In 1981, the U.N. General Assembly established a group of governmental experts on international cooperation to avert new flows of refugees. The recommendations in the Special Rapporteur's study offer the group of experts useful information and analysis for their consideration.

Finally, a code of conduct drafted on the lines suggested by Dr. Lee with an international monitoring scheme seems a useful next step in our efforts toward preventing mass exoduses.

**Remarks by Luke T. Lee**

Refugees have existed from time immemorial. Indeed, we are all descendents of refugees, from the time Adam and Eve were expelled from the Garden of Eden. In the last few decades, however, even with the ameliorating influences of the League of Nations and the United Nations, the refugee phenomenon has worsened. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), there are approximately 10 million refugees today, not counting Palestinian refugees. While estimates vary, it is certain that no continent has been spared the human suffering that is the hallmark of the refugee.

Historically, armed conflict has been a major factor behind flight of refugees. It is, however, expulsion across national frontiers of ethnic minorities which has perhaps occurred “with the greatest frequency in the course of human history.” A few examples suffice: expulsion of Jews from Spain in 1492 and from Bohemia in 1744, expulsion of Huguenots from France in 1685, massacre and expulsion of Armenians in 1915-1916, and expulsion of more than 400,000 Jews from Nazi Germany by 1939. The most recent example is the expulsion of over a million Indochinese, most of whom are of Chinese descent, during the last decade.

While the fundamental cause of refugee flight remains man’s inhumanity to man, immediate causes vary according to the times. In his report, *Study on Human Rights and Massive Exoduses*, Sadruddin Aga Khan, Special Rapporteur for the U.N. Commission on Human Rights, lists these as recent causes of mass exoduses: “new ideologies misunderstood by and unacceptable to portions of population, blatant racial discrimination, civil wars, the terror tactics of more than one dictator, foreign invasion or acute economic hardship. . . .” In addition to socioeconomic factors, General Assembly Resolution 36/148, which established the U.N. Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees, cites as “root causes” of new and massive flows of refugees: “policies and practices of oppressive and racist regimes, as well as aggression, colonialism, apartheid, alien domination, foreign intervention and occupation.”

Both Aga Khan and the U.N. Experts Group address the phenomenon of the movement of people in terms of mass exoduses of nationals, rather than aliens. These remarks are concerned with mass expulsion of people across national boundaries. As such, it is not concerned with deportation of a few individuals, deplorable though that may be. Admittedly, the concept of massiveness is a relative one. It must take into account not only the political, social and economic environment in which expulsion occurs, but also the effects of such expulsion.

My remarks are also limited to transfrontier expulsion, which falls more appropriately within the purview of international law than do “internal” deportations or dis-

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placements. Crossing international boundaries is also an essential element in the determination of the status of "refugees."

By "expulsion" is meant use of coercion, direct or indirect, with the intention and effect of securing departure of people against their wills from their homelands. "Direct coercion" refers to use of force or the threat thereof to compel departures in violation of life, liberty and security as guaranteed by article 3 of the Universal Declaration of Human Rights. "Indirect coercion" refers to deliberate creation of conditions that so violate basic human rights as to leave people with no choice but to flee their homelands. Thus, excluded from the purview of these remarks are traditional migrations and other voluntary movements.

The starting point is the premise that expulsion of nationals by their governments is a gross violation of human rights and international law. Much has been written on this subject, but underlying reasons can be stated simply. Although prohibition of mass expulsion of nationals from their countries is not explicitly provided in existing human rights instruments, it is undoubtedly implied, for how can a government which has physically banished its citizens from its territory fulfill its obligations toward them under the Universal Declaration of Human Rights and other human rights instruments? Thus, the violation of human rights is total and instantaneous.

Furthermore, when a state expels its citizens, it undermines the very foundation on which relations among states and between states and their citizens are built. As early as 1758, Vattel defined nationality as "the bond which ties a state to each of its members." Over the centuries nationality has provided the legal link between the individual and the state. The former owes allegiance to the latter; the latter, in return, owes its power of protection to the former, whether at home or abroad. This reciprocal bond of allegiance (or the concept of social contract or compact) cannot be broken without mutual agreement except for serious causes. In the words of Goodwin-Gill:

The first and most general condition which is held to limit the power to expel is that its exercise should be confined to aliens. This limitation flows from the nature of the legal relationship which exists between the expelling State and the State of which the alien is a national. Thus, the duty of a State to receive its nationals expelled from another State has been described as a corollary of the "right" of expulsion.

International law permits denationalization or revocation of nationality in certain circumstances. However, not only is a state prohibited from manipulating its competence in this area to avoid its international obligations, but, as Professor Brownlie has noted, such deprivation of nationality is normally provided in municipal law in cases where residence and acts of allegiance have occurred abroad.

Until 1980, the response of the international community to massive refugee flows might have been characterized as curative or ameliorative in nature, mainly through providing care and maintenance of refugees or assistance in resettlement. The UNHCR, for example, has rendered invaluable service and assistance to millions of refugees throughout the world, in recognition of which it has been awarded the Nobel Peace Prize twice. However, its mandate has been interpreted to be of an entirely nonpolitical character, precluding it from actively seeking solutions to the causes of refugee flows, particularly when responsibilities of source countries are involved. Inevitably, we must question the wisdom of continuing to supply the needs of today's refugees without also addressing root causes that will create tomorrow's refugees.

Since 1980 the search for durable solutions through a preventive approach has taken two tracks: the Canadian initiative in the U.N. Commission on Human Rights, and the initiative of the Federal Republic of Germany in the General Assembly. The
former initiative was essentially ended with completion of Aga Khan’s Study on Human Rights and Massive Exoduses in December 1981.

The West German initiative focuses on thorough review of major circumstances causing new massive flows of refugees, whether natural (e.g., catastrophes) or man-made (e.g., political or economic upheavals). It aims at proposing appropriate means, including those of a political, juridical and economic nature, to improve international cooperation to avert new massive flows. Among the tools to be employed by the newly created 25-member U.N. Experts Group is analysis of existing “international instruments, norms, [and] principles” relevant to refugee flows. In the belief that the group’s task can be facilitated if it has available codified materials relating to one of the most important areas of refugee law, I have prepared a Draft Declaration of Principles of International Law on Mass Expulsion for consideration by this panel. This preliminary draft must, of course, be improved, and the final version will take into account comments and suggestions. Precisely what form the resultant instrument will take—whether a General Assembly declaration or resolution, or perhaps a Convention open for states’ signature and ratification—must await future developments.

The text of the Draft Declaration reads:

**DRAFT DECLARATION:**

**PRINCIPLES OF INTERNATIONAL LAW ON MASS EXPULSION**

The Panel on Human Rights and the Movement of Persons at the seventy-eighth Annual Meeting of the American Society of International Law held in Washington, April 14, 1984,

Recognizing that the phenomenon of mass expulsion continues to be a major cause of refugee flows, human suffering and strained relations among states;

Considering that mass expulsion results from the use of coercion, including a variety of political, economic and social measures which directly or indirectly force the people to leave or flee from their homelands for fear of life, liberty and security—all of which are rights guaranteed by article 3 of the Universal Declaration of Human Rights;

Considering further that “expulsion” may be defined as an act, or a failure to act, by a state with the intended effect of securing the departure of persons against their will from the territory of that state;

Noting that “a failure to act” may encompass the situations where authorities of a state tolerate, or even aid and abet, acts by its citizens with the intended effect of driving persons out of the territory of that state, or where the authorities create a climate of fear resulting in panic flight, do nothing to assure protection to those contemplating flight, and obstruct their subsequent return;

Mindful of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)), which points out:

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

Recalling the Universal Declaration of Human Rights, which provides that no one shall be subjected to arbitrary exile (article 9) and that everyone has the right to leave any country, including his own, and to return to his country (article 13(2));

Recalling further that the principle against the expulsion of people from countries of which they are citizens is included in many regional instruments, includ-
ing the 1969 American Convention on Human Rights (article 22(5)), the 1948 American Declaration on the Rights of Man (article 8) and the 1963 Fourth Protocol to the 1960 European Convention for the Protection of Human Rights and Fundamental Freedoms (article 3);

Cognizant of the fact that the Charter of the Nuremberg International Military Tribunal declares the crimes against humanity as including “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population,” and that the Nuremberg principles are reaffirmed in General Assembly Resolution 95(1);

Expressing the deep concern about the vulnerable and precarious position of many national minorities, whether racial, ethnic or religious, and of aliens, including long-term residents and migrant workers;

Declares the following principles of international law and human rights as governing mass expulsion situations and calls upon all states to observe scrupulously these principles in their conduct toward nationals and aliens alike:

Principle 1. By expelling its own nationals, a government denies them the opportunity to exercise all the basic human rights in the country of their nationality as guaranteed under the Universal Declaration of Human Rights and other human rights instruments. Consequently, its violation of human rights is total and instantaneous.

Principle 2. By expelling its own nationals, a government destroys the legal bond and genuine link between a state and its citizens, hence inconsistent with the responsibilities of statehood which constitute the foundation of international law.

Principle 3. The massive character of the expulsion of nationals compounds the illegality and the violation of human rights. In particular, such mass expulsion falls under the purview of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide because it is invariably “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such

(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” (article II)

Principle 4. Mass expulsion of aliens, whether long-term residents, migrant workers, refugees or stateless persons, must not be arbitrary or discriminatory in its application, or serve as a pretext for genocide, confiscation of property or reprisal. The power of expulsion must be exercised in conformity with the principles of good faith, proportionality and justifiability, with due regard to the basic human rights of the individuals concerned.

Principle 5. Mass expulsion of “undocumented” workers or aliens must also be carried out in full conformity with applicable International Labor Organization and other international instruments.

Principle 6. Compulsory transfers or exchanges of population by treaties are as inherently objectionable as unilateral expulsions, and any such treaties today are to be considered null and void as inconsistent with those peremptory norms of international law from which no derogation can be permitted (jus cogens).

Principle 7. The persons unjustly expelled have the right to adequate compensation as well as the right to return to their homes in their homelands.

Principle 8. The principle of nonrefoulement is the cornerstone of the protection of refugees, whether or not lawfully admitted into the receiving state.

Principle 9. In cases of large-scale influx of asylum-seekers admitted on a temporary basis, they may not be expelled until their individual applications for refugee status have been dealt with according to appropriate rules or procedures, or until another country has been found to receive them.
Principle 10. The U.N. High Commissioner for Refugees (UNHCR) or other competent U.N. authorities are "Consuls-in-fact" or "Consuls-at-Large" for refugees under their charge. The extent of their protective functions as well as their privileges and immunities in the receiving state must not be less than those specified in the 1963 Vienna Convention on Consular Relations.

Principle 11. In the event of a difference over the determination of refugee status between the receiving state and the UNHCR or other competent U.N. authorities, expulsion shall not be carried out until the international obligation to cooperate with the UNHCR or other competent U.N. authorities in resolving the question of protection has been fulfilled.

Principle 12. Neither denationalization nor denial of citizenship to children born in the receiving state pursuant to jus sanguinis may be invoked as a legitimate ground per se for deportation or expulsion.

Principle 13. During an armed conflict of an international character, no persons may be deported or forcibly transferred from an occupied country except in conformity with the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict, as well as the 1977 Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-international Armed Conflicts.

Principle 14. All states shall, individually or jointly or through the United Nations, act in a spirit of cooperation to lighten the burden connected with the massive flows of refugees in accordance with articles 55 and 56 of the U.N. Charter and article 2 of the 1967 Declaration on Territorial Asylum, whether in the form of financial and material assistance, rescue at sea, repression of piracy or, where necessary, resettlement and integration in the country of asylum.

These principles are not intended to be exhaustive. Some may need modification. It is hoped that this panel and the Society will improve upon these principles where necessary to make them complete and accurate.

Remarks by David A. Martin*

I want to offer a few general thoughts on the evolution of international concern, both among nation-states and among international lawyers, about our panel's topic. By tracing that developing pattern, we may gain a few insights into the recent measures aimed at dealing with root causes of massive exoduses that Dr. Lee has described. My review will also underscore the importance of those and all similar efforts designed to curb the human rights violations that engender many large-scale migrations.

When one thinks about our topic, "Human Rights and the Movement of Persons," perhaps the first thing that comes to mind is the human right to movement itself. Our starting point in considering this matter is article 13 of the Universal Declaration of Human Rights, particularly paragraph 2: "Everyone has the right to leave any country, including his own, and to return to his country." Since the Universal Declaration was adopted, several large-scale denials of that right have received worldwide attention. East Germany and the Soviet Union furnish well-known examples; there are certainly others. International efforts to promote better observance of that right have achieved mixed results. At the moment it seems as though East Germany has decided to honor emigration requests on a much broader scale than ever before. In the Soviet Union, after some encouraging developments in the late 1970s, the trend runs decid-

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