the country of asylum--became increasingly acute in the face of hardships caused by Hungary's attempts at economic reform. The transition from socialism to

¹¹³ Világosi Gábor, Secretary of State for the Ministry of the Interior, *Minutes*, 209.

¹¹⁴ Tóth, "A délszláv", 28.

capitalism led to unprecedented unemployment, enormous decreases in industrial and agricultural production, high inflation, reduced real incomes for over 50% of the population, and massive cuts to health, welfare, and education.¹¹⁵ As the Head of ORMA in 1993 stated: “economic and social conditions...allow in less and less extent the acceptance of migrants en masse”: “[target] countries...will soon reach the limits of their reception capability.”¹¹⁶ His successor summarized the reaction of many Hungarians as he imagined it:

Why do we accept foreigners of uncertain origins, backgrounds and positions, why do we spend on them astronomical amounts of money, why are we “again” the dupes of the world, when a growing segment of our population is wanting and, when our brothers living in a minority situation in the neighbouring countries, are growing poor and are being assimilated?[sic]¹¹⁷

Indeed, as the opinion poll cited above indicated (see Figure 1), the population seems to have increasingly viewed immigrants as rivals for jobs, especially in the secondary economy. Further, with the general decrease in the standard of living, growth in the need for welfare, and considerable cuts to the social net, Hungarians have focused on the costs of receiving refugees in terms of housing, health, education, transportation, and welfare. Economic factors, indeed, go a long way toward explaining the decline in sympathy for the Romanian refugees. As Loescher theorizes and the opinion poll cited above confirms, the host population “resent[ed] the attention and assistance given the

¹¹⁵ UNHCR, “Situation Report.” (Sept. 1994, Jan. 1996).

¹¹⁶ Morvay, “Statement”, 2.

¹¹⁷ Jungbert, “Refugees on Photos”, 23.

newcomers, and fear[ed]the influx of labour [would] drive down wages and create unemployment while driving up the cost of housing and other goods.”¹¹⁸

Refugees are further seen to display threatening social behaviour, such as criminality. Judit Tóth, former ORMA employee, for instance, writes of a rise in the number of criminal acts by ex-Yugoslavs and claims that the conditions of war made aggression, violence, and “disrespectful conduct” more accepted in ex-Yugoslav society.¹¹⁹

3) Refugees as Criminals

One of the perceptions that most weakened refugee protection is the equation of refugees with “illegal immigrants”. Often, indeed, they had no choice but to enter the country with fraudulent documents or with the help of people smugglers. Thus they were lumped without adequate research into the same category as all other illegal migrants. They came to be associated in the minds of the public and policy-makers with other migration-related crime, including drug smuggling, prostitution, and money exchange.¹²⁰ As the head of ORMA stated in 1993, the general belief is that “there is an extremely close relationship between illegal migration and criminal activities.”¹²¹ One writer even

¹¹⁸ Loescher, 48.

¹¹⁹ Tóth, “Délszláv”. 26-27.

¹²⁰ Ibid., 27.

¹²¹ Morvay, “Statement”, 2.

associated them with terrorism, a relatively rare phenomenon in Hungary.¹²² The result was an increase in popular prejudices against all migrants, including refugees.

4) *Refugees as a Source of Instability*

In light of these three main “threats” presented by refugees, segments of the public reacted with a “popular nationalist backlash against asylum-seekers” in “a climate of fear, suspicion and resentment.”¹²³ Reactions to perceptions of refugees as a threat have themselves led to another threat, *indirectly* caused by the refugees: that of internal political instability due to ethnic strife. In Hungary, two phenomena have reinforced fear of this fourth threat. First, racist attacks by right-wing groups in Hungary increased dramatically in the early 1990s, as the Martin Luther King Organization has documented.¹²⁴ However, after a peak in 1992, frequency of these incidents has subsided. Second, a number of right-wing parties and movements appeared which tried to take advantage of this popular dissatisfaction with anti-immigrant platforms. In the 1994 elections, however, none of these won the 5 percent of the vote necessary to achieving a seat in parliament. Csepeli and Sik argue that this failure was the result of continued espousal of cultural nationalism by these parties after the public had moved on to a narrower, citizenship-based conception of nationhood.¹²⁵ Nevertheless, policy-makers in

¹²² Péter Deák, in “Minutes”, 217.

¹²³ Loescher, 5.

¹²⁴ Martin Luther King Organization (MLKO), “Summary of physical attacks against non-white people mainly students (both foreign and Hungarian) in Hungary 1991-1995, based on the files of the MLKO”, internal document, 1995.

¹²⁵ Csepeli and Sik, 127.

both Western Europe and Hungary feel compelled to pre-empt the growth of potentially threatening anti-foreigner sentiment by restricting in-migration.

The securitization of refugees in Hungary as outlined above has taken place through a combination of processes. First, changes in migration flows and economic circumstances, combined with exposure to changing Western European ideas on migration, have resulted in the internalization of those ideas. As some analysts argue,

certain ideas and beliefs prompt policy-makers in subordinate states to pursue certain policies favored by a hegemonic state not because these ideations possess the ability to produce these policy effects, but because these ideas and beliefs have been internalized by those policymakers through a socialization process.¹²⁶

Second, European states and multilateral organizations have exerted pressure on Hungary to adopt these views, both through their own migration policies and through diplomatic pressures. In the context of Hungary's desire to become a member of the European Union, this has been a powerful factor in the shift toward control-oriented policies. This will be discussed in greater detail in the next chapter.

While in the first phase, the policy agenda was set through an "outside initiated model", the agenda in the second phase was adopted through a different process that best approximates what Howlett and Ramesh call the "consolidation model". In their view,

This occurs when the government initiates the process of solving a public problem for which there is already extensive popular support. In such instances the issue does not have to be 'initiated', nor does public support have to be 'mobilized'. It is enough for the state to 'consolidate' the existing support and go ahead with making policy.¹²⁷

¹²⁶ Yee, 71.

¹²⁷ Howlett and Ramesh, 116.

While opinion polls and other evidence point to growing popular fear and resentment of refugees, the public did not organize or lobby the government to change its approach. Instead, government officials, for the various cited reasons, pursued policies that fit with the attitudes and beliefs of citizens.

Having traced in this chapter the interplay between international influences and national objectives that shaped the evolution of refugee policy over the period, we are now better equipped to understand the logic of inter-actor relationships as well as the choice of policy instruments. The next chapter will examine more closely how the factors discussed here played themselves out in the interactions of three sets of policy actors--the international regime, the regional regime, and civil society--with the Hungarian government.

CHAPTER THREE

RELATIONS BETWEEN INTERNATIONAL AND DOMESTIC INSTITUTIONS

Having examined the effect of the ideas, the norms and principles, encased in the international and regional regimes, the picture is completed by looking at the impact of international institutions and civil society on Hungarian refugee policy. Western European entities have increasingly been able to intervene in Hungarian policies, while the UNHCR and local NGOs have been unable to effectively exert their own and thus counteract the European influence. The chapter will first argue that the UNHCR has encouraged compliance with the international refugee regime, but has been incapable of enforcing provisions that did not coincide with the government's perceived needs. Next, it will show that unlike the UNHCR, Western European actors *have* had the leverage to effectively pressure the authorities and shape policy. Finally, it will demonstrate that NGOs, while initially influential, quickly lost their ability to participate in policy formulation, and have thus not effectively fought the European influence.

RELATIONS BETWEEN THE HUNGARIAN STATE AND UNHCR

An examination of the interaction between the Hungarian government and the UNHCR will help to uncover the ways in which the international regime has influenced Hungarian policy-makers on the ground, at a day-to-day operational level. It demonstrates that the UNHCR has not generally been capable of enforcing compliance with the 1951 Convention in instances where Hungary's perceived interests have been served better

outside the regime. The UNHCR, indeed, has neither the supranational authority, nor the raw power, to make states follow its dictates. As Donnelly asserts, “compliance with regime norms rests primarily on authority and acceptance.”¹²⁸ Yet this section will also show that the UNHCR has nevertheless played an important role in shaping government refugee policy through its implementation and promotional activities. These have assisted Hungary in complying with the regime’s directives in instances where it had an interest in doing so but lacked the administrative or financial capacity, thereby averting what Robert Putnam terms the “involuntary defection” of Hungary.¹²⁹

In examining the effect of an international institution on Hungary’s behaviour in a particular domain, this section takes part in the ongoing debate on the impact of regimes on state policy. The evidence supports a “modified structural” approach to regimes. This position accepts the fundamental premises of structural realism, that the international system consists of functionally equal, power-maximizing states acting under conditions of anarchy. Nevertheless, it maintains that under certain conditions, when individual states cannot attain their objectives through self-help alone, regimes can have a significant impact on actions.¹³⁰ In Hungary’s case, the regime seems to influence state actions

¹²⁸ Jack Donnelly, “International human rights: a regime analysis,” *International Organization*, Vol. 4, No. 3 (Summer 1986), 619.

¹²⁹ Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization*, Vol. 42, No. 3 (1988), 427-460.

¹³⁰ See Arthur Stein, “Coordination and collaboration: regimes in an anarchic world”, 115-140; Robert Keohane, “The demand for international regimes”, 141-172; Robert Jervis, “Security Regimes”, 173-194, John Gerard Ruggie, “International regimes, transactions, and change: embedded liberalism in the postwar economic order”, 195-232; Charles Lipson, “The transformation of trade: the sources and effects of regime change”, 233-272; and Benjamin J. Cohen, “Balance-of-payments financing: evolution of a regime”, 315-336), in *International Regimes*, Stephen D. Krasner, ed. (Ithaca and London: Cornell University Press, 1-21.

through the incorporation of its norms into state law (see Chapter Four) and through the activities of the UNHCR. But when Hungary has been more strongly motivated by other factors such as nationalism and the desire to join the European Union, as detailed previously, little has prevented it from not complying with the international regime.

Jack Donnelly's typology of regimes, which classifies human rights regimes according to strength and function in order to draw conclusions about their ability to influence policy, can be used to explore UNHCR's activities.¹³¹ This system delineates three types of activities through which regimes shape policy: enforcement, implementation, and promotion activities. These will each be discussed in turn with a view to evaluating the UNHCR's influence in Hungary.

Enforcement Activities

Since the establishment of its Branch Office for Hungary in Budapest in October 1989, the UNHCR's small office of well under twenty staff has had the task of promoting Hungary's compliance with the principles, norms and rules of the international refugee regime. As the international authority responsible for refugee protection, it is the one international organ that could possibly ensure Hungary's respect for international norms. Enforcement of these norms, according to Donnelly, would include 1) institutionalized, binding international decision making and 2) strong international monitoring (defined as a "formal international review of state practice").¹³² Yet the UNHCR's Statute gives it little independent authority to carry these out. The High Commissioner is officially mandated

¹³¹ Donnelly, 604.

¹³² Ibid.

to provide “international protection to refugees” and to seek “permanent solutions for the problem of refugees”.¹³³ However, it must do that “*by assisting Governments and, subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities*”[my emphasis].¹³⁴ As is typical with intergovernmental organizations, the UNHCR is not autonomous, but gives governments the power to define its policy. This is exemplified by the fact that country representatives of the UNHCR must be approved by the government of the host country. Indeed, according to one UNHCR employee, there are rumours that the first representative to Hungary, Mr. Huang, was removed from his post after one year because of governmental disapproval.¹³⁵ Further, the UNHCR cannot intervene in the internal affairs of the state without Hungary’s consent. Interestingly, however, it *has* undertaken its own programs without full agreement of the state, as will be discussed below. Overall, though, effective control over the refugee protection system lies with the Hungarian state, not the UNHCR.

The organizational and financial set-up of the UNHCR as a whole have further compromised its ability to enforce compliance. The HCR was created by and ultimately answers to the international community of member states. This fact impedes effective protection in situations which require seriously challenging the actions and policies of states. Hungary’s tendency toward increasingly restrictive policies mirrors--is in fact

¹³³ Statute of the Office of the United Nations High Commissioner for Refugees, Annex to General Assembly Resolution 428 (V), adopted on December 14 1950, in UNHCR, 5.

¹³⁴ *Ibid.*, 5.

¹³⁵ Kyoko Yonezu, Associate Program Officer, UNHCR, personal interview (Budapest: June 7, 1996).

prompted by--that of more powerful European states who are also controlling members of the UNHCR. The power of these countries is further enhanced by the fact that all HCR's operational financing must be obtained through the voluntary contributions of states. Not surprisingly, these are earmarked based on the priorities of donor states--which increasingly emphasize exclusion rather than protection--rather than on the UNHCR service priorities.¹³⁶ It is clear from this that the UNHCR has no enforcement powers in Hungary.

Implementation Activities

Despite this, the UNHCR has made an important contribution to ensuring that Hungary lived up to its international obligations when policy-makers so desired. It has done this in part through a number of implementation activities involving the direct provision or coordination of relief and financial assistance as well as international policy coordination.¹³⁷ Where the UNHCR has most clearly played an important independent role

¹³⁶ Morris, Nicholas. "Refugees: Facing Crisis in the 1990s--A Personal View from within UNHCR." *International Journal of Refugee Law: Special Issue* (Oxford: Oxford University Press, September 1990), 45-48; Claudena M. Skran, "The International Refugee Regime: The Historical and Contemporary Context of International Responses to Asylum Problems," *Journal of Policy History*, Vol. 4, No. 1 (1992), 24.

¹³⁷ This definition of implementation differs from that provided by Donnelly. For Donnelly, implementation activities include: 1) "*weaker monitoring procedures*"; 2) *international policy coordination*, that is the "regular and expected use of an international forum to achieve greater coordination of national policies but no significant international review of state practice, and 3) "*some forms of information exchange*", defined as "obligatory or strongly expected use of international channels to inform other states of one's practice with respect to regime norms." (604) However, when it comes to the difference between promotion and implementation, Donnelly's categories do not seem to fit the refugee regime as well as they do the human rights regimes for which they were designed. Donnelly lumps "*promotion of*" and "*assistance in*" the national implementation of international norms in the same category. This might make sense in the field of human rights, where assistance in the implementation of norms mainly involves information exchange and consultations. In the field of refugees, however, assistance involves in many cases the direct provision or coordination of relief, development, training, and other activities more appropriately called implementation than promotion.

is in taking responsibility for the status determination, protection and assistance of non-European asylum seekers under its mandate. It has had to take this role because Hungary adhered to the Convention with a geographical reservation, limiting its responsibility to European refugees only. In this way, the UNHCR is actually implementing the regime's norms directly rather than forcing the state to implement them.

A second area of implementation activities has been undertaken since the Dayton Accord officially ended the civil war in Bosnia. The UNHCR first strove to promote repatriation by coordinating the organized return of 54 refugees to the Muslim-Croat Federation, in March 1996, together with government officials and the International Organization for Migration (IOM). HCR has also organized a number of assessment missions to East Slavonia (Croatia) to investigate the possibility of repatriation.

In a third respect, the UNHCR has played a major function. It has permitted international financial burden-sharing by using donor funds to help Hungary carry out projects for which they may not otherwise have had the means. UNHCR contributions amounted to about 15% of Hungary's total budget for refugee protection assistance between 1988 and 1995. This equals approximately 1 175 000 million forints.¹³⁸ The agency has made these contributions with little attempt before 1995 to influence their direction. Contributions went to assist the local settlement of refugees, and to provide care and maintenance for recognized refugees pending resettlement as well as temporarily protected persons from the former Yugoslavia. In the first year or so, HCR money was directed at equipping the camps with such goods as mobile health screening units, toys,

¹³⁸ At an average exchange rate of 80 Forints for every Canadian dollars, this is about \$ 15 000 million Cdn. ORMA, cited in Judit Tóth, "A délszláv," 37.

kitchen and recreational equipment, furniture, educational materials and language instruction.¹³⁹ Later, funds helped to provide food, vehicles, accommodation, medical care, teachers and educational materials, cultural and recreational activities and language instruction.¹⁴⁰

Government officials had requested or at least consented to this assistance, and they continued to make the programming decisions.¹⁴¹ As a UNHCR report states, “the government remains in charge and nothing useful can be accomplished without its consent or cooperation”.¹⁴² HCR has not even been able to ensure that its contributions are spent in an honourable and equitable manner. For example, although Representative Philippe Labreveux publicly accused the government--based on HCR’s own monitoring and meetings with former ORMA employees--of inflating the numbers of refugees to obtain more HCR funds, nothing was done about it.¹⁴³ Similarly, the UNHCR, though it disapproves of spending differentials across the refugee camps, has not been able to achieve any change in this area.¹⁴⁴

¹³⁹ UNHCR, “Assistance to Asylum-Seekers and Refugees in the Hungarian People’s Republic,” internal document (1989).

¹⁴⁰ UNHCR, *UNHCR activities financed by voluntary funds: report for 1992-1993 and proposed programs and budget for 1994, Part III, Europe*, A/AC.96/808 (12 August 1993), 50-52.

¹⁴¹ Independent Commission on International Humanitarian Issues (ICHI), *Refugees* (London: Zed Books, 1986), 21.

¹⁴² UNHCR, *Report on the Fourteenth Session of the Executive Committee* (Geneva: November, 1965) A/AC.96/313.

¹⁴³ UNHCR, “Emlékeztető feljegyzés a déli országrészben dolgozó menekültügyi tanácsadók szemináriumán elhangzott előadásokról” [Minutes of Lectures delivered at a seminar for refugee counsellors working in the South of Hungary] (Budapest: October 24-25, 1995), 1-2.

¹⁴⁴ Philippe Labreveux, Country Representative, UNHCR, personal interview (23 May, 1996).

Until 1995, UNHCR staff were content with this situation, funding government projects while having little say in their content. This changed with the arrival of a more critical and aggressive country representative, Philippe Labreveux, in late 1994. The UNHCR in Hungary had by that time arrived at the view that the temporarily protected persons from former Yugoslavia were being turned into human vegetables in the camps, and that those outside were not being assisted adequately. Indeed, the lion's share of government funds, to which the UNHCR had been contributing, went to the maintenance of the refugee camps, as Table 5 shows.¹⁴⁵ In the representative's view, the government had "managed to transform these people into social parasites, because they *thought they* were social parasites."¹⁴⁶ The UNHCR wished to reorient policy toward long-term self-sufficiency with a view to local integration on one hand and eventual repatriation on the other. The government, on the other hand, argued that given diminished public patience and the potential for new arrivals, a minimum number of camps had to be maintained.¹⁴⁷ It refused to accept the change suggested by the UNHCR. A five month stalemate between the government and the UNHCR ensued.

Finally, the UNHCR decided to begin administering its own refugee assistance programs directly, with the assistance of implementing NGOs, rather than to channel all of its funds through the government. This marked an important turning point in the relationship between the government and HCR, a change from cordial to bitter and

¹⁴⁵ Data from ORMA, cited in Judit Tóth, "A délszláv", appendix.

¹⁴⁶ Ibid.

¹⁴⁷ Csaba Révfalvi, ORMA, in UNHCR, "Emlékeztető feljegyzés a déli országrészben dolgozó menekültügyi tanácsadók szemináriumán elhangzott előadásokról" [Minutes of lectures given during a seminar for refugee counsellors working in the South of Hungary], (Bp: 1995 Oct. 24-5), 13.

conflictual relations. It also meant, however, that the HCR began to have more independent influence on the care given to refugees, if not direct influence on government policy. In effect, frustrated with its inability to force government compliance with its objectives, the UNHCR circumvented ORMA altogether and forged closer ties with NGOs. ORMA officials are displeased with the loss of control this represents, as well as the administrative confusion caused by the mixture of government-HCR collaboration in some areas and independent action in others.¹⁴⁸

Thus in June of 1995, the UNHCR redirected its funding to privately accommodated refugees. It offered a number of programs designed to make them self-sufficient outside the camps. First, it provided a 100% increase in their living allowance. Second, it offered camp-dwellers assistance in moving out of the camps in the form of a one-time settlement grant of 80 000 Hungarian forints (HUF) (equivalent to four months' income) for furniture and domestic equipment.¹⁴⁹ Third, it provided language and vocational training through the IOM. With a 90% attendance rate, this proved far more successful than previous government-organized classes, probably because students now had better possibilities of settling outside the camps. Vocational training focused on skills

¹⁴⁸ Ibid., 14.

¹⁴⁹ At that time, there were approximately 80 HUF to every Canadian dollar.

Table 5. Government expenditures on refugees and temporary protected persons, 1988-1995¹⁵⁰

Year	Refugee camps	children's education	health care	allowances	one-time settlement grants	housing loans	other
1988	6 343	1 950	6 382	15 622	10 006	2 527	16 804
1989	118 282	1 627	12 268	43 044	64 513	211 114	66 235
1990	324,216	1 506	20 357	33 114	63 041	306 148	37 218
1991	570 732	86	384	1 654	4 019	252 700	6 925
1992	873 218	19 970	43 026	1 434	1 867	121 343	13 600
1993	969 225	18 745	16 245	3 304	1 652	117 056	344 673
1994	985 000	19 600	54 400	1 200	800	0	288 000
1995	1 107 863	30 575	165 015	5 503	534	22 195	47 544
Total	4 954 879	94 059	319 077	104 875	146 432	1033 083	822 999
100%=	66.4%	1.2%	4.2%	1.4%	2.0%	13.8%	11.0%

useful in post-war reconstruction, but was not linked to jobs. Fourth, it offered apprenticeship grants as another form of training. These allocated trainers 21 000 HUF per month for three months, with possible renewal. Fifth, it initiated a program of small business grants of up to 210 000 HUF. Between January and June 1996, 90 such grants had been given, 60% in agriculture (33% animal raising; 27% vegetable growing), 24% industry (bricklaying, needlework, welding, etc.), and 16% in services (sales, auto body workshops, hairdresser salon, etc.). Social counselling and legal assistance programs were

¹⁵⁰ Data from ORMA, cited in Judit Tóth, "A délszláv", appendix.

also established to complement these projects.¹⁵¹ These programs all involve direct implementation of programs designed and managed by the UNHCR *without* government cooperation. From a peaceful collaboration in which ORMA called the shots, there has been a shift to an uneasy coexistence of the two organizations.

A final implementation activity carried out by the UNHCR is that of international policy coordination. This is done at the international rather than national level, through the Executive Committee (ExCom) of the UNHCR. This body consists of 50 member states “which have a particular interest in refugee matters”, either as “important asylum countries” or as “major donors to UNHCR programmes.”¹⁵² In October 1992, Hungary was elected a member. As such, government officials can represent the country’s interests at the international level and participate in the creation of annual reports¹⁵³ and recommendations which set non-binding norms for action on matters from status determination to asylum and repatriation. Through these meetings, the UNHCR encourages greater coordination of Hungary’s policies with those of member states. Conversely, Hungary’s presence also allows officials to take part in shaping the international regime according to its interests.¹⁵⁴

¹⁵¹ UNHCR, “Emlékesztető”, 14; Labreux, personal interview; UNHCR, “Programs for DPs provided by UNHCR,” internal document (Pécs, March, 1996); Konstantin Negrea, Senior Field Clerk, Field Office Pécs, UNHCR, “UNHCR Business Grants January-June 1996 Statistics,” internal document (May 12, 1996).

¹⁵² UNHCR, Annex III, Box III, *State of the World Refugees* (1993), 170.

¹⁵³ E.g. “Report of the Forty-Fifth Session of the Executive Committee of the High Commissioner’s Programme” (Geneva, 3-7 October 1994) A/AC.96/839.

¹⁵⁴ Donnelly, 604.

Promotion Activities

If the UNHCR implements some elements of refugee assistance, its most important role in Hungary and elsewhere is to promote, rather than enforce, state compliance with international norms. In Donnelly's definition, promotion activities involve 1) international information exchange; 2) "promotion of ... the national implementation of international norms", and 3) weak monitoring of international guidelines.¹⁵⁵ HCR has had a notable impact, however, only when the government was receptive to HCR's technical assistance in pursuit of government-defined goals

Where information exchange is concerned, Hungary has been linked to the UNHCR database since summer 1991. This has enabled Hungary to receive all important computerized information about the refugee legislation of other countries, the number of refugees, and legal precedents in refugee status determinations. HCR also provides information on asylum seekers' countries of origin in order to facilitate refugee status determinations.

Through public information activities, HCR has sought to promote understanding and tolerance of refugees among the general public, thus making it easier for Hungary to pursue policies with a humanitarian thrust. Such activities have included assisting journalists in preparing reports on refugee-related issues, giving lectures to journalists and journalism students and organizing public awareness campaigns.

Training is perhaps HCR's most powerful vehicle for promoting officials' understanding of refugees and competence in related tasks. Over the years, HCR has held

¹⁵⁵ Donnelly, 604.

a large number of workshops to train ORMA employees including senior officials, eligibility officers, and camp staff, as well as Foreign Affairs officers, parliamentarians, mayors, detention centre staff, border guards, alien police officers, academics and NGO representatives. Through such programs, the agency has increased policy-makers' and practitioners' understanding of Hungary's international obligations under refugee and human rights law. Seminars on topics such as emergency management, aliens' rights, the role of municipalities in facilitating integration, human rights situations in various countries of origin, and minority rights have further enhanced Hungary's capacity to fulfill its obligations under the international regime. They have made the regime's principles, norms, rules and procedures known to the policy community, thus encouraging compliance with them.¹⁵⁶

In the areas above, where Hungary had requested or been open to benefiting from HCR's money, knowledge, and human resources, HCR was able to have an impact. However, when HCR opposed government policy or practice, it has rarely been able to effect change. Admittedly, until 1994, UNHCR Branch Office leaders took a conciliatory, rather than a confrontational approach that did not emphasize lobbying tactics. Yet even since the arrival of the more combative Labreux, diplomatic tools such as meetings and negotiations--perhaps the strongest response to regime non-compliance of which the UNHCR is capable--have lacked effectiveness.

Some instances of success do exist, nevertheless. One took place in 1996, after ORMA had declared that following the Dayton Accord, new asylum seekers from the

¹⁵⁶ UNHCR, internal documents, 1995 and 1996.

former Yugoslavia would no longer be given temporary protection. A number of returning refugees, transiting Hungary on their way back home, lacked the papers necessary to cross into Croatia and had to stay in Hungary for a number of days. ORMA initially refused to house these in the state camps. Under UNHCR pressure, officials eventually agreed to take them on a case by case basis, provided HCR assume the costs. In a similar case, following the closure of the Kerepestarcsa prison for illegal aliens in summer 1995, the UNHCR managed to arrange for non-European asylum seekers from the prison to be accommodated in the Bicske state refugee camp. This victory was achieved only after half a year of negotiations, and with the proviso that HCR pay for their room and board. A final example took place when UNHCR staff confronted the employees of one of the refugee camps about complaints that diluted milk was being served to the residents. The problem was solved soon thereafter.

On these relatively minor issues, UNHCR lobbying has thus had some success. Despite this, one employee claims that for the most part, when HCR brings problems to the attention of ORMA, nothing is done.¹⁵⁷ On larger policy issues, its record is particularly bleak. For example, UNHCR pressure to lift the geographical reservation on Hungary's accession to the Convention has yielded promises but few results. The reservation puts non-European refugees in an untenable situation, as they are unable to resettle elsewhere or return home, yet have no formal legal status or rights in Hungary.¹⁵⁸ As early as April 13, 1992 Hungary stated under UNHCR pressure that it would soon lift

¹⁵⁷ Yonezu, Associate Program Officer, UNHCR.

¹⁵⁸ Judit Tóth, *Menedékjog kérdőjelekkel* [Refugee law with question marks] (Budapest: Közgazdasági és Jogi Könyvkiadó, 1994), 111.

the reservation in 1993, and year after year it has delayed implementing this promise. The UNHCR has geared its training and information programs toward preparing the appropriate authorities for the change, which would make Hungary responsible for determining the refugee status of non-European claimants.¹⁵⁹ The Representative has met with several MPs and politicians about the issue. Yet several years later, the restriction remained. While government officials argue that it should only be lifted once material resources, institutions, and personnel are able to cope with the consequences, HCR staff grow more and more frustrated at repeated postponements.

Similarly, the UNHCR has lobbied the government to define the legal status of temporarily protected persons, who have no social or legal rights in Hungarian law. Most notably, HCR has pushed for their legal right to work. The government promised to clarify these issues, as well as to remove the geographical restriction, in a refugee law that has been planned for years but whose approval was expected only in late 1997. In the content of this law itself, HCR staff expected to have little input.¹⁶⁰

On other issues, while the UNHCR has been critical, it has not seriously pursued changes in government policy. For example, UNHCR staff have criticized Hungary for according ethnic Hungarians preferential treatment in their asylum, immigration and citizenship policies. Most specifically, they were concerned that non-Hungarians lacked equal access to the refugee status determination procedure and were discriminated against

¹⁵⁹ UNHCR, personal interviews (May-June, 1996).

¹⁶⁰ Agnes Ambrus, National Legal Officer, UNHCR, personal interview (Budapest: May 22, 1996).

within the procedure. However, no doubt realizing the limited potential of their efforts, they have not been persistent in negotiating the issue with the Hungarian government.

Similarly, UNHCR allegations of corruption in the camps were not followed by serious diplomatic pressure on the state. According to Mr. Labreveux, bilateral donations to the camp were disappearing. When these accusations were brought to the attention of the government, they claimed that the money was redistributed from the largest centre, Nagyatád, to the other camps. Labreveux does not believe this defence, but takes the resigned attitude that the UNHCR has no power to eradicate corruption, because it is so pervasive in Hungarian society.¹⁶¹

Finally, UNHCR Branch Office for Hungary has also pursued the third type of promotional activity listed by Donnelly: weak monitoring of international guidelines. In an annual report on the protection of refugees in Hungary, HCR staff answer a detailed set of questions on state practice and the HCR's role in areas such as status determination, asylum, voluntary repatriation, non-refoulement, and expulsion.¹⁶² However, this type of monitoring is strictly an internal and private activity of the UNHCR. It does not require the active participation of states and thus functions only to inform the UNHCR's promotion and assistance efforts.

A more open type of monitoring has taken place since HCR opened a three-person field office in Pécs in May 1992. Until the 1995 switch to direct implementation, this office focused on collecting its own refugee statistics locally to ensure that refugee

¹⁶¹ Labreveux, personal interview.

¹⁶² Refugee Protection Questionnaire, mimeograph; Refugee Protection Reports (REFPRO). REFWORLD CD Rom, consulted at UNHCR Branch Office for Canada.

numbers were not inflated by the government. Given that ORMA was allegedly still inflating figures in 1995, the success of these activities is uncertain. One HCR field officer felt, however, that although monitoring never has concrete results, it may have made the Hungarian government more restrained and attentive in its practice.¹⁶³ Borders are one area that the UNHCR would like to monitor, in order to ensure that potential asylum seekers have the opportunity to claim refugee status, as well as access to interpreters, lawyers, and the appropriate officials. However, its own staff, at less than 20, is insufficient to carry out this function, and it has not been able to find an appropriate NGO partner to deal with this effort.¹⁶⁴

Impact of the UNHCR on Hungarian Refugee Policy

From this discussion, the limits of the UNHCR's influence on Hungarian decision-making become apparent. The principal limitation is its lack of enforcement power, as well as its lack of political leverage. The Hungarian state's stretched financial, institutional and human resources have also impeded its full compliance with the international regime, though the UNHCR has sought to remedy this through financial assistance and training programs. A final problem is the UNHCR's lack of credibility, particularly in the area of the refugee status determination procedure. While the HCR Hungary is supposed to help ensure that Hungary meets its international obligations as

¹⁶³ Konstantin Negrea, Senior Field Clerk, UNHCR Pécs, personal interview (Pécs: June 14, 1996).

¹⁶⁴ Ditlev Nordgaard, Deputy Representative, UNHCR, personal interview (Budapest: May 22, 1997).

defined by the UNHCR, staff admit that they are “preaching higher standards to the Hungarian government than [they] can themselves live up to.”¹⁶⁵

The UNHCR refugee determination process has been criticized on a number of grounds. First, until 1995 when pamphlets on asylum were produced with HCR funding, the agency did not provide information to detention centre residents on the possibilities for requesting refugee status. Second, there is no possibility to appeal negative decisions, although this is one of the basic requirements for the procedure stipulated in a 1977 recommendation by the UNHCR Executive Committee.¹⁶⁶ Instead, applicants may submit a request for review of an amended application if there is new evidence, and this is usually heard by the same person who made the first instance determination. Refused applicants are issued a form letter, usually dated the day of the interview, in English, which many applicants cannot read.¹⁶⁷ Reasons for rejection are only rarely given, and then only five to six months after the interview. Most interestingly, UNHCR legal officers routinely use the “safe third country” principle, one of the main features of the emerging European regime, in their own determinations. This allows them categorically to turn down Afghanis coming from Pakistan or Russia, Iraqis transiting through Turkey, or Africans taking a roundabout route to Hungary. Among the approximately 5% of applicants

¹⁶⁵ Ibid.

¹⁶⁶ *Official Records of the General Assembly, Thirty-second session, Supplement No. 12 (A/32/12/Add. 1)*, paragraph 53 (6) (c), in UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva: UNHCR, January 1992), 46.

¹⁶⁷ African asylum seekers, Mahatma Gandhi Association home for illegal aliens, personal interviews (Budapest, July 24, 1996); Mandate refugees and rejected asylum seekers, Red Cross home, personal interviews (Budapest, June 9, 1996).

accepted, typical cases are Iraqis who crossed through Jordan, high profile political cases, refugees harassed in a potential safe country, and *refugiés sur place*— usually foreigners who came as students and were unable to return home due to a change of regime or the eruption of war.¹⁶⁸

These practices all put the UNHCR in a false position when it comes to advocating humanitarian solutions that conform to the spirit of the Geneva Convention. In fact, as will be discussed in greater detail in chapter four, it appears that the UNHCR itself is being influenced and its humanitarianism weakened by the growing trend toward restrictiveness exhibited by its most powerful member states. This evolution inevitably diminishes its resolve in promoting protection and solutions along the lines envisaged by the 1951 Convention.

This section has sought to show the importance of “how the design features and programmatic activities of institutions interact with the configurations of interests and patterns of influence within which they operate.”¹⁶⁹ When the international regime has complemented Hungary’s interests as outlined in chapter two, Hungary has conformed to it. When it has not, Hungary has tended toward policies inspired by prevailing domestic imperatives and other Western influences. In sum, then, the international refugee regime has *not* been fully effective in using “endogenous facts (rules, procedures, and programs) to alter exogenous facts (patterns of influence and interest, behaviour of actors).”¹⁷⁰ It has

¹⁶⁸ Nordgaard, interview.

¹⁶⁹ Marc A. Levy, Oran R. Young, Michael Zürn, “The Study of International Regimes”, *European Journal of International Relations*, Vol. 1, No. 3 (1995), 303.

¹⁷⁰ Levy et al., 303.

merely reinforced or assisted behaviour that meshed with existing patterns of influence and interest.

RELATIONS BETWEEN THE STATE AND WESTERN EUROPE

In contrast, the emerging West European regime has been able to have a growing impact on Hungarian refugee policy. This is despite the fact that Hungary is not yet a signatory to either the Dublin or Schengen Agreements or to the Maastricht Treaty, and therefore not even a member of the European regime. And whereas the UNHCR has worked to promote Hungarian compliance with the international regime, no office representing the European regime has established itself in Hungary for such a purpose. It is therefore difficult to speak of the European regime as undertaking any enforcement, implementation, or promotional activities in Hungary.

What then accounts for the growth in influence of that regime and the simultaneous loss of influence of the international regime? As described in Chapter Two, changes in migration flows and the economic and social difficulties of transition have delegitimized the principles embodied by the UNHCR while making those of the EU seem more relevant and applicable. Two other reasons hinge less on the appeal of the regime's content itself than on the institutional relationship between Hungary and Western Europe. First, Western Europe has used the lure of membership in the EU to promote policy changes along the lines of the emerging regime. Second, its adoption of the "safe third country" principle has threatened Hungary with greater numbers of migrants and asylum seekers and has thereby pressured it to use similar tactics. These developments, it will be

shown, have led to Hungary's increased participation in European migration and asylum policy fora, particularly those focused on restrictive measures.

The “Carrot”: The Prospect of Joining the European Union

Traditionally, the European Community based its foreign relations on commercial, foreign and security policy and development aid. Since 1990, however, it has extended those relations to the domain of justice and home affairs, under the Third Pillar of the European Union. One way this has been achieved is by using the prospect of EU membership in order to influence the internal and external policies of Eastern European states. From the beginning of the transition period, Western powers have, according to theorist Peter Gowan, pressured Eastern Europe to adopt transformation strategies that suited their own economic and political interests, while imposing considerable costs on the populations of those countries.¹⁷¹ They have done this through conditional aid, conditional recognition, and conditional trade deals. At the same time, the political classes of Eastern Europe have wholly adopted the view that a “shock therapy” approach is the best, if not only one.

In a similar way, Western powers have begun to use conditional EU membership as yet another “carrot” to lure Hungary and its neighbours into adopting desired policies. In Hungarian policy discourse, meanwhile, European integration has become a panacea that will presumably alleviate unemployment, poverty and other social and political ills, including migration problems.¹⁷² In 1992, among the government's foreign policy goals

¹⁷¹ Peter Gowan, “Neo-Liberal Theory,” 3-60.

¹⁷² For example, during a lecture on Hungarian refugee policy, the Director General of ORMA, Mr. Jungbert, concluded an exposé of the various migration and refugee-related problems faced by

were “Atlantic co-operation and future EC membership.”¹⁷³ By 1994, rapid integration with Euro-Atlantic institutions was listed first of three main foreign policy priorities.¹⁷⁴

European pressures and domestic policy-makers’ beliefs and goals have worked together in a mutual fashion to encourage Hungary to harmonize its policies with those of Europe. By December 1994, the EU had charted the course which would eventually lead Hungary and other associates to full membership. Cooperation in refugee and migration issues was incorporated to the accession strategy.¹⁷⁵ Aware of this, both the Secretary of State for the Ministry of Interior and the Director General of ORMA have stated Hungary’s fundamental interest in molding national regulations in the image of EU norms.¹⁷⁶ Political conditionality, moreover, has not been restricted to membership of the EU, but has also included assistance. Indeed the mainly economically oriented assistance program PHARE (Poland, Hungary Aid for Reconstruction) has been broadened in scope to include assistance related to Third Pillar matters, particularly in matters related to illegal immigration, asylum and drug trafficking.¹⁷⁷

Hungary with the remark, unsubstantiated, that the only “solution” was integration with the EU. Natalie Zend, *Report on the Visit*.

¹⁷³ Hungarian Government, Prime Minister’s Press Office, *Midway*.

¹⁷⁴ Le Bor, Adam, “Facing the Future.” The other two were (a) good neighbourly relations and reconciliation, and (b) support of the minorities.

¹⁷⁵ UNHCR, “Situation Report” (January 1995) and Lavenex, 10.

¹⁷⁶ Világosi, interview; Jungbert, interview.

¹⁷⁷ Originally, PHARE was designed “to provide economic assistance in the reforms of the agriculture, ecology, finance, industry, infrastructure, social sector and education”, Lavenex, footnote 30, 23.

The “Stick”: The Threat of Becoming Europe’s “Dumping Ground”

The EU has extended its external relations to include migration policy in a second way: through the use of the redistributive principle of “safe third countries”. Because it ratified the 1951 Convention and therefore upholds, at least in theory, the norm of non-refoulement, Hungary has been deemed a “safe country” since 1990.¹⁷⁸ As such, if an individual who claims asylum in an EU member state has received a visa or residence permit in Hungary, has a close family member legally there, or simply passed through, Hungary is responsible for taking the claimant back and examining the claim.¹⁷⁹ Through this rule, the EU is preventing large numbers of asylum seekers from accessing its members’ determination procedures and is transferring responsibility to third countries such as Hungary. A concrete manifestation of the inclusion of non-EU states in the purview of the regime is a readmission agreement between the EU and Poland (March 29, 1991). It stipulates that illegal migrants, including third state citizens and asylum seekers, be returned from Schengen signatory states and Poland.¹⁸⁰

In addition to these EU measures, several member states have also adopted restrictive national laws that have the same effect of making Hungary a host country “by

¹⁷⁸ István Sándor, Director of the Department of Migration and Refugee Affairs, *A Magyar Köztársaság Tevékenysége a Nemzetközi Menekültügy és Migráció Terén* (Hungarian Refugee and Migration Related Activities), Internal document, 1993, 6; Mária Rédei, “The Politics of East-West Migration: Hungary”, Manuscript, 19.

¹⁷⁹ Art. 4-8 Dublin Convention, art. 32, Schengen Convention, qtd. in Lavenex, 6.

¹⁸⁰ Wladyslaw Czaplinski, “Aliens and Refugee Law in Poland—Recent Developments,” *International Journal of Refugee Law*, Vol. 6, No. 4, 636-642, qtd. in Lavenex, 10.

default”.¹⁸¹ In June 1992, for example, Austria adopted a more restrictive asylum law incorporating the concepts of “safe country of origin” and “manifestly unfounded application”. In July 1993, Germany made restrictive amendments to laws which had granted asylum for all politically persecuted. Britain and France also enacted new and stricter asylum laws that same year. At the same time, Austria reinforced its borders with Hungary.¹⁸²

A major problem with these policies is that, “[g]iven that international law derives a responsibility of readmission only for the states’ own citizens, there is no legal basis for these states to agree to take back a third state national.”¹⁸³ Indeed, these measures have been adopted without Hungarian input, yet they affect the Hungarian state. They have robbed Hungary of its capacity to exercise its sovereignty in this area by making independent decisions.¹⁸⁴ A growing number of readmission agreements, however, has been changing this situation. These agreements entitle Western states to return migrants to transit countries and oblige those countries to readmit them. Hungary has signed such agreements with Western European states Austria (April 20, 1995) and Switzerland (July

¹⁸¹ Iwinski, Mr. “Preliminary Draft Report on refugees and asylum-seekers in Central and Eastern Europe” (Strasbourg: Council of Europe Parliamentary Assembly Committee on Migration, Refugees and Demography, 3 April 1995), 2.

¹⁸² *Migration News Sheet*, No. 123 (1993), 3, qtd. in Boldizsár Nagy, “The Refugee Situation,” 21.

¹⁸³ Lavenex, 8.

¹⁸⁴ Rédei, 22, 41.

8, 1995), and has been engaged in preparatory talks with Germany, France, Italy and Greece.¹⁸⁵

These policies leave Hungary in a difficult position: either to accept the role of Western Europe's "dumping ground" or buffer, or to shift the burden further eastward again. Given Hungary's transition pains, security concerns, and public antipathy towards refugees, as detailed in Chapter Two, it is choosing the latter course. Hungary is compelled to use the same instruments vis-a-vis its Eastern and Southern neighbours as Western countries have used toward it.

Increased Cooperation on Migration and Refugee Affairs

The "sticks" and "carrots" proffered by the EU, along with Hungary's domestic concerns and foreign policy goals, have led Hungarian officials to participate actively in the many organizations and fora created to address migration problems in Europe. Such fora have multiplied, from five in the mid-1980s, to 15 today, with between 30 and 45 sub-groupings.¹⁸⁶ Hungary has been particularly active in the most important and successful of these in the East-West context, the Berlin-Budapest Group. This is a forum for cooperation between 34 EU and non-EU states which aims to control illegal migration. It began with a Conference of Interior Ministers in Berlin organized by the Council of Europe in October 1991, which agreed to cooperate on (a) enhancing the infrastructure, equipment and training necessary for border security, and (b) intensifying border

¹⁸⁵ Hungarian Border Guard, "Toloncegyezmények" [Readmission Agreements], internal document (Budapest: July 18, 1996).

¹⁸⁶ Examples include the ad hoc Working Group on Immigration (established in 1986) and the Group of Co-ordinators (1988). See King; Fernhout.

surveillance on the basis of joint analyses and up-to-date situation reports. Hungary coordinated follow-up activities related to organizing information exchange. In February 1993, the Hungarian Minister hosted a new Interministerial Conference on European cooperation for border and entry control. Hungary now chairs the Budapest Group, the steering group in charge of follow-up activities. Three meetings of the Budapest Group have taken place to date. A sub-group, of which Hungary is a member, has prepared action to improve East-West coordination on issues such as human trafficking, readmission agreements, information exchange, financial and technical assistance to Central/East Europe, return of illegal migrants, and model law.¹⁸⁷

These issues mirror West European policy priorities in the area of migration. This is no coincidence, since the EU Commission, Schengen, and European Free Trade Agreement (EFTA) Presidencies have an influential role as members of the Group. Indeed, Hungary seems to have taken on a leadership role in a bid to hasten its preparations for joining the EU, as well as to address the problem of uncontrolled migration. The dynamism of the group, and Hungary's predominant role in it, seem to suggest that Hungary is moving toward adoption of restrictive mechanisms similar to those devised by its Western neighbours.

A look at Hungary's other diplomatic activities in the field of migration confirms this. Hungary plays an active role in other European fora, such as the Council of Europe's CDMG (European Committee on Migration) and CAHAR (Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons). It

¹⁸⁷ International Centre for Migration Policy Development. "Information Note on the Budapest-Process." March 1996.

also promotes regional cooperation on migration issues in various fora. One example was a meeting in April 1993 of six Central European Interior Ministers. The goal of the meeting was to discuss how to cope with changes in German legislation which participants feared would increase the number of refugees and illegal migrants in their countries. In this meeting, the reluctance of Hungary and its neighbours to being incorporated into the new European system of redistribution became quite clear with the creation of an alternative proposal for multilateral readmission agreements.¹⁸⁸ Other examples include consultations among the members of the Migration Working Group of the Central European Initiative (CEI),¹⁸⁹ and informal cooperation on migration issues within the Visegrád Group (a free trade association among Hungary, Poland, Slovakia and the Czech Republic).¹⁹⁰

Interestingly, the Vienna Process, the international forum whose activities might have allowed Hungary to maintain a liberal border policy, was disbanded after less than four years while the Budapest Process remains strong. This Process began with an interministerial conference in January 1991 to discuss East-West migration in Europe. Its mandate was broader than that of the Budapest Process, as it included discussion of conflict prevention, economic cooperation to ease Central/East European countries' transitions, and aid to countries of origin. This might have been an opportunity for European countries to take a long-term approach to the issue, rather than focus

¹⁸⁸ Boldizsár Nagy, "Changing Trends," footnote 47.

¹⁸⁹ Sandor, A. *Magyar*, p. 5; IBHI, *Central and Eastern Europe*, p. 13.

¹⁹⁰ Judit Tóth, "Humanitarian Security and Involuntary Migration in Europe," *New Forms of Security: Views from Central, Eastern and Western Europe*, Pál Dunay, Gábor Kardos and Andrew J. Williams, eds (Aldershot, Brookfield: Dartmouth Publishing Company, 1995). 155.

exclusively on stop-gap control measures.¹⁹¹ By establishing “burden-sharing mechanisms”, whereby the richer Western countries would assist their Eastern neighbours with determining refugee status and providing asylum, the Vienna Process might have enabled Hungary not to adopt Western-style restrictive policies. However, diverging interests have prevented progress in the area of burden sharing. While countries already burdened with large numbers of refugees such as Hungary and Germany support the concept, more restrictive countries oppose it.¹⁹²

Thus in many ways--through conditional membership in the EU, through their own restrictive policies, and through international meetings and fora--Western Europe has increasingly pressured Hungary to adopt the focus on control characteristic of the developing regional regime.

RELATIONS BETWEEN THE STATE AND CIVIL SOCIETY

Because they espouse humanitarian responses to refugee flows, NGOs might be expected to play a part in countering this European influence and in promoting government receptivity to the ideas of the international regime. This expectation has not been borne out in the long-term, however. In the early stages from 1987 to 1989, as this section will first demonstrate, NGOs indeed participated in agenda setting and policy formulation through membership in a pluralist policy network. However, when the issue

¹⁹¹ Iwinski, “Preliminary Draft Report”; Jonas Widgren, “Vers une coopération europeene face aux mouvements de population,” Doc. 51 (Strasbourg: Groupe de travail sur une structure de solidarité (Partage de la charge), Groupe de Vienne, 17-18 June 1993).

¹⁹² Hungarian delegation to Vienna Group, Working document on questions relating to information prepared by the Hungarian delegation (Strasbourg: Group of senior officials entrusted with the follow-up to the Conference of Ministers on the Movement of Persons from Central and Eastern European Countries, 3rd meeting, 7-8 November 1991).

was taken on as a matter of state policy, the civil sector quickly grew marginalized. NGOs implemented their own programs, but largely failed to influence the government's policy formulation process. Unable to reconstitute either an effective knowledge-based policy community or a cohesive interest-based policy network,¹⁹³ they have remained largely atomized, their interactions with either the government or each other limited, and their impact on government policy minimal.

1987-1989: NGOs and Government in a Pluralist Policy Network

Initially, as argued in Chapter Two, the grassroots movement that emerged in response to the Romanian refugees helped to set the government's policy agenda. In the early stages of the refugee crisis (1987-1989), NGOs became part of a pluralist policy network in which they were joined with state actors in formulating and implementing public policy.¹⁹⁴ Their influence is attributable to a number of conjunctural factors: a broad base of public support and a history of grassroots relations; the inability of the government to handle the crisis effectively on its own due to a combination of inexperience and "excessive politicization" of the issue; and the compatibility between the ideas and aspirations of civil society and of government (shown in Chapter Two). These points will be highlighted by tracing the history of NGO-government relations in this period.

¹⁹³ Ibid., 131.

¹⁹⁴ The definition of policy networks offered by Peter Katzenstein is: "Those links joining the state and societal actors together in the policy process," "Conclusion: Domestic Structures and Strategies of Foreign Economic Policy," *International Organization*, Vol. 31, No. 4 (1977), paraphrased in Howlett and Ramesh, 127. A pluralist policy network, in the Howlett and Ramesh taxonomy, is one in which "a large number of actors are involved in the subsystem but state actors are dominant." (130-131)

The Romanian refugee “crisis” began in August 1987 when a large group of Romanians entered Hungary as tourists under the pretext of attending the Formula-1 automobile race, and were forced by Austrian and Swedish visa restrictions to remain in Hungary. At that time, there was already a long history of personal intellectual networks across the border and grassroots diplomacy involving regular visits and provision of food, medicine and cultural commodities to the Hungarian minority in Romania. These formed a strong precedent for widespread public involvement with the incoming Romanians.¹⁹⁵ The emigrants themselves broadened this human resource base, becoming active in self-help groups.¹⁹⁶

Organizations coalesced into three broad categories, according to Endre Sik. First the churches began to organize the widespread private activities into charity committees in the winter of 1987, recognized by church authorities around the spring of 1988. These, along with the Red Cross, were most crucial in the areas of fundraising, coordination and social work. They were better organized, had more extensive external contacts, and a more clearly defined role in the system. But the other two types of groups, the political and social groups, despite their small size and poverty, were very active and perhaps more effective in influencing the state sector.¹⁹⁷ According to Agnes Czakó, the social groups, which focused on preserving Transylvanian traditions, received support from the municipal

¹⁹⁵ Ágnes Czakó. “A romániai menekültek és a civil szféra változó szervezetei” [The Romanian refugees and the changing organizations of the civil sphere], *Útkeresők* [Roadseekers], Endre Sik, ed. (Budapest: Institute for Political Science of the Hungarian Academy of Sciences, 1993), 93-112.

¹⁹⁶ Endre Sik, “Policy Networks to Cope with Crisis: The Case of Transylvanian Refugees in Contemporary Hungary,” *Innovation*, Vol. 3, No. 4 (1990), 729-748.

¹⁹⁷ *Ibid.*, 743.

governments and the Red Cross. In contrast, the political groups, oriented toward the defense of human rights and affiliated with the political opposition and alternative churches, were perceived by governments as opposition groups.¹⁹⁸ All of them had strong international connections with foreign churches, affiliates and governments.

While these groups responded very quickly to the crisis, state authorities were much slower. They lacked relevant experience as well as a legal framework. Moreover, Sîk argues that the situation was aggravated by the “over-politicization” of issues related to Transylvania. By this he means that “state activities [could not] start without an ‘upper level policy’ decision”, leading to the continual postponement of decision-making and a “veil of secrecy” about state activities. This was caused by “the country’s party-state control structure and communist heritage on one hand, and the traditional Hungarian-Romanian tensions on the other.”¹⁹⁹ It decreased the effectiveness of state responses and created suspicion and distrust between government and non-government agents, but also had the effect of spurring public enthusiasm about volunteering and donating.²⁰⁰

Loose organizational structures developed at both the state and societal levels, and a dense web of personal contacts among and between them created a “weakly integrated [policy] network”. In 1988, the state established a non-hierarchical, decentralized set of local Coordination Committees consisting of local divisions of all relevant government

¹⁹⁸ Csakó, “A romániai”.

Comprehensive and systematic data are not available on the number, characteristics and activities of non-governmental groups. Collecting such information is hindered by the dispersal of the individuals involved at the time.

¹⁹⁹ Sîk, “Policy Networks,” 741.

²⁰⁰ Ibid.

ministries, including Finance, Education, Social Affairs and Health, Justice, and Labour, as well as mayors, trade unions, the police, the State Office of Church Affairs, the Red Cross, and representatives of the governing party. These local groupings were led by a central Interministerial Committee. For their part, groups in civil society were also loosely organized: no “peak associations” were formed to bring various groups together, and they acted quite independently of each other. Involved individuals did, however, cooperate across sectors on the basis of personal connections, as Sik’s extensive interviews with policy actors reveal.²⁰¹ A network evolved that would fit Wilks and Wright’s description of a weak integration: “large, loosely structured, with multiple and often inchoate links with other groups and actors”.²⁰² Through these links, NGOs first pressured the government to assume responsibility for refugee care. Later, they lobbied the state to accord residence permits and develop a state-run refugee system. Throughout the two-year period, and during the brief German refugee influx,²⁰³ they delivered material assistance.

By 1989, however, civil sector influence on government policy began rapidly to decline, and it would never resume its early influence. This decline was precipitated first by the full institutionalization of the issue by the state in 1989. The ratification of the 1951 Convention signalled the turning point, as Hungary was now obligated to establish

²⁰¹ Ibid., 744-748.

²⁰² Wilks and Wright, “Conclusion: Comparing Government-Industry Relations: States, Sectors, and Networks”, 301-2, paraphrased in Howlett and Ramesh, 128.

²⁰³ The Maltese Charity Service, an order of the Catholic Church, was particularly active during the 1989 German refugee crisis, setting up four temporary camps for them in Budapest and providing food and other aid, according to Imre Kozma, President, Maltese Charity Service, Personal interview (Budapest: July 24, 1996).

an appropriate infrastructure for assistance and protection. A series of decrees regulated the core issues: the refugee determination process, the distribution of the Settlement Fund and management of refugee centres, and the legal status of refugees. A Department of Refugee Affairs, housed in the Ministry of the Interior, replaced the Interministerial Coordinating Committee. Five local authorities of the Department and three refugee camps were established by the end of the year.²⁰⁴

NGOs had pushed for government action because their own human and financial resources were insufficient to cope in the long haul. Eventually, donations and public support did decline as resentment toward the Romanian Hungarians rose. The refugee issue went from being a pressing political issue to an administrative one.²⁰⁵ The self-help groups quickly imploded, while other groups refocused their energies from short-term emergency aid to the preservation of Hungarian culture in Transylvania. A few groups stayed afloat by professionalizing and taking a more market-oriented approach to services such as employment brokering.²⁰⁶ The Red Cross and church organizations such as Caritas (the official charity of the Catholic Church) focused increasingly on other needy groups in society. On the whole, the civil sector soon lost its influence over the formulation of state refugee policy.

²⁰⁴ Sîk and Tóth, "The Role," 71.

²⁰⁵ Ibid., 72.

²⁰⁶ Csakó, "A romániai", 111.

1990-1996: NGOs and Government as Parallel Actors

In the period that followed, from 1990 to 1996, NGOs never regained that ephemeral power despite the resurgence of refugee-related problems with the Yugoslav crisis and the growing influx of asylum-seekers. While new NGOs have appeared on the scene, they have been unable to create an effective policy network within which they might affect state policy. From a loose pluralistic network in which several types of NGOs and state agencies were involved, the refugee policy system became a bureaucratic network, in which policy interactions are directed by the state and take place almost exclusively among state agencies.²⁰⁷ In this situation, civil society has been marginalized in the policy process.

A window of opportunity for non-governmental actors opened for about two years at the beginning of the transition from state socialism to pluralism. This transition was signalled by the legal recognition of foundations in 1987, and the 1989 enactment of a law on freedom of association.²⁰⁸ But ironically, even as the legal climate for the nonprofit sector improved and as there was more talk of the importance of “civil society”, its policy influence in this area diminished. Having institutionalized state responsibility for the matter, the government maintained control. As Chapter Two argues, public support for a continued humanitarian approach to the issue declined. NGOs, which favoured the approach encased in the international regime, were going against the flow of both general public opinion and the more restrictive approach of the government.

²⁰⁷ See taxonomy of policy networks, in Howlett and Ramesh, 130-131.

²⁰⁸ Éva Kuti, “Overview of the voluntary sector in Hungary,” Manuscript (Budapest, 1996).

Two major types of refugee-related NGOs prevailed in this period: large charity services and small human rights organisations. The former lacked an interest in shaping policy, while the latter lacked the organization and resources to make their imprint. Both types, however, remained essential in supplementing government action. Some representative organizations of both types are profiled in Table 6.²⁰⁹ As indicated in the chart, most of the charity NGOs became active in refugee aid between 1987 and 1989, whereas the human rights organizations were established later, between 1991 and 1995. The chart also indicates their main target groups, principal activities, and some indicators to show how they differ in size from one another.

The main representatives of the charity organizations, as shown on the chart, are the Red Cross and broadly-based church-based groups, such as Caritas (Catholic), the Maltese Charity Service (Catholic), and Interchurch Aid (Protestant and Orthodox). They all have an extensive web of branches across the country and are part of larger international organisations. They cater to the general population as well as to refugees, and have devoted most of their refugee activity to the Romanian and--to a lesser extent--the Yugoslav waves, since these were the largest. They were most active in supplementing government aid by receiving and distributing large volumes of donations of clothing, food, money, medication and household products in areas with important concentrations of refugees. Other services they offer include counselling and cultural,

²⁰⁹ The data in the chart is collated from various sources. These include interviews with leaders and staff from each of the organizations, as well as their promotional materials and, in some cases, newsletters and internal documents. Specific sources are cited in many of the footnotes that follow, as well as in Appendix One (List of Personal Interviews) and the Bibliography.

sports and leisure activities. For a breakdown of each organization's activities, please see Table 6.

These larger organizations have generally been well-respected by ORMA, but have relatively few meaningful contacts with the Office or other government agencies. There are some exceptions to this rule. One is the Red Cross Refugee Centre in Budapest, to which state-run refugee camps, detention centres, and the alien police prison send some of their cases along with the funds to care for them.²¹⁰ Another is the channelling of donations through state refugee camp authorities.²¹¹ However, the smaller charity NGOs do not have unimpeded access to the state refugee camps. ORMA, according to one NGO leader, views them with suspicion.²¹² In July 1995, for instance, ORMA ordered a small German healthcare NGO, the Heidelberg Group, as well as two volunteers providing psycho-social assistance to Nagyatád camp residents, to leave the camp. ORMA alleged "security concerns", but a media polemic was triggered over allegations that the Office wished to "eliminate a permanent witness of wrongdoings in the camp, particularly the disappearance of foreign donations".²¹³ Furthermore, the government agency makes no attempt, for example through training, funding or joint projects, to develop or utilize the capacities of any of the charity services.

²¹⁰ István Major, Head of Refugee Service, Hungarian Red Cross, personal interview (Budapest: June 9, 1996).

²¹¹ Visit to Nagyatád Refugee Camp (June 12, 1996).

²¹² Szilágyi, Júlia, Executive Director, Veritas Foundation. Personal interview (Budapest: July 5, 1996). This NGO did psychological counselling in the government refugee camps in 1995.

²¹³ UNHCR, "Situation Report" (May, 1995).

Table 6: Refugee-Related NGOs, 1990-1996

	DATE EST'D	CLIENT GROUPS	ACTIVITIES	SIZE INDICATORS
HUNGARIAN RED CROSS	1881 refugee service: 1989	German ref's, Romanian ref's non-Europeans mandate refugees	<ul style="list-style-type: none"> refugee centre (Germans, Romanians, non-Europeans) aid: cash, food, cleaning products (for poor) social and employment assistance education: organization of language classes cultural, sports and leisure activities family reunification non-refugee related: tracing, blood donations, first aid, etc. 	<ul style="list-style-type: none"> members: 500 000 volunteers: 60 000 local offices: 7 100
CARITAS	WWI-1945, 1988	Romanian ref's Yugoslavian ref's	<ul style="list-style-type: none"> aid: money, clothing, furniture, food, infant care items counselling cultural, sport and leisure activities non-refugee related: care for poor, including aid distribution, vacations for poor children, social work classes. 	<ul style="list-style-type: none"> staff: 4-5000 volunteers: 30-40 # of dioceses: 15
MALTESE CROSS	1230-1945, 1987	German ref's Yugoslavian ref's illegal migrants	<ul style="list-style-type: none"> 4 camps for Germans in Budapest (1989) aid: food packages, clothes, medicine, Christmas packages, packages for Yugoslavian returnees since 1995: social counselling, apprenticeships, business grants 	<ul style="list-style-type: none"> staff: 87 volunteers: 40 000 # of regional centres: 9
INTERCHURCH AID	Spring 1989 (formally, 1991)	refugees, aliens, asylum seekers	<ul style="list-style-type: none"> refugee camp for Yugoslavians + (since 1993) legal and social counselling (office in Budapest) 	<ul style="list-style-type: none"> staff: <10 refugee-related
MARTIN LUTHER KING ORGANIZATION (MLKO)	1991	non-Europeans	<ul style="list-style-type: none"> for victims of racial attacks: 24-hour emergency service, interpreters, voluntary lawyers, reports to police documentation of racial incidents lobbying public education about racism aid: distribution to residents of alien police detention centre 	<ul style="list-style-type: none"> board members: 6 volunteers: 6 staff: 1

MEJOK	1993 (split with MLKO)	non-Europeans	<ul style="list-style-type: none"> counselling to victims of human rights abuses (victims of unwarranted detention and deportation), referral representation bcf government agencies fact-finding, monitoring research and reporting on human rights violations public education about xenophobia lobbying 	<ul style="list-style-type: none"> staff: <10 volunteer lawyers: 10 volunteers 40 # of cases in 1995: 400
MAHATMA GANDHI ORGANIZATION	1991	non-Europeans	<ul style="list-style-type: none"> lobbying legal assistance camp for non-European illegal aliens allowed to stay on humanitarian grounds sports activities for African residents 	<ul style="list-style-type: none"> board members: 10 members: 150 volunteers: 50-60
VERITAS	1993 ref's: 1995	refugee camp residents	<ul style="list-style-type: none"> psychological care to refugee camp residents research 	<ul style="list-style-type: none"> staff: 14 board: 5 founders: 2
MENEDEK	January 1995	asylum seekers, refugees and TPPs	<ul style="list-style-type: none"> legal aid (for refugees and asylum seekers) monthly migration newsletter public information pamphlets on legal issues relevant to foreigners organization of conferences on refugees and migrants collection of legal information on countries of origin lobbying 	<ul style="list-style-type: none"> staff: 4 (p-t) members: 30 affiliated lawyers: 6 law offices: 5

The larger NGOs have recently attempted to reinforce cooperation amongst themselves and with the Hungarian authorities through the creation of the Hungarian Alliance of Humanitarian Organisations in July 1995.²¹⁴ However, on the ground, the Alliance has had no effect: in fact, some front-line workers had not even heard of it.²¹⁵ The peak association is mandated to uphold Hungary's human rights obligations (as enshrined in the 1976 Human Rights Conventions, the 1951 Refugee Convention, the 1989 refugee-related decree, and the Constitution), in part by publicizing opinions on draft laws and human rights and humanitarian issues. However in reality its members consider matters such as the legal status of non-European refugees to be a "political matter" into which they have no desire to interfere. When the UNHCR attempted in 1994 to create a Hungarian Council for Refugees and Migrants to lobby on behalf of asylum seekers and refugees, it was unable to mobilize these larger organizations. As UNHCR staff stated, "they have their own agenda, are to some extent dependent on the state and are reluctant to advocate and 'make waves'".²¹⁶

In sum, then, the charity organizations lack the links to government and the desire to lobby that would enable them to take part in the formulation of state policy. The human rights organizations that began appearing in 1991, on the other hand, have the desire but lack the capacity. Please see Table 6 for the details of each organization's target groups and activities. The first of these organisations, The Martin Luther King

²¹⁴ Humanitárius Szervezetek Magyarországi Szövetsége [Hungarian Alliance of Humanitarian Organisations], "Alapszabály" [Statute] (Budapest: July 23, 1995).

²¹⁵ György, Böhm, Social Counsellor, Maltese Charity Service, Personal Interview (Pécs: July 29, 1996.); János Szalay, Director, Pécs office, Caritas, Personal interview (July 29, 1996).

²¹⁶ UNHCR, "Situation Report" (September 1994).

Organization and Mahatma Gandhi International Human Rights Organization, arose in response to the rise in xenophobia and racism, in particular the increased incidence of skinhead attacks against non-whites. Along with MEJOK, created in 1993, they document such incidents, provide support to the victims, educate the public about racism, and lobby the government for more humane laws and policies on non-European immigrants, including illegals and asylum seekers.²¹⁷ Another organization, Veritas, provided psychological care to the residents of Nagyatád refugee camp in 1995.

These NGOs and a few others like them lack many of the organizational attributes that would allow them to make an impact on state refugee policy. As advocacy groups, they generally publicly oppose the government. Therefore they would require considerable organizational strength to influence a government that has asserted a bureaucratic monopoly on decision-making at the domestic level. Just the opposite is the case, if we evaluate their “power potential” according to the relevant components of a model proposed by William Coleman.²¹⁸

First, they lack internal resources. Their permanent staff is small, generally under 15, as Table 6 indicates. This limits their policy expertise, “political tracking ability to follow and maintain pressure on political questions”, and their time to define target group

²¹⁷ Márton Ill, director, MEJOK, Personal interview (Budapest: July 4, 1996); Márton Ill and Attila Szücs, *Centre for Defence of Human Rights (MEJOK) Annual Report 1994* (Budapest: MEJOK, 1994); Martin Luther King Organization, “General Information on the Martin Luther King Organization,” Brochure (Budapest, n.d); Martin Luther King Organization, “The Pattern of Drift” (Budapest: October, 1994), “The Pattern of Drift 2” (Budapest: September, 1995); Gibril Deen, Director, Mahatma Ghandi International Human Rights Organization; Personal interview (Budapest: July 24, 1996); Taye Kabede, Martin Luther King Organization, Personal interview (Budapest: July 17, 1996). See also Table 6.

²¹⁸ William D. Coleman, “Banking, interest intermediation and political power: A framework for comparative analysis,” *European Journal of Political Research*, Vol. 26 (1994), 31-58.

interests.²¹⁹ In addition, with annual budgets of 1.5 to 10 million HUF, they cannot operate on a large scale. They lack the public status that would result if the state were to supply their resources, define their “domain or representation, regulate...[their] internal organization , or give them an official role in the policy process”.²²⁰ Second, they are not vertically integrated in a “peak association” which would give them collective power.²²¹ They operate “like small islands”, as one commentator stated.²²² Personal dislikes and grudges and differences of opinion impede effective cooperation. In addition, like the larger charity organizations, their staff lack professional training or status, and their informational infrastructure is often weak. All of these factors have weakened their capacity to challenge the government.

Recently, however, these organizations have increased their profile and influence somewhat in a handful of instances. Notably, in February 1995, the Ministry of Interior commissioned a report on conditions at the alien police-run Kerepestarcsa detention centre. MEJOK, Veritas, and the Hungarian Branch of the Helsinki Committee for Human Rights carried out the study with UNHCR support. As a result, the Minister decided to close the camp for reasons of public image and cost.²²³ Soon after, the Ministry asked the same agencies as well as the newly-created Menedék to prepare a report on the largest refugee camp, Nagyatád. Even before the report was completed,

²¹⁹ Ibid., 37.

²²⁰ Ibid.

²²¹ Ibid., 44-47.

²²² Judit Tóth, personal interview (Budapest: July 3, 1996).

²²³ UNHCR, “Situation Report” (June 1995).

camp authorities reversed their policy of forbidding refugees from leaving the camp without permission.²²⁴ Finally, Menedék, MEJOK and the Helsinki Committee made proposals on amendments to the Alien Law executive provisions of 1994. These were largely accepted by the cabinet in March 1996.

This may be the sign of a moderate renewal of NGO influence, though it is perhaps imprudent to derive too much meaning from these few incidents. However, since 1995, the UNHCR has become a significant outside factor in strengthening NGOs. With the 1995 decision to administer its own programs parallel to those of the government, the UNHCR began to cooperate much more closely with NGOs than in the past. It engaged them in a number of joint projects. For example, the Maltese Charity Service began to act as implementing agency for its social counselling, apprenticeship and business grant program. It funded Veritas' psychological work in the refugee camps as well as the Kerepestarcza report cited above.

Most significantly, following the failure to bring together a comprehensive umbrella lobby organization, it created Menedék (the Hungarian Association for Refugees and Migrants) in January 1995. This agency clearly promotes respect for the international refugee regime. As listed in Table 6, it enhances the fairness of the Hungarian refugee determination procedure by providing free legal aid and authoritative information on the asylum procedure. Through its monthly newsletter, it disseminates information to most of the important actors in the field, particularly within government. It also organizes conferences and collects legal information on countries of origin. In these ways it seeks

²²⁴ Ibid.

more than any other NGO to bridge the gap between the UNHCR, civil society, and government agencies. It has been relatively successful compared to the other human rights NGOs, largely thanks to HCR support and highly professional and knowledgeable board members.²²⁵

In spite of some signs of influence, the civil sector on the whole has had a remarkably small role in shaping state refugee policy since 1990. Instead, it has operated in parallel with the government, filling important gaps in government policy. First, it has supplemented government aid through the distribution of aid and psycho-social assistance. Second, it has addressed populations neglected by the state, namely non-European asylum seekers and illegal migrants. Third, it has provided services neglected by the government such as information gathering and public education on xenophobia. Finally, it has replaced services the government cannot provide because they necessitate an impartial view of the government. These include legal assistance and representation before the authorities, and documentation of discrimination on the part of government officials.

On the whole, NGOs in the post-1990 period have not been effective in becoming an integral part of the policy subsystem which would have weighed the available options and decided on a course of action.²²⁶ They have, therefore, not been able to counteract the pressures of the European regime from within the country's borders, nor to promote a more open and humanitarian policy.

²²⁵ Tóth, interview.

²²⁶ Howlett and Ramesh, *Studying Public Policy*, 124.

From this survey of state interactions with the international and regional refugee regimes and with the civil sector, it is clear that structural and organizational factors, like the ideational ones discussed in Chapter Two, are pushing Hungary toward an increasingly restrictive approach to migration and refugees. While Europe has the power and leverage to effectively pressure the government, the UNHCR does not. NGOs, meanwhile, though they generally support the UNHCR's approach, have been largely impotent to influence state policy. The outcome, as the next chapter will argue, is a gradual move toward restrictive policies.

CHAPTER FOUR

IMPACT ON POLICY OUTCOMES

The interaction between state objectives and relevant circumstances, and institutions during the period under study has been examined in Chapter Two and Three. The refugee-related policy instruments which the Hungarian government has adopted since 1989 are the subject of this chapter. New instruments were initially inspired to a significant extent by the international refugee regime. More recently, Hungary has overlaid on this a series of policies which follow the restrictive trends observed in Western Europe. Throughout this period, Hungary has implemented policies which privilege ethnic Hungarian immigrants over others, and which are most exclusive of non-Europeans. This combination of liberal, restrictive, and nationalist policies will be illustrated through a discussion of the instruments adopted (a) to define and recognize Convention refugees, (b) to provide asylum to ex-Yugoslavian war refugees, and (c) to control illegal migration.

CONVENTION REFUGEE STATUS

The Legal Definition of the Term “Refugee” in Hungarian Law

Instruments relating to the legal status of refugees were among the first refugee-related tools that Hungary adopted. They most closely reflected the norms and procedures of the international regime, and are proof that the international regime has affected domestic refugee law. Interestingly, they do not reproduce those norms and procedures

exactly but modify them somewhat to place a priority on the protection of ethnic Hungarians. They are an immediate result of Hungary's accession to the 1951 Convention and its 1967 Protocol. This occurred in the spring of 1989, through law decree no. 15.²²⁷ By this act, which accepted the Convention definition of refugees, Hungary took on a duty to "ensure that its domestic law is in conformity with its international obligations".²²⁸

Two peculiarities in Hungary's refugee definition resulted from the state's prime motivations in joining the regime, namely the protection of ethnic Hungarians from Transylvania (see Chapter Two). First, the amended Hungarian constitution (Section 65) incorporates a refugee definition that slightly differs from the Convention. Among the grounds for persecution, it substitutes "language"²²⁹ for "membership of a particular social group"²³⁰. This fits more closely the circumstances of the Transylvanian refugees, who were fleeing gross limitations on the expression of their language and culture in Romania.²³¹ What this definitional incongruity has meant in practice is unclear: legal

²²⁷²²⁷ It adhered to the Convention June 12, 1989, and to the Protocol earlier, on March 14, 1989. Enforcement began on October 15, 1989. By comparison, Czechoslovakia adhered July 10, 1991; Slovakia adhered January 25 1993, the Czech Republic May 11, 1993, and Poland, September 27, 1991.

²²⁸ Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1983), 141.

²²⁹ Hungarian Constitution, Section 65 (1), unofficial translation, UNHCR, REFLEG, in REF WORLD, <http://www.unhcr.org/unhcr/cdr>.

²³⁰ Art. 1, A (2), 1951 Geneva Convention Relating to the Status of Refugees, in UNHCR, *Collection*: 11. These inconsistencies (but not my interpretation of them) are noted in Nagy, "Hungarian Refugee Law", *Genesis*, 48; Judit Tóth, *Menedékjog kérdőjelekkel*, 109-110; Judit Tóth, "Toward a Refugee Law in Hungary", *Genesis*; Hungarian Ministry of Interior: "A menedékjogi törvény koncepciója" ("The conception of the refugee law") (Budapest: December 1995), 2.

²³¹ Endre Sik, J. Taryányi and Tibor Závecz, "Sociological Characteristics," 27. It is not clear that these individuals would have qualified because of their "nationality", another of the Convention's five specified grounds, as this has most often been understood as designating citizenship rather than ethnicity. See James Hathaway, *The Law of Refugee Status*, 144-145. The Hungarian Romanians were generally Romanian, rather than Hungarian citizens.

experts and officials have been unsure of which definition is to be used and case law is still insufficient to accurately determine which definition has been customarily applied. Nevertheless it does show that to some degree Hungary adapted the provisions of international law for the needs of the Romanian refugees, for whose protection it originally joined the international regime.

A second definitional peculiarity is the geographical limitation with which Hungary acceded to the Convention. Hungary joined a handful of states²³² in interpreting the Convention to apply to refugees from “events occurring in Europe”.²³³ Although the legal validity of this restriction is questionable on technical grounds, in practice the limitation is applied.²³⁴ This means that Hungary is responsible for the status determination, protection, and settlement of European refugees only, while the UNHCR assumes responsibility for non-Europeans. Because Hungary was the first Soviet bloc country to ratify the Convention, no precedent for accession had been set as of yet. Though Hungary’s reservation would later seem anachronistic in the light of its neighbours’ accession without the restriction, at the time it reflected a short-sighted belief that Hungary would not have to cope with “refugees” other than Hungarians from neighbouring countries.²³⁵ Only later, under pressure from the UNHCR to lift the

²³² Malta, Turkey, Monaco and Madagascar, according to Béla Jungbert, Director General of Hungary’s Refugee and Migration Office, “The Refugee System in Hungary”, presentation, in Zend, *Report on Visit*, 9.

²³³ Art. 1, B(1), 1951 Convention, UNHCR, *Collection*, 11.

²³⁴ See Boldizsár Nagy, “Hungarian Refugee Law”, *Genesis*, 52-54, for details.

²³⁵ Agnes Jantsits, Personal interview; Agnes Ambrus (employee at ORMA in 1990), Personal interview.

reservation, did officials argue that Hungary did not yet have the bureaucratic or economic infrastructure to cope with the uncontrolled mass migration that would follow.²³⁶

The international regime's stance is somewhat paradoxical: the Convention is phrased so as to allow this restriction, and yet the UNHCR argues that the restriction has come in the way of fulfilling the ultimate aims of the regime, effective protection of refugees and solution of their problems. Because of the increasing restrictiveness of Western countries and ongoing conflict and deprivation in countries of origin, HCR staff argue, non-European refugees in Hungary are in an untenable situation, unable to return home, integrate locally, or resettle elsewhere.²³⁷ To make matters worse, the existing law is unclear about whether provisions on the rights, obligations, and legal status of refugees apply equally to mandate refugees.²³⁸ This leads to a host of practical problems, including non-granting of permanent residence permits to mandate refugees.²³⁹ The case thus highlights a major weakness within the international regime. A legal regime that aims to be universal should not explicitly allow states to apply it in a non-universal manner, by excluding non-Europeans from its ambit.

²³⁶ Béla Jungbert, Personal interview; Jungbert, "Refugees on photos".

²³⁷ Philippe Labreveux, Agnes Ambrus, Ditlev Nordgaard, Personal interviews.

²³⁸ Judit Tóth, *Menedékjog*, 111.

²³⁹ They are granted a temporary residence permit for tourists, valid for one year, according to four mandate refugees from Sudan and Nigeria. Personal interview (Budapest: May 23, 96).

The Convention Refugee Status Determination Procedure

The procedure whereby Hungary recognizes refugees according to the 1951 Convention definition very clearly shows the influence of the international refugee regime. Its application also reveals a distinct bias toward ethnic Hungarians, and since 1991, shows elements similar to recent European policies. The procedure was established as a direct result of Hungary's joining the Convention. Although no binding international instrument specifically indicates what procedures should be adopted, each signatory to the Convention is required to establish that which it considers most appropriate to its constitutional and administrative structure. Certain basic requirements, set by the Executive Committee of the UNHCR, should nevertheless be met by these procedures.²⁴⁰ Hungary established such procedures in 1989, through Law-Decree No.

²⁴⁰ 28th session, October 1977, *Official Records of the General Assembly, Thirty-second Session, Supplement No. 12 (A/32/12/Add.1)*, paragraph 53 (6) (e). in UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refs.* HCR/IP/4/Eng/REV.2 Geneva: UNHCR, January 1992, 45-46. These basic requirements are:

- (i) The competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of *non-refoulement* and to refer such cases to a higher authority.
- (ii) The applicant should receive the necessary guidance as to the procedure to be followed.
- (iii) There should be a clearly identified authority--wherever possible a single central authority-- with responsibility for examining requests for refugee status and taking a decision in the first instance.
- (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
- (v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
- (vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.
- (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

101/1989./IX.28/MT, and to a very large degree these meet the UNHCR's basic requirements.²⁴¹

The procedure in Hungary is as follows. Asylum seekers have three days after entry to make a refugee claim to the border guard or alien police. These officials have instructions to refer asylum seekers to a clearly identified authority, one of six local Refugee Eligibility Offices of ORMA (or the UNHCR in the case of non-Europeans). Within the next three days, the claimant must submit a formal application for status. As required by the UNHCR, applicants have access to the services of a competent interpreter. They also have the opportunity to contact a representative of the UNHCR for guidance, and in some cases intervention with the authorities. As recommended in the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, the Hungarian procedure provides that "while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner". In practice, however, there is no guarantee that authorities will "use all the means at [their] disposal...to produce the necessary evidence"²⁴² or that they will give claimants the benefit of the doubt, as required. The decision must be reached within 30 days, and unlike many European states, Hungary has been successful in keeping to this limit.²⁴³

²⁴¹ UNHCR Branch Office for Hungary.

²⁴² UNHCR, *Handbook*, 47.

²⁴³ Nagy, "Hungarian Refugee Law", *Genesis*: 56.

If not recognized as a refugee, the claimant has five days to appeal to a different office of ORMA. The decision is reviewed within 30 days on the merits of the claim, often in the absence of the claimant. Further appeal is reviewed within 15 days by a first instance court and possibly a second instance court, which examine the case only to control a deficient application of the law. With three levels of appeal, the Hungarian procedure is very generous, compared for example to Canada's where only one judicial appeal is allowed. It is also far more efficient than that of most Western countries of asylum, where unlike in Hungary, thoroughness is preferred to efficiency.²⁴⁴ Pending decisions on the initial request and on appeals, applicants are entitled to stay in the country, as recommended by the UNHCR. They can use the premises and services of a reception centre, including health care.

As for the outcome of the procedure, Hungarian authorities have been very liberal in awarding refugee status. Between 1989 and 1995, they granted refugee status to 73% of those who began the procedure.²⁴⁵ The UNHCR Branch Office for Hungary, by contrast, accepts only about 5% of non-European claimants.²⁴⁶ Compare this to 57% for Canada in 1992, 10% for Denmark, 5% for Sweden, and an average of 14% for the 16 main refugee claimant destinations.²⁴⁷ The main reason for Hungary's high acceptance rate

²⁴⁴ Ibid.

²⁴⁵ My calculation based on data in ORMA, "Menekültügyi és Migrációs Hivatal Helyi Szerveinek évenkénti összesített ügyfélforgalma, 1989-1995" [Total yearly client turnover at ORMA local authorities, 1989-1995], internal document, and "A menekültek érkezésének éve, nemzetiségük, 1990-1995" [Asylum Seekers by year of arrival and ethnicity, 1990-1995], internal document.

²⁴⁶ Nordgaard, Personal interview.

²⁴⁷ Daniel Stoffman, "Toward a More Realistic Immigration Policy for Canada," *Backgrounders* (C.D. Howe Institute, June 1993), 10.

is the high proportion of ethnic Hungarians who apply, combined with Hungary's desire to protect them (see Chapter Two).

Indeed, despite praise for liberal application of the Convention that seems to conform with the UNHCR's basic requirements, the UNHCR has complained that access to the procedure appears to privilege ethnic Hungarians. Very few asylum seekers begin the procedure at all. Up until June 1991, only 2 836 of 51 977 were recognized as Convention refugees.²⁴⁸ The low number is largely due to fact that those who had entered Hungary before October 15, 1989 had only thirty days to decide whether to apply for Convention refugee status following Hungary's accession to the Convention. Very few of the 30 000 in the country at the time decided to begin the procedure. Of those who did initiate it before that date, 95% were Romanian. And of them, 95% were ethnic Hungarians. Among those who did not enter the procedure, about 5 500 resettled in the West, while 2 200 repatriated voluntarily. About 40 000 remained in Hungary with no legal status.²⁴⁹

Starting in 1991, the authorities began to implement more systematically an informal screening procedure, allowing them to examine individuals' claims and discourage those with "manifestly unfounded claims" from applying. This tool appears to be a way of continuing to give priority to ethnic Hungarians. It is also an indication that the country has begun to adopt principles discussed and gradually institutionalized in the West through the Maastricht Treaty and in some Western European states (see

²⁴⁸ Nagy, "Hungarian Refugee Law", *Genesis*, 52.

²⁴⁹ *Ibid.*, 52.

Chapter One). The result is that only an average of 4% of registered new arrivals since 1991 entered the status determination procedure.²⁵⁰ Of those, 88% were ethnic Hungarians, although they represented only 43.8% of new arrivals (see Figures 9, 10, and 11).²⁵¹ It is unlikely that such a grossly lower proportion of non-Hungarians resulted because non-Hungarians had less well-founded fears of persecution. Most of the refugees in this period were likely to face persecution on the basis of their religion or nationality if they returned to their country of origin.

The “manifestly unfounded claim” principle has been recognized by the Executive Committee of the UNHCR as an appropriate response to growing numbers of asylum-seekers. Nevertheless, it raises some concerns about refugee protection, as it may reduce procedural safeguards and increase the risk of *refoulement*.²⁵² In the Hungarian case, legal expert Boldizsár Nagy is disturbed by the “total informality of this phase and the lack of any legal control over its outcome”, even if asylum seekers can pursue their case after being advised against it.²⁵³ Furthermore, “nonsubmission of appreciable data” and “repeated and serious violations of the rules regulating the applicant’s behavior and obligations while staying at the reception centre” are both grounds to halt proceedings.²⁵⁴ Nagy remarks that “appreciable data” is insufficiently well-defined, and that “deviant

²⁵⁰ ORMA, internal document (1996).

²⁵¹ Pie chart figures are from my calculations, based on ORMA, internal document (1996).

²⁵² Louise Drücke, “Refugee Protection in the Post Cold War Europe: Asylum in the Schengen and EC Harmonization Process,” *Les accords*, 109.

²⁵³ Nagy, “Hungarian Refugee Law”, *Genesis*: 58.

²⁵⁴ Section 14, Law-Decree No. 101, (2), (3).

*Figure 3. Refugee arrivals
by ethnicity, 1991-1995*

*Figure 4. Temporarily
Protected Persons by ethnicity,
1991-1995*

*Figure 5. Convention Refugees by
ethnicity, 1991-1995*

behaviour under...stress...should not prevent applicants from being recognized if they otherwise qualify under the Convention".²⁵⁵

If Hungary has already been influenced by European practice in the one area of "manifestly unfounded claims", it is bound to be influenced in many more respects once the geographic restriction is lifted. According to Károly Répansi and Anna Hodozsó, senior eligibility officers with ORMA, in that event, they and their colleagues would begin to use devices to keep non-Hungarians and non-Europeans from settling in Hungary. For

²⁵⁵ Nagy, "Hungarian Refugee Law", *Genesis*: 59.

one, they would start to employ the “safe third country” rule enshrined in the Maastricht’s Third Pillar. Indeed, this reform is already underway.²⁵⁶ They would also question claimants’ credibility more closely.²⁵⁷ Given that the UNHCR is involved in helping ORMA to prepare for the lifting, it is likely that they would follow the UNHCR’s current practice with non-European refugees. This, as discussed in Chapter Three, includes the use of the “safe third country” rule.

From this overview it is clear that Hungary’s laws and procedures for determining refugee status according to the Convention are directly inspired by the international regime’s norms. However, by using the concept of “manifestly unfounded claims”, Hungary has taken one step toward adopting Western European principles in its procedure, and this step is likely to be followed by more.

TEMPORARY PROTECTION

The corollary to excluding “obviously unfounded claims” from the procedure has been to offer temporary protection to persons fleeing the civil war in the former Yugoslavia as a substitute for Convention refugee status. Between 1991 and 1995, while Hungary gave Convention Refugee status to only 1444²⁵⁸ refugees from the former

²⁵⁶ See *Migration Newssheet*, No. 159 (June 1996); UNHCR, “Summary of UNHCR Activities in Central Europe” (October 1996), 5, qtd. in Lavenex, footnote 44.

²⁵⁷ Károly Répánsi, Eligibility Officer, Bicske local authority, ORMA. Personal interview (Bicske: June 10, 1996), Anna Hodozsó, Eligibility Officer, Békéscsaba local authority, ORMA. Personal interview (Békéscsaba: June 27, 1996).

²⁵⁸ My calculations, based on ORMA, “Menekült státust kapott személyek száma állampolgárság szerint, 1989. október 15.-1995. december 31.” [Number of persons awarded refugee status according to citizenship, October 15, 1989-December 31, 1995], internal document (1996).

Yugoslavia, it gave temporary protected status to 73 888.²⁵⁹ This status means that protection is provided as long as the causes of persecution persist, in theory until a durable solution becomes available, such as repatriation, resettlement, or local integration. The policy move, begun also in 1991, was inspired by *both* the international and the regional regimes. Temporary protection is a prime example, in fact, of the way in which the international regime is being modified and undoubtedly weakened by the initiatives undertaken in the emerging Western European regime.

Following the outbreak of the Balkan conflict, the UNHCR encouraged Western states to offer temporary protection to ex-Yugoslav refugees. This was a means to persuade reluctant states to accept refugees. But for the recipient states, including Hungary, it served a number of purposes quite unrelated to expanded protection: (a) By bypassing a full refugee status determination procedure for all asylum-seekers, it saved money and bureaucratic resources. (b) It made it easier to return refugees after the conflict ceased. Thus, it made it clear to refugees that their stay was temporary, but also administratively implied the simple process of not renewing residence permits, rather than revoking them. (c) Finally, it was a way of expressing ideologically to a weary Hungarian public that protection would be purely short-term and contain no elements of voluntary migration.²⁶⁰ By accomplishing these objectives, it allowed Hungary and other host

²⁵⁹ ORMA, "Magyarországra menekülők megoszlása, 1989-1995" [Breakdown of refugees fleeing to Hungary, 1989-1995], internal document (1996).

²⁶⁰ Morten Kjaerum, Director, The Danish Center for Human Rights, "Human Rights Implications of the Development of the Concept of Temporary Asylum in The Nordic Countries," Paper presented at the Nordic Human Rights Conference (Copenhagen: November 21-24, 1994), 3-4; Judit Tóth, personal interview.

countries to be more generous in allowing refugees to remain in the country than it might have been, had it offered more comprehensive protection.

However by the same token, as the UNHCR itself has stated, it has greatly watered down the protection given these refugees. First, it has eased “pressure on governments to apply the Convention along with its wide range of economic and social rights, as discussed above.”²⁶¹ Second, the content of temporary protection has not been defined in legislation and responses have taken place in an *ad hoc* and idiosyncratic manner.²⁶² The result is that the temporarily protected persons (TPPs) have been in a legal limbo and a state of uncertainty about their present and future. They have no legal status and, particularly, they have not been able to work legally unless no Hungarian is available for the job. Convention refugees, by contrast, have all the rights of nationals with the exception of the right to vote or to take a job requiring Hungarian citizenship.

Third, by its very nature, temporary protection has led to a policy approach that focuses on the short term, on emergency assistance or “care and maintenance”, as the UNHCR terms it. In principle the goal is to encourage repatriation as the optimal durable solution, but in practice the Hungarian government has done little to help create safe conditions for return. Other than small assistance efforts, such as a five million Forint donation to Sarajevo in early 1995, Hungary has preferred to keep a low profile in the region. In part, this is because it has striven to maintain good relations with Belgrade.

²⁶¹ UNHCR, qtd. in Frank Laczkó, “Temporary Protection and Ex-Yugoslav Refugees in Hungary,” *Refugees and Migrants*, 173.

²⁶² A forthcoming asylum law should rectify this.

Only since the Dayton Accord has Hungary offered some modest peacebuilding assistance.²⁶³

Instead of focusing on durable solutions, the government has directed most of its financial resources (about 60%) toward sustaining TPPs in camps, although the large majority live outside the camps. In August 1994, 15 000 or 88% were privately accommodated while 2 000 were in the camps; by May 1996, the number had declined to 4 000 or 66%.²⁶⁴ While the government spends about \$8 USD a day on refugees in the camps, privately accommodated refugees receive only about \$1.30 a day. The latter receive a small cash allowance of 1050 Ft. a week per person. This amount is not tied to inflation or housing costs, and represents only about 30% of the minimum subsistence level determined by Hungarian authorities. In addition, host families receive a heating allowance of 2500 Ft. a month. Medical treatment and schooling in children's native language are also provided.

In the camps, conditions have been relatively satisfactory on the whole. However they have generally been better in camps where ethnic Hungarians are in the majority than in those where Bosnian Muslims predominate. Perhaps the greatest problem with life in the government-run camps is that most Bosnian Muslims can neither leave for the West, nor repatriate, nor settle in Hungary. Unable to work legally, most remain idle in the

²⁶³ Specifically, this assistance consists of: (a) logistical support to the North Atlantic Treaty Organization (NATO) Implementation Force (IFOR) based in Southern Hungary; (b) training for 300 ethnic Croat and Serb police officers from Croatia; (c) help with reconstruction of villages and infrastructure in the Baranya Triangle, according to UNHCR, "Situation Report".

²⁶⁴ United Nations High Commissioner for Refugees (UNHCR), Branch Office for Hungary, "Situation Report" (Aug. 1994; May 1996).

camps awaiting an uncertain future. This situation is what prompted the UNHCR to push for policies to promote TPPs' self-sufficiency (see Chapter Three).

In practice, the policy of temporary protection has allowed Hungary to focus on the short-term while avoiding the root causes and long-term solutions to the problem. In January 1996, soon after the November 1995 Dayton Peace Agreement, ORMA stopped granting temporary protection to displaced persons arriving at the borders. Since then, the obvious question has been the fate of those remaining within Hungary. Three types of durable solutions exist, according to the UNHCR: resettlement, local integration and repatriation. The difficulty is that while resettlement and repatriation are unlikely to be the solution for all, Hungary has been unwilling thus far to consider local integration as a long-term solution for the remainder.

Organized resettlement to the West has occurred on a limited scale. Canada has resettled about 600 DP's over the last several years, and Australia and the United States each resettled about 100 refugees through programs started this year.²⁶⁵ However none of these countries is expected to resettle more refugees. This is despite the fact that many Bosnian Serbs from Republika Srpska, especially mixed couples and those who suffered trauma in the camps, see no other solution for themselves. TPPs continue to move to the West on their own, but tightened border controls and more restrictive migration politics have made this increasingly difficult.

Local integration, as noted above, has not been encouraged by the government. Settlement and integration in Hungary is what most of the 1400 Hungarians from

²⁶⁵ —, "Situation Report" (April 1996).

Vojvodina would prefer, even though the UNHCR believes that they could now safely return without facing persecution or harassment for having dodged the draft. However the Hungarian government, despite UNHCR urging, while not forcing them to leave, is not willing to facilitate their access to Convention refugee status, immigrant status, or citizenship.

The third solution, repatriation, is what is now being emphasized by most of the TPPs themselves, by the UNHCR, and by the government. The government, however, continues to devote the lion's share of its resources to maintaining the camps. Its one attempt at organizing a return was a limited success. The operation, which repatriated 54 TPPs to the Croat-Muslim Federation on March 26, 1996, was greatly slowed by the weight of the government, IOM and UNHCR bureaucracies. Private initiatives have been far more efficient. A small German NGO based in Zagreb, Survive the War, has proved much more successful in organizing the return of small convoys. By July 1996, it had returned about 600 DPs, and the UNHCR and the government are now channeling their repatriation assistance through it.²⁶⁶ In addition, several hundred refugees have returned to Bosnia-Herzegovina by their own means, usually with the assistance of traffickers. About 2000 repatriated in 1996, mainly to Bosnia-Herzegovina. However, prospects for the repatriation of the remaining TPPs from Eastern Slavonia and Republika Srpska are

²⁶⁶ Martin Fischer, Director, Survive the Winter (Preživjeti Zimu), Personal interview (Zagreb: July 8, 1996).

uncertain, given the ongoing precariousness of peace and the need for further mine clearance and reconstruction in those areas.²⁶⁷

Overall, then, temporary protection represents a middle ground between the international regime's emphasis on protection to those who need it and the European regime's concern for limiting the toll of refugee flows on Western host societies. Because it is in harmony with current Western European interpretations of the 1951 Convention and with current policy trends, the policy of temporary protection has not interfered with, and may indeed have served, Hungary's main foreign policy goal of integration into the European Union and other European institutions.

CONTROL OF ILLEGAL MIGRATION

The influence of the emerging regional regime has been strongest in the area of the control of illegal migration, particularly since 1993. A new Aliens Act which includes carrier sanctions, the strengthening of border patrols, and an expanding web of readmission agreements all signal a drift toward the Western European approach. In itself, border control is legitimate, but it has the danger of interfering with the individuals' right to seek asylum and states' obligation not to *refoule* refugees. Protection cannot legitimately be denied--according to the international norms--for the sole reason that asylum seekers are entering or staying in the country illegally.²⁶⁸ Yet safeguards to prevent this from happening are inadequate.

²⁶⁷ Labreveux, Personal interview; Lawrence Fioretta, Director, UNHCR Field Office in Daruvar, Croatia, Personal interview (Daruvar: July 9, 1996); Greg Austreng, Director, UNHCR Field Office in Osijek, Croatia, Personal interview (Osijek: July 10, 1996).

²⁶⁸ See Goodwin-Gill's argument to this effect, *The Refugee*, 74-77, 83.

The Aliens Law (Act LXXVI of 1993 on the Entry, Stay in, and Immigration to, Hungary, of Aliens, enacted on May 1, 1994) implements some of the restrictive measures adopted by Western Europe. It specifies the conditions for legal entry into the country, including sufficient money for the planned duration of the stay, and visas for Hungary or for onward travel. In theory, the law waives those entry requirements in the case of refugees: “The scope of this Act shall not extend to refugees seeking asylum before the final refusal of their application and to aliens recognised by Hungarian authorities as refugees.”²⁶⁹ Border authorities have clear instructions to refer asylum seekers to ORMA or the UNHCR in order to have their requests examined,²⁷⁰ as recommended by the UNHCR.²⁷¹ In practice, however, the onus is on the asylum seeker to claim refugee status, and doing so requires a minimal knowledge of the process and overcoming of language barriers. It remains unclear whether non-European asylum seekers should be allowed entry to see the UNHCR representative in Budapest, or whether the representative should be requested to see them at the border. Current practice is to notify the UNHCR of non-European asylum seekers at Budapest’s international airport, but not necessarily at the border.²⁷² Of the 800,000 people refused entry in 1994 for not satisfying entry requirements, it is impossible to know how many may have been legitimately in need of asylum.

²⁶⁹ Section 1, paragraph 3, unofficial translation, UNHCR, REFLEG (entry into force: 1 May 1994).

²⁷⁰ Répansi, Personal interview.

²⁷¹ Drücke, “Refugee Protection,” 107.

²⁷² Nagy, “Hungarian Refugee Law”, *Genesis*, 59.

A second element of the Act which potentially threatens refugee protection is the legislation of carrier sanctions (Ch. VI, Section 60), also a feature of Western European states' policies. According to these, air, land and water transportation companies are responsible for the return of undocumented aliens to their country of origin.²⁷³ Refugees are exempted from this, but no special provisions for their situation are introduced. Furthermore, non-European refugees fall into the scope of the law. This places the onus of determining whether passengers are refugees on the staff of private companies with no training or authority in refugee law. As Louise Drücke of the UNHCR points out:

Carrier sanctions pose a threat to the basic principles of refugee protection, to the operation of asylum procedures, to procedural guarantees of due process, and to international cooperation in resolving refugee problems with full respect for the human rights of the individuals involved.²⁷⁴

Drücke suggests therefore that states such as Hungary enforce the sanctions only if they can prove that carriers knowingly brought an individual in with invalid documents and no well-founded fear of persecution. This places the burden of proof on the state, where it should be.²⁷⁵

The strengthening of Hungary's Eastern borders is another clear signal of the country's growing focus on migration control. This reinforcement has occurred with a non-negligible amount of technical assistance from European countries, and as a direct result of the tighter borders of its Western neighbours. Indeed, soon after the imposition of stricter controls at the Austrian (EU)-Hungarian border in 1994, some 400 border

²⁷³ UNHCR, "New Rules on Aliens in Hungary," internal document (1994), 1-2.

²⁷⁴ Drücke, "Refugee Protection," 107.

²⁷⁵ *Ibid.*, 108.

guards were redeployed from that border to the Eastern borders with Romania and the Ukraine. In 1995, the number of border guard directorates was increased from 19 to 25, and professional border guards replaced conscripts along the entire Ukrainian and Romanian borders, so that now all of Hungary's borders are guarded by professionals.²⁷⁶ In support of these moves, donors such as Germany, France, Ireland and Canada have trained police, immigration personnel, and customs officers on such subjects as the detection of fraudulent documents.²⁷⁷

There is also evidence that the government has considered introducing visa requirements for citizens of Eastern and Southern refugee producing states, specifically Ukraine, Romania, the South Slav states, and CIS countries. The repercussions on ethnic Hungarians in the countries concerned, however, are a disincentive to follow the Western example in this respect.²⁷⁸

Finally, a rapidly expanding network of readmission agreements has complemented all of the above measures. These agreements guarantee that people illegally crossing borders can be deported back to the other country and will be taken back. Generally, they oblige signatories not only to readmit their own nationals or aliens residing in or legally staying in the state, but also to "ensure the possibility of transportation through the requested state by the requesting state with a destination in a third state".²⁷⁹ Western

²⁷⁶ UNHCR, "Situation Report" (Jan. 1995). King, 17-18.

²⁷⁷ Widgren, 9 and 10.

²⁷⁸ UNHCR, "Situation Report" (Jan. 1995; July 1995).

²⁷⁹ Nagy, "Changing Trends". *Refugees and Migrants*, 37.

countries, namely Austria (April 20, 1995) and Switzerland (July 8, 1995), have signed such accords with Hungary, while discussions are under way with Germany, France, Italy, and Greece. These mean that migrants transiting Hungary on their way Westward now become Hungary's responsibility. Hungary likewise has agreements with its Eastern neighbours Ukraine (June 5, 1994), Romania (October 30, 1994), Slovakia (April 20, 1995), the Czech Republic (August 5, 1995), and Poland (August 5, 1995). Agreements had been signed but not ratified (as of July 1996) with Slovenia (signed October 20, 1992), Croatia (signed December 9, 1992), and Bosnia-Herzegovina (signed April 21, 1996). Discussions are under way with Russia, Turkey, and Egypt.²⁸⁰ Here again, the agreements allow the requested state to deny readmission in order not to violate the principle of *non-refoulement*, but as Boldizsar Nagy points out, no agreement "enables an impartial body or public opinion to determine whether persons transited by its readmission partners through Hungary to a third state" are not Convention refugees.²⁸¹

From these recent policies it is evident that Hungary is following the Western example of returning asylum seekers to a "safe country". As fast as its Western neighbours such as Austria and Switzerland arrange to shift the burden back to Hungary, Hungary is arranging to shift the burden yet further East and South, to countries such as Ukraine, Romania, Russia and Turkey. Through readmission agreements, Hungary and its Eastern neighbours are being included in a system of redistribution that shifts responsibility for providing asylum ever closer to the country of origin.

²⁸⁰ Hungarian Border Guard Headquarters, internal document (Budapest: July 1996). Please note that numerous time limits and further conditions apply.

²⁸¹ Nagy, "Changing Trends", 37.

Including Hungary and other Central and Eastern European countries in this system has a number of negative repercussions for international refugee protection in general. Unlike in the system established by the Schengen and Dublin Conventions, the countries involved in the widening grid do not have common standards of refugee treatment. Nor do they have a system to determine which country is ultimately responsible for examining asylum claims. This is a major problem, given that many of these countries do not yet have fully functioning legal and administrative systems of refugee protection. Furthermore, these measures often do not incorporate sufficient safeguards to ensure that refugees are exempt from their purview. They often fail to distinguish asylum seekers from other illegal migrants. As a result of these conditions, there is a danger of “refugees in orbit” situations, in which refugees are shunted from state to state in search of one that will examine their claims.²⁸²

It is clear from the development of refugee-related policy instruments over the period between 1989 and 1996 that while Hungary remains bound by its commitments to the international refugee regime, it has steadily harmonized its legislation and administrative practice with the restrictive European powers. Observations about the growing emphasis on control and security in Chapter Two, and about the overwhelming institutional influence of the regional powers over the international regime or domestic forces in Chapter Three, are borne out by the evolution of policy instruments in the field.

²⁸² Lavenex, 18-19.

CHAPTER FIVE

CONCLUSION

This thesis has sought to discern the impact of two conflicting international refugee regimes on the refugee policy of a post-Communist state, Hungary. It began by examining, in Chapter Two, the way in which domestic goals and aspirations have interacted with these international influences to determine which would have the greatest impact in changing circumstances. In Chapter Three, it turned to the interaction between the two regimes and the government at an institutional level and evaluated the institutional factors that have made one regime more effective than the other. It also studied the impact of domestic forces in civil society and their ability to encourage state actors to comply with the international regimes. Finally, Chapter Four outlined the policy outcomes that have resulted from these complex interactions between international, state and societal actors. The results are summarized below.

At the international level, there has been tension between two frameworks for the handling of refugees. Originally, international cooperation in refugee issues viewed refugees as a human rights and humanitarian problem. These were to be dealt with through asylum and via the redistribution of resources through an international agency. Since the 1980s, that vision has been undermined by the very Western states that developed it. A new framework for refugee policy is being adopted by Western Europe, one which is closely linked with internal security. This confuses illegal immigration and abuse of asylum procedures, and conceives refugees as a police and control rather than a

human rights issue.²⁸³ The new regime's measures to keep illegal migrants out, such as carrier sanctions and a crackdown on fraudulent documents, threaten asylum seekers with *refoulement*. Other measures, such as the notion of "manifestly unfounded claims" and "safe third country", erode the level of legal protection for asylum seekers.

The case of Hungary demonstrates that this new regime has already expanded Eastward in practice, if not yet officially. Of the two international influences, the European regime is clearly winning, after an initial period of UN-inspired legislation and policy. Since 1991, Hungary has been making the same shift in its policy framework as its Western neighbours. This process continues to accelerate. Such evolution suggests that the international refugee regime has been impotent when trying to enforce compliance with the letter and the spirit of its norms, in the face of opposing imperatives at both the domestic and the international levels.

The international regime has successfully promoted its norms and procedures-- such as the Convention definition of refugee and local integration as a durable solution-- only when these have agreed with Hungary's pre-existing domestic or international objectives. In the initial few years of state refugee policy, this was the case. Throughout the period, two principal goals determined the government's refugee policy. The first was the desire to secure national identity, while the second was the wish to become part of the Western world in a post-Communist transition. On a practical level, the first objective translated into the initial wish to receive and integrate ethnic Hungarians fleeing minority repression in Romania. Joining the international regime provided diplomatic protection

²⁸³ Lavenex, 18.

and financial and technical assistance to facilitate this. Acceding to the regime also contributed to the second goal by signaling Hungary's respect for human rights and the rule of law. The international regime did provide incentives for compliance in the form of monetary and institutional assistance, but when other goals came to predominate, the incentives were not sufficient to maintain compliance. The regime was a tool in the state's pursuit of its interests more than a tool for altering those interests.²⁸⁴

As circumstances changed, those same goals came to be better pursued through means other than those provided by the international regime. First, starting in 1991, growth in the proportion of non-Hungarians among new arrivals, as well as a rise in illegal migration, transformed the manifestation of Hungary's nationalist goals. Securing the Hungarian identity in this area came to be better served by the control-oriented policies of the Western regime. These would keep undesirables out and limit the strain on the country's asylum determination system. Second, joining the West soon meant not merely acceding to international conventions, but adhering to the European Union. The new circumstances, overlaid upon long-standing nationalist and xenophobic sentiment and combined with the growing influence of the West, led to Hungary's adoption of the Western regime's conception of refugees as a security issue.

Ironically, although Hungary is not yet even a member of the European regime, this regime *did* alter Hungary's interests--the best means to achieve its goals--in very tangible ways. First, by considering Hungary a "safe third country", the regime has *de*

²⁸⁴ Haggard, S., and Simmons, B. A. "Theories of International Regimes," *International Organization*, Vol. 41 (1987), 491-517, qtd. in Thomas I. Bierstaker, "Constructing Historical Counterfactuals to Assess the Consequences of International Regimes: The Global Debt Regime and the Course or the Debt Crisis of the 1980s," *Regime Theory*, 316.

facto incorporated a non-member state into its purview. This policy has threatened Hungary with the prospect of would-be transit migrants being stranded within its borders, taxing its asylum system and its social and economic infrastructure. In response, the state has sought to protect itself using the very same instruments that contributed to its own problems. Second, the EU has more directly pressured Hungary to adopt those instruments by including the treatment of aliens among the conditions of Hungary's accession. In this way, refugee and migration issues have come to play an ever more important role in the EU's relations with Hungary and other Central and Eastern European countries.

This case shows how domestic interests and objectives can play a major role in mediating international influences. Each of the two regimes was able to have an effect only insofar as policy-makers believed that espousing it would help the state to achieve its ends. Domestic actors at the societal level played a varying role in determining those ends. Initially public opinion exerted considerable pressure, through a large network of grassroots organizations and opposition groups, in favour of a generous state policy to receive and integrate Hungarian Romanian refugees. Later, once the state had successfully taken over the management of refugee care, organizations in civil society lost their policy influence. To a large extent, this was because they continued to promote the human rights orientation of the international regime after the public and policy-makers had refocused on security and control.

The case also demonstrates that international regimes and actors are most influential when they have the leverage and institutional strength to threaten or lure states

into compliance. The international regime, with its promise of limited financial and technical assistance, has not been able to compete with the more impressive “carrots” and “sticks” proffered by Europe. Much of the European regime’s strength is derived from its linkage to the broader economic and political issues enmeshed in Hungary’s prospective membership in the European Union. The transition from Communism to a market system has been the main priority of the governments in power since the fall of the Communists in 1990, and the harmonization of policies with those of Western states has been made a prerequisite to that economic reform. In this sense, the history of Hungarian refugee policy cannot be separated from the history of the post-Cold War political and economic transition which has exposed Hungary to the forces of globalization.

The trends observed in Hungary extend beyond simple national significance. Hungary’s refugee policy has been the most prominent in Central Europe, since the presence of a large cross-border diaspora and its common border with the former Yugoslavia have made it the number one target state in the region. It has, indeed, taken in about twenty-five times more asylum seekers than the Czech Republic, Poland, or Slovakia.²⁸⁵ In other respects, however, those countries face similar situations. As a result of their geographic proximity to Western Europe and their transition to capitalism, they have also experienced a rise in migration as well as the effects of European restrictiveness. In addition, they too aim to join the EU. The European regime is affecting Hungary and other Central and Eastern European countries not only in their “domestic policies ... with regard to internal security, border controls, police, asylum and

²⁸⁵ Nagy, “Changing Trends”.

immigration, but also [in] their own foreign policies towards their eastern neighbours and third state nationals.”²⁸⁶ The numerous parallels between Hungary and its neighbours make this study’s focus on the interaction between domestic and international influences a potentially fertile model for the study of refugee policy in other countries of the region.

These parallels also mean that the restrictiveness that is gaining ground not only in Western Europe but in Hungary is an even wider phenomenon. It is gradually coming to dominate the approaches not only of traditional receiving states, but also, in a domino effect, those of their neighbours. The expansion of control-oriented policies has worrying implications for the protection of refugees worldwide. The norm of asylum, as embodied in the international regime, is being eroded as states focus on internal security over human rights. To ensure continued protection and assistance of refugees, international cooperation should refocus on human rights rather than security issues.

This might be done first of all through the full harmonization of the application of the refugee definition, asylum determination procedures, and treatment of accepted and rejected claimants. Establishing similarly fair and humanitarian policies in these matters in all countries of Western and Eastern Europe would address the danger that individuals sent back to a “safe third country” may not receive an adequate hearing of their claim. Drücke suggests that an independent body be envisaged to “give preliminary rulings on country of origin conditions for asylum-seekers and provide common interpretations of

²⁸⁶ Lavenex, 19.

legal provisions.”²⁸⁷ Such a body could operate not just at the level of the EU, but would include all designated “safe” countries.

To address countries’ concerns about people abusing their asylum systems, the UNHCR has proposed alternatives to visa requirements and carrier sanctions. Allocating sufficient resources to the asylum determination procedure would help ensure faster consideration of claims by trained personnel with the authority to make decisions based on humanitarian reasons rather than a strict and exclusive application of the Convention definition. Complete and updated information on the countries of origin, a prerequisite to a fair hearing, could be provided through internet access to UNHCR’s database. This would require an enhanced information infrastructure in many countries, as well as translation services. Combined with common standards in the deportation or return of unfounded or rejected claimants, this would prevent fraud. However it would also not deny protection to individuals at risk.²⁸⁸ In addition, a common acceptance of outside monitoring of the procedure by a body such as the UNHCR would help to ensure consistent application as well as the absence of negative discrimination.

Another issue of concern is the potential for “refugees in orbit” created by the enlarging grid of readmission agreements. Agreements on criteria to allocate responsibility for examining the claims would address this, if they were established not only among Schengen and Dublin signatories, but also among the countries in this expanding web. Receiving countries would be responsible for considering asylum

²⁸⁷ Drücke, “Refugee Protection,” 123.

²⁸⁸ Ibid., 120-123.

requests. Sending countries, for their part, would be required to inform the return country authorities of the basis of the removal decision.²⁸⁹ Accompanied by the harmonization of the asylum process and standards, this would ensure that refugees are not deported without the guarantee of a hearing.

Temporary protection has been recognized as a legitimate way to address the narrowness of the Convention definition. It is a positive innovation in that it allows asylum for refugees who may not qualify under the Convention but nevertheless need protection from war, massive human rights violations, etc. However more effort must be made to ensure that it is a temporary measure only. States in the region might put a greater priority on creating the conditions for repatriation. Most crucially, they must recognize that equitable burden-sharing is the only solution that can ensure respect for the refugees' rights. Much lip-service has been paid to the concept of "burden-sharing" but it has unfortunately been given far less substance than "burden-shifting". Through a regional body or the UNHCR, states could agree on quotas for resettlement and local integration of Temporarily Protected Persons (TPPs), recognizing that temporary protection must, after a reasonable period, give way to a durable solution. Forcing TPPs to return before conditions allow it is neither a practical nor a humane solution.

These policy alternatives would all help to prevent the *refoulement* of individuals to countries where they would risk persecution, inhumane or degrading treatment, or danger to their life and limb. They would rectify a situation where responsibility for

²⁸⁹ UNHCR, "Conclusions of the informal meeting on cooperation with countries of Central and Eastern Europe (translation): Discussion Paper" (Nuremberg: Meeting on Development of Cooperation with Central and Eastern European Countries, 10-11 November, 1994), 4.

refugees is being shifted ever Eastward and Southward. Countries like Hungary, in the midst of a painful economic and political transition, are far less well-equipped to handle the population inflows than the Western states that are transferring the burden to them. Rising unemployment, the dismantling of their social systems, reduced productivity, and shrinking real incomes diminish these countries' willingness and capacity to receive the migrants that the West rejects. Transferring the burden to countries with lesser developed economic, social, legal and administrative infrastructures not only endangers refugee protection, it exacerbates the states' transition pains. Ultimately, it creates the conditions for instability. The suggested policies require some commitment of financial, social and human resources not only on the part of countries in the "buffer zone", but of those in the core of Western Europe. If this is what it takes to ensure the stability of the region, it may well be worth the expense.

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APPENDIX 1: LIST OF PERSONAL INTERVIEWS

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Nordgaard, Ditlev, Deputy Representative, UNHCR Branch Office for Hungary (Budapest: May 22, 1996).

Pataki, Natasa, Refugee Services, Hungarian Red Cross (Budapest: July 4, 1996).

Répánsi, Károly, Eligibility Officer, Bicske local authority, ORMA (Bicske: June 10, 1996).

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Székely, Béla, Director, ORMA-run Békéscsaba refugee camp (Békéscsaba: June 27, 1996).

Szilágyi, Julia, Executive Director, Veritas Foundation (Budapest: July 5, 1996).

Tóth, Judit, Former Employee, ORMA; Project Coordinator, Hungarian Association for Migrants (Budapest: July 3, 1996).

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Utz-Schneider, Lisa, International Rescue Committee (Budapest: July 2, 1996).

Világosi, Gabor, Political Secretary of State, Ministry of Interior (Budapest: July 26, 1996).

Yonezu, Kyoko, Associate Programme Officer, UNHCR Branch Office for Hungary. (Budapest: June 7, 1996).

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