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**Between promise and reality:
what right to education for refugee and
asylum seeking children?**

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I would like to dedicate this paper to Florian.

He probably doesn't remember who I am, but I remember him very well.

He was one of the many asylum seeking children who came one night to Como from former Yugoslavia.

He and his family were trying to cross the border to Switzerland chasing the dream of a better life. But the doors were closed for them and they were sent back to Como.

They were sheltered in an asylum seekers' centre where they stayed for more than one year, waiting for recognition as refugees.

The asylum seekers' centre was opposite to a school, but Florian and the other children were not allowed to go in there.

One day I passed by and I saw those poor children looking from the other side of the road, behind a fence, to the happy children playing in the school garden.

Florian's sad eyes were like a stab at my heart.

I tried to talk to him, in the strange language of children (they seem to understand everything even if it is not in their mother tongue): he didn't speak a word and kept looking at the others with tears in his eyes.

A small road kept Florian and the others away from other children, children just like them.

And that small road must have been hundreds of miles wide in their eyes!

Those children were not allowed to go to school with the others, they were not granted any right to education, they were missing one of the most important stages in their development, that is contact with peers.

How was it possible?

That day I decided to write this paper.

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Introduction

The right to education is one of the fundamental human rights. It is included in the most important international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child,¹ and it is usually said to be not only a right itself but also an instrument for all other rights. Actually, the right to education is the means for the transmission of culture and cultural identity, it is directed to the full development of the human personality, but it also enables all persons to enjoy other rights so that they can participate effectively in social life and develop all their potentialities at their best. In this sense it is an empowerment right because it helps marginalized people to improve the quality of their lives and ensures access to the knowledge needed by every human being to have an adequate standard of living.

If the right to education is essential for the development of all human beings, then it is even more important in situations where its contents and aims are in danger or difficult to obtain. It is the case, for instance, of vulnerable groups and persons with special needs like refugees and asylum seekers.

When addressing problems of refugee and asylum seeking children we are usually concerned about food, shelter, health and we leave behind education. But the absence of education proves to be a lifelong hindrance for those children already affected by the experience of loss, trauma and change. Denying or limiting their education can result in a fatal impairment in their formative years: everything they are missing is lost forever. This is the reason why the provision of basic education and recreational activities for them can be considered a principal protection objective. Education can provide refugee children with the opportunity to build up a successful new existence of their own; it can represent a certain continuity with the past and a link with the future; it can allow them to grow up like any other child, without feeling discriminated. Unfortunately, in practice many refugee and asylum seeking children are not granted any right to education at all and even if they are, it is not always easy to secure its full realization. Actually,

¹From now on also as UDHR, ICESCR, CRC. For a list of all acronyms see Appendix 1, p. 69.

the right to education for refugee and asylum seeking children is not free from problems. Just to give some examples, in this case education must be aimed at the respect for the child's cultural identity, language, values as well as for the culture, language, values of the State of asylum. It should also take into consideration the children's psychological and physical conditions and their previous experiences and background. Therefore, it is not just a matter of building schools or printing textbooks, but rather a matter of assessing priority needs and formulating strategies that could adapt to the specific situation.

In this respect it becomes interesting to consider what the practical applications of the international provisions on the right to education are in the concrete case of these disadvantaged children. The first and main aim of this paper is, therefore, to see to what extent the right to education can apply to them, given the existing provisions.

In the first part, starting from a general overview on the standing of the right to education in the main instruments of human rights law, I will consider its normative contents and its main aims, features and practical implications at the level of State implementation.

From this background I will endeavour, in the second chapter, to show how the recognized standards apply to the specific situation of asylum seeking and refugee children. I will move through their specific needs, highlighting the determining factors, problems and obstacles that impede the full realization and enjoyment of the right to education for them. I will also deduce from the previous analysis the host country's obligations in this particular case and take into account some guiding principles and good practices useful for the enhancement of educational opportunities for these children.

On this subject, in chapter three I will illustrate my considerations through the example of Denmark. Many have studied the right to education for refugees in developing countries or in emergency situations. I have decided to do something different, to see how the right to education is implemented with respect to refugee and asylum seeking children day by day, in normal situations, taking as an example a particular European country. In developing countries it is already difficult to provide local children with education, hence one should not be surprised if it is even more difficult for refugees. But what happens in the wealthy countries of the so-called

post-industrialized world? Are they really offering the best protection to refugees? Can they, and are they willing to, grant the right to education to asylum seeking children? And if they are, are they also complying with the provisions enshrined in the main international instruments? Are they adopting a human rights approach?

All this will lead to the second aim of this paper, which is to demonstrate that it is not enough to proclaim high and ambitious principles if they are to remain dead-letter in practice. Effective application of the right to education, and of all other rights, is essentially a matter of will. International principles can hold great promises, still only practice can show if they can become realities. And practice is usually confronted with difficulties, concrete obstacles, structural constraints. This is why only strong commitment and goodwill informed by a human rights dimension based on the two principles of non-discrimination and the best interest of the child can promote the essential rights at the extent that they will contribute to the fulfilment of every individual and the progress of society.

Chapter 1

The right to education: what is it about?

The realization of the right to education is a process, greatly facilitated by the rationale behind the human rights norms: the way we treat children forms the kind of people they become.²

² Statement by Special Rapporteur on the Right to Education, Ms. Katarina Tomasevski, to the Commission on Human Rights, Geneva, 8 April 1999.

1.1 Is a definition possible?

When speaking of education, it is always difficult to find a comprehensive definition. The first thought that comes to mind is the transmission of learning tools and practical skills useful to manage everyday life. But education is not limited to instruction delivered in schools or teaching of basic learning needs. It concerns, in a broader sense, every activity of the human being in relation to the others and to the social and natural environment he or she is living in. It includes learning of skills, intellectual development, non-formal activities, access to different sources of knowledge rather than schools, and transmission of social and cultural values. Education starts at home, with the family as the first source of learning, and then develops freely and thoroughly as the child grows up, lives, studies, communicates ideas and values, participates in the life of the world surrounding him or her. Therefore education can be considered a process of interactions or, better, to put it in the words of UNESCO, «the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge».³

From this definition it is clear that the focus of education is the human being, the person who is being educated, and the main objective is the full development of his or her personality. In this respect, different theories have been used to support and give a rationale for the idea of education as linked to human development and personality. J. J. Rousseau, for instance, proclaimed the emancipation of the child as the main objective of education, while J. Piaget asserted that education aims at the full development of the human personality in order to make people capable of intellectual and moral independence and respectful for the same independence in others. Another interesting theory is A. Maslow's idea that people are not merely controlled by instincts, but should be understood in terms of human potential. Humans strive to reach the highest levels of their capabilities to become fully functioning or self-actualized and education is the process that can promote this personal growth.⁴

³ *Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms*, UNESCO, 1974, art. 1(a).

⁴ For more information on these theories see: J.J. Rousseau, *Emile*, P.D. Jimack, 1993; J. Piaget, *Où va l'éducation?*, Denoël/Gonthier, 1972; A. Maslow, *Toward a Psychology of Being*, D. Van Nostrand Company, 1968.

To summarize these different approaches, it could be said that personal development depends mainly on achieving a personal, social and cultural identity. The individual is not isolated; his or her identity expresses itself to the extent that he or she assumes a position in relation to others as a human being recognized as such. But the recognition of human dignity and identity is also the very substance of human rights. Hence, to recognize that education is the individual way of building a life and a framework of relationships leading to the achievement of personal dignity is equivalent to recognize a human right to education.

In this respect a discussion could be opened to acknowledge whether education is a human right or not. In my opinion the close connection between education, human development, dignity and human rights shall not leave room for doubts. In any case, it is not the purpose of this study to investigate and deepen the analysis in this direction. My intention, on the contrary, is to reaffirm through the use of the existing international instruments that there are already established standards that set education as a human right and that demand it to be implemented as such.

On the other hand, it is also true that the acknowledgment of these existing standards does not mean that the right to education is easy to define. One should always consider if it refers to access to education, to formal instruction, to transmission of traditional cultural and social values or to some more general concepts. To enjoy the right to education can mean, for example, to be able to receive information and instruction on basic learning tools such as literacy, numeracy, oral expression and on learning contents such as knowledge, skills, attitudes, values. But the realization of the right to education can also go beyond the acquisition of information and knowledge, and imply other objectives such as, for example, making sure that each individual has the freedom of choosing the form of education which best suits him or her.

In conclusion it could be said that defining education and the right to it is mainly a matter of interpretation related not only to the specific situation of the country's culture or of the group's needs, but also to the content and application of the provisions set out in international instruments. Therefore, a general overview of the recognition of the right to education in the international instruments of human rights law could prove useful to establish the background for the subsequent analysis.

1.2 Standing of the right to education in international instruments

The first international instrument on human rights to assert a general right to education is the 1948 Universal Declaration of Human Rights.

In article 26 it states:

«Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.»

The wording of article 26 speaks for a certain degree of free, equally accessible or available education aimed at the best development of the human being in a setting respectful of the others and their rights. To be a provision contained in a declaration, it is already quite complete and detailed. But, due to the non-binding nature of the Universal Declaration, it could have had little effect on the implementation of the right to education as set forth in it, had it not been taken as the starting point for the inclusion of the same right in the International Covenant on Economic, Social and Cultural Rights.⁵ In the ICESCR the provisions of the Universal Declaration were clarified in different articles, the most important of which is article 13:

«The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons

⁵ Today the Universal Declaration on Human Rights is considered as customary law and its moral importance and value are not questionable. Still, for practical purposes full realization of rights is better guaranteed in legally binding instruments that impose obligations on States and mechanisms and procedures for implementation.

to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.»

Article 13 provides for free or inexpensive, egalitarian and comprehensive education accessible to all and it is more specific than article 26 of the UDHR. As far as the aims are concerned, for example, it adds the effective participation of all persons in a free society. It also introduces the concept of progression in the introduction of free education and refers to adult education. The

provisions regarding individual and group's choice are more detailed, too and speak of minimum educational standards.⁶

The most comprehensive provision on the right to education nowadays, however, is article 28 of the Convention on the Rights of the Child:

«State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child human dignity and in conformity with the present Convention.

State Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.»

The minimum core educational provisions enshrined in article 28 refer to free, compulsory primary education for all, different forms of secondary education available and accessible to all and higher education made accessible on the basis of capacity. But article 28 also mentions

⁶ «These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn these standards must be consistent with the educational objectives set out in article 13 (1).» Committee on Economic, Social and Cultural Rights, *General Comment No. 13*, Document E/C.12/1999/10, 8 December 1999, paragraph 29.

vocational education and guidance, access to scientific and technical knowledge and modern teaching methods, casting a new light on the definition of education.

This article also differs from the other norms in that it does not set any aim for the right to education, but this is because there is one single article dealing with aims and objectives, that is article 29:

«States parties agree that the education of the child shall be directed to:

- (a) The development of the child personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment;

No part of the present article or art. 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.»

Article 29 is very detailed and adds to the usual objectives of education mentioned in the previous documents some new interesting aspects. When speaking of the full development of the child personality, it considers also the child's talents and abilities requiring that they are achieved at the best of their potentialities. It introduces as well new reference terms like the respect for the natural environment and, more important to the topic of this paper, the respect for cultural

identity, language, values of both the child's country of origin and the country he or she is living in.

Other international instruments have also elaborated some norms on the right to education, in particular with specific respect to its aims. The UNESCO Convention against Discrimination in Education, for example, restates in its article 5(1)(a) the same objectives as article 26 of the Universal Declaration.⁷

Among the non legally binding instruments dealing with education, the Vienna Declaration and Programme of Action reaffirms, in paragraph 33 and 79, the usual aims and at the same time places a great deal of effort in underlining the importance of human rights education⁸, whereas article 1(1) of the World Declaration on Education for All is more concerned about basic learning needs and the respect for cultural diversity:

«Every person - child, youth and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the qualities of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time.»

⁷ «The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.»

⁸ «The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so...»

The Vienna Declaration and Programme of Action, 1993, Part I, Paragraph 33.

«States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.»

The Vienna Declaration and Programme of Action, 1993, Part II, Paragraph 79.

It is certainly true that any application of the terms education and right to education depends on the particular situation of the single State party, nevertheless from this quick survey through the main international instruments, it is possible to come to some common features and aims that give a more precise content to education and the right to it.

1.3 Normative contents

All the provisions mentioned above speak for education meaning the transmission of skills, abilities, learning tools and contents, values. They are focussed on the different aspects of the process of education, but at the same time seem to underline the more practical side which is related to formal institutional education. In this sense there seems to be a general reference in international instruments to education as the delivery of knowledge within an institutional setting. Taking this perspective as the basis for consideration in this paper, it is easy to find a «red thread» among the different instruments and define what are the aims or objectives, the features and the practical implications of the right to education.

1.3.1 Objectives

The texts considered so far seem to have a common ground when it comes to the aims of the right to education. They all generally assign five objectives to education:

- (a) the full development of the human personality;
- (b) the full development and respect for the human dignity;
- (c) the strengthening of respect for human rights and fundamental freedoms;
- (d) the ability of everyone to become a useful member of society;
- (e) the promotion of understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.

These aims could also be seen under a child specific and adult specific perspective. In the first case the main goal is the full development of the child during his or her formative years; in the case of adult education the objective is self-determination on an on-going basis in order to obtain a fully functioning life. In both cases, at any rate, the full realization of the human personality proceeds together with the recognition of the human dignity and self-respect which, in turn, leads to the understanding of and the respect for other human beings and their rights. In this sense it is

clear that the human dimension of education permeates any consideration about its aims and influences its contents.

As a matter of fact, if full development, self-actualization and respect for others are the aims of education, then there should be some core content of the different kinds of learning around which education should be organized. The issue here is to understand what is everyone supposed to learn if these aims are to be achieved. In this case it is helpful to refer to the so-called four pillars of education as defined in the Report to UNESCO of the Commission on Education for the Twenty-first Century:⁹

- (a) *learning to know*, which means to acquire the instruments of understanding;
- (b) *learning to do*, meaning to be able to act creatively on one's environment;
- (c) *learning to live together*, so as to participate and cooperate with others;
- (d) *learning to be*, in order to develop a personal identity.

In the same way as real pillars serve as a foundation to a building, the pillars of education are the basis for the building of any human being. Seen in this way, education is the instrument by which every person shapes his or her personality and creates a network of links with others so to freely express and take active part in society life.

It can be concluded that the close link among human personality, human rights and society forms the substance of all aspects and implications of the right to education. Therefore, commitment to make possible the full realization of every human being's potentialities must be considered a priority in determining the scope of any activities related to education.

1.3.2 Defining the features of the right to education

It becomes interesting, at this point, to consider what is the real meaning of the provisions enshrined in the international instruments recalled in the previous pages and what are their concrete implications.

The three main instruments considered so far, the UDHR, the ICESCR and the CRC, mention

⁹ J. Delors, *Learning: the treasure within*, UNESCO Report to the International Commission on Education for the Twenty-first Century, Paris, Odile Jacobs, 1996, chapter 4.

the different grades of the schooling system requiring them to be free and compulsory at the first level; generally available and accessible at the level of secondary school, whether technical, professional or vocational; and equally accessible to all at the level of higher education.

Some recurrent words indicate a common view on the characteristics of the right to education. As a matter of fact, according to the Committee on Economic, Social and Cultural Rights' General Comment 13, the right to receive an education «shall exhibit the following interrelated and essential features:

- (a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State Party. [...]
- (b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Accessibility has three overlapping dimensions:
 - i. Non-discrimination - education must be accessible to all, especially the most vulnerable groups [...]
 - ii. Physical accessibility - education has to be within safe physical reach [...]
 - iii. Economic accessibility - education has to be affordable to all [...]
- (c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate case, parents. [...]
- (d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. [...]»¹⁰

This General Comment refers to the normative content of article 13 of the ICESCR, but can easily be taken as reference for other provisions as well. After all, the characteristics mentioned in it are also stated or implied in the wording of article 26 of the UDHR and in both article 28 and 29 of the CRC. In addition to this, the four features referred to in the General Comment can be said to represent the core content of the right to education and can give some suggestions about its practical implications when it comes to State implementation.

¹⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 13*, Document E/C.12/1999/10, 8 December 1999, paragraph 6.

1.4 Practical implications for State implementation

Defining the role of the State with respect to education has always carried with it conflicting visions that range between the two extremes of asserting that the State should finance and operate the entire educational system and of denying the State any role in providing education. The question here is more general and is about understanding how human rights stand vis-à-vis these two extremes: are human rights about imposing obligations on the State or are they about securing individual freedom from State intervention? This issue could also be seen under the perspective of «generations of rights» where the first one is based on the liberal principle that is the State's duty to respect freedom of choice and the second one on the socialist philosophy that human rights can only be guaranteed by positive State action. In the case of the right to education one can easily say that it falls under both the first and the second generation. As a matter of fact, the apparent conclusion is that it is balanced between a positive obligation for the State to provide for education, and make it accessible and available to all, and a negative obligation not to interfere with the individual freedom of choice. But it is also important to underline that the right to education is characterized by the presence of a duty or, to express it in the words of a commentator, that «education is one of the few human rights for which it is universally agreed that the individual has a corresponding duty to exercise this right.»¹¹

In any case, from an attentive reading of the provisions about the right to education, it is possible to have a clear-cut idea of the State's role with respect to educational policy.

The first consideration is that it must be clear that there are differences between providing for education and complying with the right to education. As a matter of fact, making education available, for instance, is not enough and it does not meet the requirements of the right if it does not possess the right qualities to attain its objectives. Education could be made compulsory and free but if schooling equals brainwashing rather than educating and if the parents' freedom of choice is not respected, then the right to education is partly denied. Hence, the role of the State is essential, but one should never forget that in practice educational strategies and standards have to be informed by the right to education.

¹¹ M. Nowak, «The right to education» in A. Eide and others (eds.), *Economic, Social and Cultural Rights*, Martinus Nijhoff Publishers, The Netherlands, 1995, p. 189.

A second consideration is that almost all the international instruments use the expression «the right of everyone to education» and, by saying that the State recognizes it, they underline how this right is closely linked to an obligation. Actually, State obligations corresponding to the implementation of the right to education are very complex and vary from elaborating strategies to setting and enforcing minimum standards, from regulating education to monitoring its implementation. It is evident in this case that the full realization of the right to education requires a comprehensive strategy that presents different aspects.

In fact, it is recognized that the State has a threefold obligation when implementing this right:

1. the obligation to *respect*, which prohibits the State to infringe the recognized right to education and consequently requires it to abstain from interfering with or restraining the exercise of such a right;
2. the obligation to *protect*, which demands the State to take steps, in legislative or other forms, to prevent and interdict the abuse and violation of the individual right by a third person;
3. the obligation to *fulfill*, which requires the State to take positive measures to enable and help individuals and groups to enjoy the right to education.¹²

Of these three obligations, the most difficult to define is the obligation to fulfill, as the positive measures taken by the State could have different patterns. In reality, as for other economic, social and cultural rights, the adoption of positive measures to fully implement the right to education is always problematic because of its dependency on conditional aspects. In this respect, as a matter of fact, also the right to education is ruled by the principle of progressive realization.

¹² For a detailed analysis of the different State's obligations see «The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights» in *Human Rights Quarterly*, vol. 9, 1987, p. 122 and «The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights» in *Human Rights Quarterly*, vol. 20, 1998, p. 691.

1.4.1 Progressive realization of the right to education

Both the ICESCR and the CRC provide for progressive realization of the rights they set out, therefore also of the right to education. The Covenant establishes in article 2(1) that

«each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.»¹³

The idea of progressive realization is a way to acknowledge that the full implementation of economic, social and cultural rights is very difficult to be reached in a short period of time, especially if considering conditional factors such as resources constraints, level of democracy, political will. Apparently, this approach takes into account the State's interest more than the relevant rights and, as a matter of fact, presents various loopholes. Indeed, the actual problem in this case is that it is always hard to evaluate where the threshold should be set and to what extent inadequate resources can really impede the full implementation of a right. This explains why the terms «to the maximum of its available resources» encompass both the idealistic aim (maximum) and the realistic (available) status of the country's conditions. At the same time, though, they also clarify why some unconditional aspects have been introduced as well in order to avoid abuse or misuse of the principle of progressive realization.

In fact, the provisions in article 2 of the ICESCR and article 4 of the CRC impose also some obligations of immediate effect in order to move as fast and as effectively as possible towards the objective. The first one can be found in the General Comment No. 3 of 1990 on the nature of States Parties' obligations where the Committee on Economic, Social and Cultural Rights «is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party.»¹⁴ In addition to this,

¹³ By the same token, article 4 of the CRC states that «With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.».

¹⁴ Committee on Economic, Social and Cultural Rights, *General Comment No. 3*, 14 December 1990, paragraph 10.

two other obligations are of particular importance: the undertaking to take steps and the undertaking to guarantee that relevant rights will be exercised without discrimination.

As far as the right to education is concerned, this means that access to and realization of it are to be achieved through progressive, concrete and targeted steps and guaranteed on the basis of equality. And in fact, the same reasoning permeates the use of «progressively and on the basis of equal opportunity» in the introductory sentence of article 28 of the CRC.

From a practical point of view, as pointed out by the Committee on Economic, Social and Cultural Rights in General Comment No. 13, in the context of the right to education the principle of «minimum core obligation» includes: «to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13(1); to provide primary education for all in accordance with article 13(2)(a); to adopt and implement a national educational strategy which includes provisions for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with minimum educational standards.»¹⁵

From this statement it can be concluded that, as regards the right to education, progressive implementation has to be understood not only in a financial perspective, but also from the point of view of administrative steps. In fact, some of these minimum core obligations require investments and resources and therefore could be subject to some constraints. On the opposite side, though, other steps only depend on commitment, goodwill and respect for the provisions. It is the case, for instance, of providing compulsory education free for all. In this perspective the word «free» could mean free of charge for the child and his or her parents, but also freedom of choice within a wide range of possibilities. The first case demands for budgetary resources, the second for administrative organization.

But what is more important here is that also for the right to education there are some steps that are of immediate application and some others that can be taken in progress. Indeed, a typical

¹⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 13*, Document E/C.12/1999/10, 8 December 1999, paragraph 57.

example is the difference between primary and secondary or higher education. The obligation to provide primary education for all is an immediate duty of all States Parties, whereas for secondary and higher education States are just requested to take steps. Once again the use of different wording reflects the fact that free compulsory secondary or higher education for all is beyond the resources of many States and requires also a great deal of time to be achieved.

1.4.3 The principle of non-discrimination

Another principle that applies to all different «generations» of human rights and is not subject to progressive realization but has to be secured immediately and fully is the principle of non-discrimination.

With respect to the right to education, one can be surprised by the fact that neither article 26 of the UDHR nor article 13 of the ICESCR specifically mention the principle of non-discrimination, but it should not be forgotten that both articles must be read in conjunction with the respective non-discrimination clauses contained in article 2 of the UDHR¹⁶ and article 2(2) of the ICESCR.¹⁷ Moreover, in 1960, between the adoption of the UDHR and the ratification of the ICESCR, the General Conference of UNESCO adopted the Convention against Discrimination in Education which in its article 1 clearly sets some rules that prohibit

«Any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) of depriving any person or group of persons of access to education of any type or at any level;
- (b) of limiting any person or group of persons to education of an inferior standard;

¹⁶ «Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.»

¹⁷ «The state Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.»

- (c) subject to the provisions of art. 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or group of persons; or
- (d) of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.»¹⁸

This article is, actually, the basis used to define what could be considered as discrimination in education. Clearly the list of reasons for discrimination is not intended to be exhaustive but merely illustrative and States must always consider other grounds that could cause discrimination. In this respect, for example, article 2(1) of the CRC adds ethnic origin and disability to the usual reasons stated in the UDHR and in the ICESCR.¹⁹

When referring the principle of non-discrimination to the right to education, also other considerations come into play. As a matter of fact, while non-discrimination depends on the traditional grounds, with reference to education there is also the question of respect for culture and values. Therefore, granting free access without discrimination of any kind in this case means also to make sure that educational pluralism is practised and freedom of choice is effective. Children can develop their potentialities at their best only if they have, and know about, a wide range of opportunities.

Speaking of non-discrimination, it is also important to underline that it does not bar affirmative action, which means that in some cases it is legitimate to apply a differentiated treatment. Identical treatment is not always possible and, on the contrary, sometimes it is the principle of equality itself that requires States to take affirmative action in order to diminish or abolish conditions causing or perpetuating discrimination. Nonetheless, the criteria for such a differentiated treatment should be reasonable and objective, pursue a legitimate aim and be proportionate to it.

¹⁸ It is worth noting that in the same article, at paragraph 2, it is mentioned that «for the purpose of this Convention, the term «education» refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given».

¹⁹ «States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.»

From all this it is clear that the obligation for States to prevent discrimination is an active one. It requires a wide spectrum of measures that include legislation, strategic planning, monitoring, awareness-raising campaigns, information. From a practical point of view, the most important issue, which in a way summarizes all the others and more than the others relates to the topic of this paper, is that providing equal access to all actually means to make efficient educational structures available to all according to their specific needs.

It is interesting in this framework to see what happens to disadvantaged groups or children with special needs. In some cases it is already difficult for the State to provide its citizens with an educational system which respects and reflects the features mentioned above. One could wonder what happens then to refugees and especially to asylum seeking children. It is always problematic to decide what right to education can enjoy children who are temporary staying in the territory of a State, waiting for a decision about their status. They are at risk of not enjoying the right to education in the same way as other groups; they could easily be left to themselves waiting for others to decide for them. But education cannot wait. It is a process that, if interrupted, can imply life-long damages, especially for children at an early stage of education. They might not be able to develop their personality at the best of their possibilities and this will have consequences for the rest of their lives.

Chapter 2

Refugee and asylum seeking children: what promises does the right to education hold for them?

*The different, the displaced, the refugees are the ones who enrich all our lives, and your tolerance and openness towards them will open new worlds for you, and make you welcome wherever you go.*²⁰

²⁰ Kofi Annan, *Message to Mfanstipim Secondary School*, Ghana, 25 October 1997.

2.1 Refugee or asylum seeking children? Difficulties of identification

«Refugee» and «asylum seeker» are two words that are by now part of our everyday vocabulary. They are often used popularly to describe a person who has left his or her country because fearing some kind of persecution or because escaping from war and violence, and usually this description does not take into account whether the person has just applied for refugee status or has already been recognized as such. But everything changes if you are just an asylum seeker or already a refugee. In the first case you still do not know what your future life will be; you still wonder if you will be given the permit to stay in the country that is hosting you or if you are going to be sent back to your own country or to a third one; you live day by day waiting for a decision on your destination and more generally on your life. If you have already been given recognition as refugee your situation is still difficult, maybe, but definitely more stable and at least less uncertain; you finally know that you can stay in the country you are living in, with the option of returning to your country of origin only and when you wish.

When using the terms «refugee» and «asylum seeker» without making any distinction one runs the risk of considering things for granted and neglecting special demands. Manifestly the asylum seekers situation is more difficult and less clear than the refugees'. Moreover, it depends on some objective and subjective factors that can have some incidence on the decision making process. As a matter of fact, the position of refugees and asylum seekers varies from country to country depending on the kind of protection the States are supposed, able and willing to give and also depending on the personal situation of the people involved.

Undoubtedly, the immense strain that refugee flows can place upon countries of asylum plays an important role in the status determination process, particularly if the host country is itself economically weak, politically unstable or socially divided. But in wealthier countries as well policies regarding refugees and asylum seekers are influenced by economic, political and social concerns. Especially in the most industrialized States sometimes refugee or asylum procedures are considered as part of the immigration policy and can suffer from a high degree of restrictiveness.²¹

²¹ Some countries, fearing destabilizing impacts from neighboring States, have prevented refugees from entering their territory. It has been the case, for example, with Pakistan denying entry to displaced Afghans or Tanzania and

The personal situation of the refugee or asylum seeker is another important element: there are major differences between the political activist escaping from persecution in China, the Sierra Leone peasant who has been displaced by an armed conflict in his country and the Kosovar family applying for refuge in Europe. The causes of flight could be as different as the forms of persecution. Every single case has to be considered in details and with attention to the particular situation, which is not always possible, especially in case of mass exoduses. One should not wonder, then, if refugees and asylum seekers run the risk to feel swapped to one situation of insecurity for another and to be considered all together as a generalized group.

Besides these general considerations on the popular opinion about refugees and asylum seekers, the two words have also a legal meaning.

Under the terms of article 1(2) of the 1951 Convention Relating to the Status of Refugees, a refugee is someone 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 and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.» Despite all the claims that this definition is not really fitting the actual situation of refugees all around the world, it is still the only universal description of the characteristics that make a refugee.²²

On the other side, an asylum seeker, in general, is a person who has crossed an international border in search of safety and is asking for recognition as refugee in the country hosting him or her. Such a definition cannot be found in any international instrument. This is already a sign of one of the main issues about asylum seekers: there is no international instrument of protection for their rights. They are usually considered under the refugee protection system, once again

Zaire closing the borders to refugee Hutus from Burundi. But also the most powerful States in the world have introduced various measures relating to the arrival, admission and entitlements of asylum seekers. Such measures vary from extended visa requirements to carrier sanctions; from pre-boarding documentation checks to fast-track asylum procedures. They have been adopted since the 1980s by the industrialized States of Europe, North America and Austral-Asia under the argument that they had to cope with an «asylum crisis».

²² Regional instruments in Africa and the Americas have supplemented the international definition with provisions that include victims of civil wars, events seriously disturbing public order or situations of massive human rights violations. See OAU, 1969 Convention Governing the Specific Aspects of Refugee problems in Africa, article 1(2) and OAS, Declaration of Cartagena, Conclusion 3.

highlighting the habit of considering different situations under the same rules, without making room for specific needs.

One could argue that most of the provisions in place for refugees can easily suit asylum seekers as well. In terms of their humanitarian needs, the conditions under which they flee from their countries of origin and the difficult moments they have to face are often the same; they share a number of important feelings and experiences such as fear, trauma, human insecurity. From a general point of view, it could be said that refugees and asylum seekers are two different sides of the same coin, meaning that they are first of all refugees at the moment of the flight, then they are asylum seekers when they apply for recognition as refugees and then they become refugees again when the decision is made. Actually, there is an international recognized standard according to which asylum seekers should be treated as refugees until a decision is made. In one of the latest attempt to define asylum seekers and refugees, the UNHCR Executive Committee stated that «every refugee is, initially, an asylum seeker. Therefore, refugee protection demands that asylum seekers be treated on the assumption that they may be refugees until such time as their status has been determined.»²³ This presumption of refugee status implies that one does not become a refugee because of recognition; the latter is not in itself decisively and does not have an impact on the enjoyment of rights.

Indeed, in terms of their human rights and human rights issues related to their flight, both refugees and asylum seekers are entitled to the same respect and protection, therefore the system set up for refugees could be adapted to asylum seekers and match their demands. Nevertheless, there is still a need, in my opinion, that a specific mention of the asylum seekers' condition should be made in international instruments, especially considering that there are some countries with complex or inadequate systems for determining refugee status where the situation of asylum seekers can become very stressful and extreme. In these conditions asylum seekers could wait for years in camps or centres, living in a kind of limbo where everything is suspended in time and space. And their rights could be suspended as well. But the State of refuge's moral duty and its obligations under international law are undoubtable: first of all asylum seekers have rights

²³ Executive Committee of the High Commissioner's Programme, *Note on International Protection*, Document A/AC.96/914, 7 July 1999, paragraph 16.

like any other individual and secondly they have special needs due to their situation. They do not enjoy the protection of their country of nationality any longer, but their rights must be protected anyway, therefore they have to be sure they can rely on international protection.

From this brief introductory overview it is clear that under the current protection system it is very difficult to make a distinction and define asylum seekers and refugees. When speaking of asylum seeking children, the situation seems to be even worse.

Almost all documents refer to them as refugees and, in general, put them in the broader group of children, which is true since they are first of all children, but still difficult to understand if no positive consideration to their particular condition is made. In a note on refugee children to the Executive Committee, the High Commissioner for Refugees stated that «there is currently no universally accepted definition of the term «refugee children» and this expression will therefore be used to include refugees, asylum seekers and displaced persons of concern to UNHCR, up to the age of 18 unless under applicable national law the age of majority is less.»²⁴ As a matter of fact, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol do not give any specific definition of refugee children; they just set standards for adults which apply to children as well. Usually the criteria for status determination are the same as for adults: being outside the country of nationality or without nationality; having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion; being unable or unwilling to avail himself of the protection of that country. It is clearly evident that for a child it is particularly difficult to assess these criteria. In this sense there is a lack in the current system concerning the content of provisions for refugee children's protection. The main international instruments are very important but have a limited role.

First of all, they do not seem to take into consideration the effects of status determination. To take a decision could require a lot of time and it is during this waiting period that it is easier to forget about the child's rights. Considering the harmful effects that a prolonged stay in a camp or centre could have on children's physical and psychological well-being and development,

²⁴ Executive Committee of the High Commissioner's Programme - Sub-committee of the whole on international protection, *Note on refugee children*, Document EC/SCP/46, 9 July 1987, paragraph 8.

special attention should be paid to their situation. The fact that asylum seeking children have been uprooted does not mean that they have lost their rights. They are in a disadvantaged situation because they do not have any protection from their State any more, but this does not negate other States' and especially the host States' responsibility for providing them with their rights and entitlements.

Secondly, there could be an inadequacy between refugee and asylum seeking children's needs and the international and national response to them. Indeed, the hardest problems for them can come after the flight, at the moment of applying and waiting for asylum, and can take the form of inappropriate solutions. «Refugee children suffer a form of double jeopardy. A denial of their human rights made them refugees in the first place [...] and when they cross a border to flee persecution or conflict, refugee children often lose whatever social or familial protection they enjoyed at home[...] Tragically the risk of human rights violations against refugee children therefore does not end at the crossing of international borders.»²⁵ All children are vulnerable because their growth is dependent on their parents and environment and they all need some role models, a sense of identity and belonging, contact with peers. But asylum seeking children have extensive needs that go beyond the usual needs of any child. They include, for example, the fact that their cultural and linguistic background is respected, that their emotional needs are recognized, especially if they have been victims of abuses, that a social framework where they could find again some safety and reliance is built around them. If not sensitively undertaken, needs assessment, planning and assistance could result in discrimination against them as a vulnerable segment of the already vulnerable group of refugees.

For many years neither refugee nor asylum seeking children have been given big consideration just because they were included in their parents' case. In the latest years, though, there has been an increasing awareness of their specific situation and progresses have been made in their respect. One of the best achievements is that now there is an international document in human rights law that specifically mentions asylum seeking children together with refugees, and that is the Convention on the Rights of the Child. Actually, given the limited protection system for

²⁵ «A Human Rights Approach to the Protection of Refugee Children», Statement by Mr. Dennis McNamara at the London School of Economics, 14 November 1998.

children in refugee law, this Convention is usually taken as the framework for action by the UNHCR.²⁶ The main reason is said to be that its provisions refer to all children, including consequently refugee and asylum seekers. But, in my opinion, it would be better to underline that, being the most widely adopted Convention in the world, also States which are not party to any refugee instrument but have ratified the CRC do have international obligations towards refugee and asylum seeking children.²⁷

In the first paragraph of article 22 the Convention on the Rights of the Child states that

«States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.»

It is certainly a big improvement to consider also the situation of children whose applications for refugee status are being processed. As mentioned above, keeping children in a sort of waiting room can be harmful for them, their security and their future. It is the uncertainty of the case that makes those children more at risk. Often durable solutions take time to materialize, but children of course will not postpone their growth. They are in need of an up-to-the-minute protection and solutions for immediate and long term development.

Along the line of CRC, in the following paragraphs the terms refugee and asylum seeking children will be used one beside the other in order to underline the idea that special attention should be paid to both groups, together but distinct. Like refugees' rights, also asylum seekers' rights must be respected, protected and fulfilled on a daily basis, and this is particularly true also for the right to education.

²⁶ «The Convention on the Rights of the Child provides a comprehensive framework for the responsibilities of its States Parties to all children within their borders, including those who are of concern to UNHCR. Moreover, as a United Nations convention, it constitutes a normative frame of reference for UNHCR's action.» Executive Committee of the High Commissioner's Programme - Sub-committee of the whole on international protection, *UNHCR Policy on Refugee Children*, Document EC/SCP/82, 6 August 1993, paragraph 17.

²⁷ The Convention on the Rights of the Child has been ratified by all countries in the world except for Somalia and the United States of America.

2.2 The meaning of education for refugee and asylum seeking children

The first issues to be addressed when refugees and asylum seeking children arrive in the host country are usually shelter, food, clothes and health. The right to education is often left aside or in any case considered later on, when the first basic needs are covered. But getting education is as important as receiving shelter or food, or being provided with new clothes and receiving medical assistance. Education is not a luxury. Educational provisions are essential to the child's growth and development and, moreover, they have an impact not only on the physical but also on the psychological well-being of the child.

These considerations could sound obvious, but they are especially important for those children whose life has been disrupted in some way and who run the risk of losing reference points. Refugee and asylum seeking children have already gone through the trauma of leaving their home, their friends, their habits, their day to day life; the most important relationships in their lives have been shattered, they have lost their sense of security and they can lose their sense of future. This traumatic situation should not be increased by the shock of losing educational opportunities for their development.

2.2.1 Reasons and objectives of education for refugee and asylum seeking children

As stated in a note on refugee children by the United Nations High Commissioner for Refugees, «the provision of appropriate educational opportunities to refugee children can be a key factor in their development and in their successful integration, either back in their national community or in a new one.»²⁸ Whether they are going to be returned to their country of origin or not, refugee and asylum seeking children should not be deprived of their right to education since it could have detrimental effects on their growth and their future capacities.

The most important reason for supporting their education is thus psycho-social. Refugee and asylum seeking children can regain a certain balance in their relationships with the others,

²⁸ Executive Committee of the High Commissioner Programme - Sub-committee of the whole on international protection, *Note on Refugee Children*, Document EC/SCP/46, 9 July 1987, paragraph 51.

especially peers of their age, and learn how to restructure their days and their lives. Education helps them to focus their attention, stimulate their creativity, develop their abilities and personality, paving the way for a constructive and positive attitude toward the future. An easy access to education facilitates the process of rebuilding their lives in a new environment, bridges the gap between their past experiences and their current situation, improves their chances to participate actively in their new society.

But there is also a more practical and moral reason for ensuring that the right to education is accorded to refugee and asylum seeking children: they need to acquire or keep those skills, attitudes and knowledge necessary for survival and for living through day to day life. They cannot just wait, sit and watch or play all day long; they need to give a meaning to their days and their activities. In this context it is useful to recall the words of the Executive Committee of UNHCR which put increasing emphasis on the education of refugee children by saying that «educational programmes for refugee children contribute enormously to their well-being and towards finding a durable solution for them.»²⁹

Last but not least, there is a legal obligation to provide refugee and asylum seeking children with the right to education. However limited it can be, the 1951 Refugee Convention already provided in article 22 that

4. «The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
5. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.»

Adding this provision to article 28 of the Convention on the Rights of the Child, the picture is

²⁹ Executive Committee of the High Commissioner's Programme, Conclusion on Refugee Children, 1994, quoted in UNHCR, *Revised Guidelines for Educational Assistance to Refugees*, Geneva, June 1995, p. 6.

clear: no State can deny the right to education to any child present in its territory, whether he or she is a citizen, an alien, a refugee, an asylum seeker. The actual implementation of these provisions, though, is still problematic. Notwithstanding the wide ratification of the CRC and the quite large number of countries that have ratified the Refugee Convention³⁰, yet «the fact remains that the majority of refugee children do not receive basic education.»³¹

2.2.2 The main guiding principles

Having recognized that the legal framework of action for refugee and asylum seeking children is the Convention on the Rights of the Child, and considering that its provisions override previous entitlements, unless they were more favourable,³² it is necessary at this point to assess what are the guiding principles that inform any practice in this respect.

A first consideration concerns the fact that we are used to thinking of children as having only needs that should be met rather than having also legal rights. But the child should be considered as a subject and not only as an object of rights. In this sense the Convention on the Rights of the Child is very innovative and one could even say that this is the general background on which the entire set of rights of the child is built.

Together with this mainstream idea, the CRC sets out also other relevant principles that are so fundamental that no action could be taken without pondering them. As a matter of fact, in addition to the principle of non-discrimination already analysed in the previous chapter, two other principles deserve particular attention and have been taken as the main guidelines in the pursuit of protection and care for refugee and asylum seeking children. The first one establishes that «in all actions taken concerning refugee children, the human rights of the child, in particular

³⁰ According to UNHCR statistics, as of 1 January 1999 the 1951 Convention and the 1967 Protocol have been ratified by 137 countries. [Http://www.unhcr.ch](http://www.unhcr.ch)

³¹ «Some estimates put the number of refugee children receiving education at no more than 30 per cent.» UNHCR, *Refugee children: Guidelines on Protection and Care*, 1994, p. 109.

³² According to article 41 of the CRC, «Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State party; or (b) International law in force for that State.»

his or her best interests, are to be given primary consideration».³³ The second principle states that «actions to benefit refugee children should be directed primarily at enabling their primary care-givers to fulfil their principal responsibility to meet their children's needs.»³⁴

According to these principles, the child's well-being is more important than any other factor. From this it follows that his or her individuality must be respected; his or her physical, psychological and social needs must be met and the impact on the child of governmental actions must be ascertained. Since the interests of the child are not always the same as the adults' the State must carefully consider and separate them out. This does not mean that the State has to take the action that is the best for children, but if a conflict arises, then the State must take the best interest of the child as a primary consideration.

If these conditions are valid for any child, then they are even more obvious for children in an under-served position. Given their particular situation within the rest of the population, their interests are certainly at risk and sometimes they can also conflict with the State's concerns.

From a practical point of view in our case this means that at the moment of planning and implementing actions concerning refugee and asylum seeking children, in the first place, what is best for the child should come before any political, economical or other consideration; secondly, an individual assessment of needs and particular circumstances should take place, if possible, with the participation of the child and, in any case, with sensitive and qualified attention from the part of decision makers.

With respect to education this implies that, instead of considering its contents and processes from the point of view of the child as a future adult, careful attention should be given to the current, actual needs of the child as such. It is not a matter of deciding his or her future in small details, but rather a matter of taking care of the immediate necessities in order to enable him or

³³ Executive Committee of the High Commissioner's Programme - Sub-committee of the whole on international protection, *UNHCR Policy on Refugee Children*, Document EC/SCP/82, 6 August 1993, paragraph 26. The principle of the best interest of the child has international legal recognition in article 3(1) of the CRC: «In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.»

³⁴ Executive Committee of the High Commissioner's Programme - Sub-committee of the whole on international protection, *UNHCR Policy on Refugee Children*, Document EC/SCP/82, 6 August 1993, paragraph 26.

her to develop his or her entire personality in a healthy and normal manner and fully enjoy the rights he or she is entitled to.

To summarize, an effective educational planning for refugee and asylum seeking children requires commitment to the principles of non-discrimination, best interest of the child and assessment of needs. Actually, as it will be discussed later on, these are the very principles that should be given priority in any action by the State. The recognition of their importance is fundamental when it comes to State obligations and good practices. But before analysing these dimensions, it is useful to highlight some other practical aspects as well.

2.3 Practical application

As seen in the previous chapter, the right to education presents some characteristics and features that in practice impose obligations of conduct on the State. Some of them are immediate and others are pragmatic in the sense that they depend on available resources. This condition clearly makes it difficult to assure full implementation of all the provisions when it comes to practical application. These circumstances reveal to be true not only at the general level, but also and especially in the case of particular groups. The specific situation they are in and the characteristic needs they have undoubtedly influence any decision in their respect. The general principles should consequently be adapted and applied taking into account every different detail.

This consideration can be better explained by analysing the practical implications of the right to education for refugee and asylum seeking children. The first issue to consider here is the fact that in this case education not only depends on several components, but is also hampered by obstacles and problems.

2.3.1 Determining factors and obstacles

The delicate situation of refugee children makes their education more difficult than the mainstream one. While all refugee students share some common experiences, at the same time their diversity of needs should be assessed in order not to make assumptions and generalize.

2.3.1.1 Learning difficulties caused by duress

All refugee and asylum seeking children go through overwhelming trauma that bring major changes in their lives and that can affect their ability to learn. Actually, a refugee child's experience can be defined as one of loss, trauma and change. Here is a scheme that suggests the different forms this experience could take:³⁵

LOSS (they may have lost)	TRAUMA (they may have experienced or witnessed)	CHANGE (they may experience)
Parents, other key carers, brothers and sisters and extended family	high intensity war, bombing or shelling	major cultural changes (language, cultural norms...)
Friends	the violent death of family or friends	going to a very different type of school
their home	the destruction of their homes	changes in standard of living and status in society
material belongings	the injury of family or friends	seeing their parents as vulnerable people
favourite toys	getting separated from family	other emotional changes in their parents such as being more protective or authoritarian
familiar surroundings	being injured	
familiar ways of doing things	the arrest of members of their family or friends	
their parents' attention and support in a new country	being arrested, detained, tortured or raped	
	grave shortages of food, water or other necessities	
	hostility in their new homeland	
	material deprivation in their new homes	
	being with people who do not understand or know about the violent events they have experienced	

Some of these experiences are common to all refugee and asylum seeking children, some others are shared only by a particular group, some others again are common just to a few number of people. But in any case they all influence the educational process which, in a way or the other, results interrupted, fragmented and/or inaccessible. All refugee and asylum seeking children

³⁵ J. Rutter, *Refugee children in the classroom*, Trentham Books Limited, London, 1994, p. 89-90.

present some gaps in their education because of the losses, trauma and changes they have been through. But what is more important and delicate in their case is that each individual reacts in his or her way; everyone has his or her background of experience and knowledge which is constantly changing.

2.3.1.2 Cultural and educational diversity

Refugee and asylum seeking children form an heterogeneous group: they come from different countries or, even if from the same country, from different ethnic groups; they have varied backgrounds and educational experiences; they have learnt from other teaching methods; they have followed differing curricula. Depending on their country of origin, different cultural traditions and values could have had an impact on their learning process and influenced their abilities. They can be used to a very strict system where every single lesson is planned in all details or they can come from a country where there is no planned curriculum and educational activities are very loose. Moreover, very often the qualifications they get in their home country schooling system do not match the entry requirements for the host country system. It is also sometimes difficult to know if they have ever gone to school, what level of education they have reached or what kind of skills and tools they possess. Assessing their knowledge could be influenced by the habit of focussing only on the system of the country of asylum without taking into consideration that they could have learnt from other sources or methods.

2.3.1.3 The language dilemma

Among the personal cultural factors that may affect asylum seeking children's education, language is one of the most important: it is the means of expressing their personality, making themselves understood, communicating with people, learning by daily activities and experiences. When the language is not the same, everything is more difficult for both sides: for the child is not easy to explain his or her situation, to tell about his or her experience, not even just to talk about anything; for the teacher or the caretaker who is in charge of assessing his or her knowledge and following his or her progresses can be very hard to understand clearly the actual situation. The problem is usually overcome by the help of interpreters, but this solution cannot be considered as a *panacea* because then other factors come into play: financial resources, different kinds of languages, difficulties in finding available personnel.

But the main issue about language and education is whether it is better to teach asylum seeking children in their mother tongue or in the language of the country they are living in. According to UNHCR, «it is problematic for refugee children to study in schools using unfamiliar languages of instruction. This should be avoided unless and until proper transition arrangements have been made.»³⁶ Knowing how hard it is to make transition arrangements in a short period of time, it becomes evident that there is no single solution. On the one hand giving value to the children's native language helps them not to lose their culture and makes the learning process easier and faster; on the other hand learning the new language could prove useful for everyday life and facilitate the integration process.

Instead of being viewed as a problem, language should be considered as an asset and an enrichment in the child's curriculum, but unfortunately in most cases it becomes a policy dilemma very hard to solve.

Provisions for refugees and asylum seekers should be able to take all these elements into consideration in order to meet their differentiated needs and to minimize the disruption of education. But the task is not easy. Furthermore, adoption of policies in this context requires large quantity of resources, either economic or human, and an enthusiastic political support which is not always possible or easy to obtain.

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2.3.1.4 Availability of structural, human and financial resources

When planning education for refugees and asylum seekers, some practical aspects play a crucial role. First of all educational infrastructures should be available, whether they are going to ordinary schools together with national students of the host country or to special schools arranged for them. This factor is usually depending upon some demographic and socio-economic settings: when a large number of refugees reach an asylum country and overwhelm local facilities, it is easier and more convenient, economically speaking, to accommodate them in separated schools; when a limited number of asylum seekers live alongside with the local population then children should be normally expected to attend local schools. In reality things are not as clear-cut as in these examples. Sometimes it happens that, regardless of the number,

³⁶ UNHCR, *Revised Guidelines for Educational Assistance to Refugees*, Geneva, June 1995, p. 15.

asylum seekers are kept in camps or in other accommodations parted from the local people; some other times the economic, social and demographic situation of the country does not allow a sufficient number of infrastructures and even where possible, a completely different educational system could impede national and refugee children to go to the same schools.

Speaking of resources, other aspects have to be taken into account such as teaching materials and facilities like libraries, computers, information technology. They could appear as luxury equipment, but it is important to remember that they can prove to be very useful in everyday work and study. They are the means by which the educational process is carried on and from which asylum seeking and refugee children learn and keep contact to the rest of the world.

In this context, one should also consider the importance of teachers: they are the mediators between the host society and the asylum seekers' community, they are the principal role-models for children at school, they are the ones in charge with their well-being and development. Therefore, they should be able to cope with all the problematic aspects of refugees and asylum seekers' education. It is not only a matter of quantity but also of quality because one could have as many teachers as possible at the disposal of refugees and asylum seekers, but if they are not trained and prepared to deal with specific needs and demands, their presence is not as effective as it should be. The problem here is that availability and quality of teachers depend on financial resources and willingness to commit to such a «human resources management». Unfortunately not all the countries are able or willing to train and pay special teachers for refugees and asylum seekers. Sometimes it is even difficult just to train ordinary teachers to the possibility of having refugee and asylum seeking children in their classroom.

Beside these structural and practical elements, there is another determining factor in deciding for educational policies for refugee and asylum seeking children: settlement expectation.

2.3.1.5 Settlement expectations

The fact that asylum seekers do not know if and for how long they are going to stay in the host country carries with it a lot of consequences also in the forms of education.

While it is clear that asylum seekers should receive educational tuition during their waiting period, it is not always evident what kind of subjects they should learn or what type of curriculum they should follow; it all depends on the length of their stay. The most common decision could be to teach them something useful wherever they are and wherever they might go, something that they will always use in their future. But there are also other different approaches. If repatriation or rejection of the case is prospected in the short term, it could be advisable to use the same curriculum and to teach the same subjects of the home country. But this solution requires the two countries to be very close each other, have the same system, speak the same language, and this is not always the case. More often the case is that asylum seekers flee to a very far or culturally different country. Therefore, it is not possible to use the same system or approach. And if repatriation or status determination is delayed, then it could be necessary to introduce some subjects that deal with the host country's culture such as language, history and geography. A combination of curricula could also be in the prospect, but only if the number of countries of origin is very limited, which is very rare and unlikely.

In addition to all these problems, one should also consider that making education depending on settlement expectations could distort the real meaning of the educational process and politicize such a delicate and important aspect of asylum seekers life. But maybe this is the real issue at stake in the whole asylum discourse.

As a matter of fact, from all this it is evident that asylum educational policies definitely derive from a combination of practical and political factors: on one side there is the specific situation of refugees and asylum seekers that requires particular care and attention; on the other, there is the structural capacity and will of the host government to cope with these problems. Usually asylum issues are dealt with by governments in the same category of immigration issues thus mixing two aspects that have hardly few things in common. And what is even worse is that the usual fears and doubts that accompany immigration policies are used in the case of asylum seekers as well, even when not justified at all. In these cases restrictive measures taken with reference to immigrants could affect the asylum process, too. The entire procedure is therefore very much influenced by the socio-politico-economical situation of the host country: the goodwill of the government will depend on the balance of powers. All this can only have bad consequences on learning opportunities.

From this short analysis of the main factors and obstacles that influence the right to education

for refugee and asylum seeking children it is clear that it is of utmost importance to consider that there is no single educational need, but rather multiple needs and consequently it is necessary to adopt flexible policies able to respond to them in a proper way.

2.3.2 Securing the features of the right to education: State obligations

In this context it is interesting to see what happens to the features of the right to education analysed in the previous chapter in order to understand what are the obligations for the host country and what could be good solutions in making education a real right rather than only a promise for refugee and asylum seeking children.

2.3.2.1 Accessibility and availability

In the words of UNHCR, «Children who are asylum seekers should not suffer any form of discrimination as regards access to education.»³⁷ This assumption derives not only from common sense but also from the principle of non-discrimination embodied both in the ICESCR and CRC. As seen in the previous chapter, according to it, the State of asylum should make sure that education is accessible and available to all children without discrimination of any kind based on the child's race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Thus, the fact that refugee and asylum seeking children enjoy another status does not mean that they are different and cannot be granted the same rights as ordinary children.

In practice this implies that education should be fully accessible and available at the same conditions of national children: primary school should be free and compulsory; secondary school should be made available and accessible; higher education should be available on the basis of capacity. Moreover, due to the particular psycho-social conditions of refugees and asylum seekers, when formal education is not possible, non formal and vocational education should be accessible anyway in order not to make them lose any possibility.

³⁷ UNHCR, *Revised Guidelines for Educational Assistance to Refugees*, Geneva, June 1995, p.16.

2.3.2.2 Acceptability

But access and availability are not enough. The host country should also make sure that the quality of education for refugees and asylum seekers reflects the appropriate standards and is at the same level of that for nationals of the same age. More important, it should be imparted in a way acceptable to them, especially if they are used to other teaching methods. It should also respect the cultural values and traditions of both countries: the one they are living in and the one they are coming from. In this respect, already in 1987 the UNHCR Executive Committee «reaffirmed the fundamental right of refugee children to education and called upon all States, individually and collectively, to intensify their efforts, in cooperation with the High Commissioner, to ensure that all refugee children benefit from primary education of a satisfactory quality, that respects their cultural identity and is oriented towards an understanding of the country of asylum»³⁸

2.3.2.3 Adaptability

Closely connected to acceptability is adaptability. As a matter of fact, education for refugees and asylum seekers should also be adaptable and take into consideration the necessity of being relevant to their particular needs and situation. It should take care of their emotional and psychological stability, it should enhance their cultural identity and, when possible should be in their native language, at least at the beginning. In this way it would ensure that they are not losing their own culture and at the same time make it easier for them to understand the new culture they are confronted with.

When and if education is targeted to the real needs of refugee and asylum seeking children and based on curricula deriving from their situation and relevant to their everyday concerns, then it is most likely that it will be more effective and productive.

³⁸ Executive Committee of the high Commissioner's Programme, Conclusion No. 47 (XXXVIII), *Refugee Children*, 1987, paragraph (o).

2.3.3 Some good practices

Due to the wide range of educational and social needs of refugee and asylum seeking children, it is difficult to set specialized provisions that could enhance educational opportunities for them. The determining factors and obstacles represent big challenges for everyone: the host government and society, the asylum seekers and refugees' community, educational experts, pupils and parents. The approaches that could be undertaken by national and local schools, educational providers and decision makers are different. Nonetheless, some common solutions and elements that could be transformed into different good practices can be taken into consideration when planning an educational system for these children that is also respecting the features of the right to education.

2.3.3.1 Assessing the personal situation

By the analysis of the determining factors it emerged that the personal, sometimes very difficult, experience and background of the refugee and asylum seeking pupil are fundamental in determining his or her education. In this sense it is important to see the student as a whole person and therefore assess his or her situation as thoroughly as possible. This could be done, for instance, at the moment of reception and orientation which are two important stages in the process of integration in the educational activities.

The first step is to determine the child's educational background and results. Teachers should get as much information as possible about the child's life, educational level and experiences. At the same time the pupil and the parents should understand the new system and what is expected from them. This full consideration of the child's previous achievements in the home country is not only useful in order to compare them with the requirements of the host country's curriculum, but also and especially in order to know where to place him or her according to his or her needs, skills and knowledge.

But if the child is to be considered as a whole, then also other skills, abilities and factors should be evaluated. It is the case, for example of housing conditions, family history and situation, plans for the future educational development. A good practice in this case could be to create a

standardized system of recording basic information and afterwards enhancing it with more personal data.

To summarize, it could be said that paying attention to diversity of needs, personal experiences and educational backgrounds is one among the best solutions to make sure that education is acceptable and adaptable to the refugee and asylum seeking child.

2.3.3.2 Inter-cultural approach

One of the methods that could also help in this direction is the inter-cultural approach to education for refugee and asylum seekers.

Actually, the inter-cultural dimension of the right to education is rarely taken into account; too often it is neglected that not only there is a right to be strengthened in one's own cultural identity, but also a duty to open one's mind to the culture of others. An extensive knowledge of refugees and asylum seekers' culture which is not limited only to traditional food, clothes and dancing, could prove useful to better understand their needs and behaviour, so to have the more appropriate form of education. After all, education is not a one-way process. It usually goes both ways: from the teacher to the learner, from the community to the single individual and vice-versa. In the case of refugees and asylum seeking children it is even more important because teachers and students, the host society and the refugee community can learn from each other and differences that are usually thought of as problems or obstacles could and should be seen as an enrichment. Education for refugees and asylum seekers promotes changes both in the host society and in the lives of individuals: on the one hand, the knowledge brought in by refugees and asylum seekers could and should be used to enhance the diversity of the host society; on the other hand, the level of knowledge in the asylum country could and should be used to enrich the refugees and asylum seekers' curriculum.

In this respect, another good practice could include promoting awareness of asylum issues amongst students of the host country in order to facilitate acceptance and combat xenophobic or racist attitudes. Moreover, respect for the pupil's culture is also useful in encouraging his or her self-esteem and, thus, his or her motivations.

2.3.3.3 Language tuition and teaching methods

In this context it is interesting to consider some good solutions for the language dilemma and the availability of teachers and teaching methods.

The first element to take into account is that consideration of all language competencies is fundamental to get a complete picture of the cognitive abilities of refugee and asylum seeking children. As seen before, language acquisition is important for the furthering of educational development and social communication. If one adds the importance of mother tongue and local language in an inter-cultural approach, then a good practice could be to use, when possible, a mixed teaching in both languages.

But this solution requires, in turn, that teachers are equipped with inter-cultural knowledge and sensitivity and also that teachers speaking the mother tongue of the child are available. From a concrete point of view, this means that teacher training should be improved in the direction of promoting and raising awareness of refugee issues. In alternative to or together with it, another good practice could be to improve access to teacher training courses for asylum seekers and refugees in order to use their skills and knowledge of the issues at stake.

2.3.3.4 Involvement of the child and the parents

All the good practices suggested so far directly imply that the involvement of the child and the parents is very important.

In the first place, if the child is to be considered as a subject and not only an object of rights, then his or her direct participation in his or her own education should be acknowledged and made possible at the widest extent. A good practice in this case is to encourage consistently across all educational activities the potential of the child to actively participate in his or her development. But it is clear that during the early years of school age this direct involvement is rather difficult without the assistance of adults and especially of parents. Therefore, as for any other usual form of education, also in the case of asylum seeking and refugee children steps should be taken to ensure that their parents or guardians are fully enabled to participate in the educational process

and activities. Moreover, a closer communication and involvement between the school and refugees and asylum seekers could prove to be an advantage for both sides.

From this analysis about the content of the right to education for refugee and asylum seeking children it is clear that in reality high principles, considerations and promises held in international instruments could be hampered by practical factors, structural obstacles, pragmatic constraints. This is why, however good the suggested practices may be called, there is no doubt that when it comes to real life they are not as easy to follow as they could seem at first glance. In the first place, refugee and asylum seeking children should receive a more specific protection in international instruments which recognizes their similarities but also their differentiated situations. Secondly, every effort should be made to consider them as children and not as adults to be. At the national level, particular attention should be paid to their diversified needs bearing in mind the guiding principles of non-discrimination and the best interest of the child. Any strategy devoted to grant educational possibilities for these children should assess their particular psycho-physical conditions, consider their cultural identity and overcome some practical obstacles such as resources availability or language problems. Undoubtedly this can be possible only if political commitment, will and enthusiasm are available.

Taking a particular country as an example could illustrate these critical aspects in the actual, concrete implementation of the right to education with respect to refugee and asylum seeking children and also help in understanding what could be the right direction to take. In this sense it is interesting to see to what extent the national system is compatible with the requirements of the right to education analysed so far and what happens to State obligations in order to consider if the national authorities comply with their international commitments and the principles they hold.

Chapter 3

The example of Denmark³⁹

If you are admitted in a Danish school, it could give the impression that you are a part of the Danish society.⁴⁰

³⁹ Factual data and information given in this chapter are in part the result of interviews and direct observation conducted with educational advisers at the Asylum Department of the Danish Red Cross.

⁴⁰ Danish Red Cross, Asylum Department, *The Danish Model - Schools for children*, 1999.

3.1 The situation of refugees and asylum seekers in Denmark

Before considering the Danish educational system of education for refugee and asylum seeking children in order to evaluate its congruity with the analysis conducted in the previous two chapters, it could be useful to provide a general overview on the situation of refugees and asylum seekers in Denmark.

Denmark has always been very sensitive and attentive to the needs of refugees and asylum seekers. This positive attitude can be explained, in the first place, by the fact that the country has international obligations to participate in the responsibility for protection and care of these vulnerable groups because of its ratification of international instruments of refugee and human rights law.⁴¹ As a matter of fact, Denmark is among those countries with a fairly good compliance rate in fulfilling the obligations under the terms of the different Conventions. One could even say that these instruments have an important impact at the political level: in Denmark the very existence of international obligations encourages a general legislative attitude in favour of living up to those standards. Furthermore, on occasion Danish legislators have even gone beyond the legal obligations and encompassed them with more specific applications.

In this context it is interesting to note, for example, that in Denmark there are four possibilities of being recognized as a refugee. The first and classical one derives from the Refugee Convention definition: asylum seekers who satisfy the conditions set out in it are recognized as *Convention refugees*.⁴² The second possibility is for asylum seekers who do not qualify directly as Convention refugees but may be granted asylum «for reasons similar to those listed in the Convention or for other weighty reasons resulting in a well-founded fear of persecution». In this case they are recognized as *de facto refugees*.⁴³ The third category is composed by *asylum seekers applying from abroad* whose conditions satisfy the general definition of refugee and who

⁴¹ At present Denmark is a State Party to the Convention Relating to the Status of Refugee and the 1967 Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, just to mention the instruments relevant for this paper.

⁴² The Danish Ministry of the Interior, *Aliens (Consolidation) Act No. 539 of 26 June 1999*, paragraph 7.(1). For the relevant articles see also Appendix 2, p. 70.

⁴³ The Danish Ministry of the Interior, *Aliens (Consolidation) Act No. 539 of 26 June 1999*, paragraph 7.(2).

have close relatives in Denmark or other ties with the country so that it is the most obvious State to grant them asylum.⁴⁴ Last but not least, the fourth group of people who could be granted refugee status in Denmark is that of the so-called *quota refugees* who are invited in the country after agreement with the UNHCR.⁴⁵

These distinctions in determining refugee status are good indicators of the particular attention Denmark pays to the refugees' differentiated situations and gives already an idea of the meticulous work of the Danish authorities in this respect.

It suffices to take a look at the statistics to understand the width of the issue at stake. From 1956 to 1984 Denmark recognized an average of 500 refugees a year. As a consequence of the increasing number of refugees on the global level, also in Denmark the total figures about refugees in the years between 1985 and 1989 increased more than fivefold and in the 1990s the country hosted thirteen times as many refugees a year as during the period 1960-1984.⁴⁶ The most recent statistics by the Danish Immigration Service show that at the end of 1999 Denmark hosted about 8,500 refugees and asylum seekers. During the year, 6,467 asylum applications were lodged in Denmark. At the first instance level, the Danish Immigration Service made a total of 5,579 decisions: 963 persons were granted refugee status under the terms of the Geneva Convention; 2,360 individuals were recognized de facto refugee status; 2,256 cases were rejected. At the appeal instance stage 1,675 decisions were made by the Refugee Board: 173 cases received Convention refugee status; 258 de facto refugee status and 1,244 were rejected. Considering also quota refugees, asylum applications from abroad, humanitarian status, cases based on exceptional reasons and applications from Bosnians and Serbs under the *temporary protection system*, a total of 4,526 persons were granted refugee status or other status in 1999.⁴⁷

All these figures reflect a general world-wide tendency in the movements of refugees and asylum

⁴⁴ The Danish Ministry of the Interior, *Aliens (Consolidation) Act No. 539 of 26 June 1999*, paragraph 7.(4).

⁴⁵ The Danish Ministry of the Interior, *Aliens (Consolidation) Act No. 539 of 26 June 1999*, paragraph 8.

⁴⁶ Appendix 3, p. 71. For more information on refugees, asylum seekers and immigrants in Denmark, see D. Coleman and E. Wadensjö, *Immigration to Denmark*, Aarhus University Press, 1999.

⁴⁷ The Danish Immigration Service, *Statistical Overview 1999*. See also Appendix 4-5, p. 72-73.

seekers but also the Danish humanitarian and democratic tradition in hosting refugees. As a matter of fact, starting from the end of the Second World War, when Denmark played an important role in receiving the Allied refugees who had fled during the war, going through the 1980s movement of displaced people, passing by the recent 1990s crisis of Yugoslavia and Kosovo, the country's government and civil society have demonstrated both solidarity and responsibility in undertaking the difficult task of giving support for long-term, viable solutions to the refugees and asylum seekers issues.

In addition to all this, Denmark is one of the most important countries of resettlement⁴⁸ and one of the UNHCR's largest contributors.⁴⁹

With this positive record of activities one could think that in Denmark asylum seekers and refugees' rights are guaranteed at the best in compliance with international instruments. But in reality the situation is more complicated than it might appear. If on the one hand it is true that the Danish society offers good legal protection and social safety, on the other it has many strict requirements and a tight organisation that often make it difficult for refugees or asylum seekers to feel at ease and welcome. Moreover, some restrictive criteria can give the impression that some rights are not completely realized but only limited.

Indeed, asylum issues are very much part of the social and political debate in Denmark. In the last 20 years politicians, civil society, newspapers, mass-media and common people have been discussing the situation of refugees and asylum seekers in Denmark from different points of view and about different aspects. Interpretations of the Aliens Act, for instance, have changed during the time both in a liberal and a more conservative way according to the different political opinions and the diverse socio-political trends. The topics of the debate have ranged from discrimination against particular groups of refugees to responsibilities of various institutions; from language teaching to social assistance. Moreover, the general discussion has gone as far as including revision of the legislation with specific attention to the assessment of the cases and

⁴⁸ Every year, at the request of UNHCR, Denmark receives about 500 so-called «quota» refugees, people who have already been recognised the status of refugees but have not been able to find permanent protection in the country they have stayed in previously.

⁴⁹ According to UNHCR Statistic, as of 6 June 2000 Denmark ranks in the third position and has contributed to the UNHCR in cash and kind with 45,056,560 US Dollars in 1999.

the length of the waiting period.⁵⁰ Most of the time the debate has been influenced by the usual prejudices and stereotypes that accompany any discourse about foreigners, whether they are called aliens, immigrants, refugees or asylum seekers: it is easier to make them the scapegoats of all the problems and hardships of the society just because they are different in appearance and culture. Denmark, like many other European and non European countries, has not escaped from this fate.⁵¹

Through a bird's eye view on the recent developments in asylum policy, it appears that the recurrent theme is the struggle between the defence of a liberal legislation to live up to clearly defined international obligations and the call for a tightening of the Aliens Act so to overcome fears and resentments about an ever-growing «inconvenient» presence.

In the first half of year 2000, for example, there has been a strong debate on the issue of family reunification. The attention focussed on the age limit for family reunification and on the fact that those asking for it should have an appropriate domicile and be able to support the family. But the debate considered also whether it would be better to have different laws for various groups of people in the society: Danes, immigrants, refugees, or one law that should apply to all. The bill presented by the Danish government put forward several criteria for granting family reunification and was said not to be discriminatory because the assessment is made regardless of the ethnic origin of the applicant. Moreover, in the government's eyes those criteria were adopted in order to avoid that bad housing conditions make the integration difficult or to help young people who are at risk of being forced into marriage against their free will. Still, they could seem very restrictive and aiming at putting a stop to an increasing number of immigrants or refugees coming to Denmark.

It is clear that the difficulty in this case lies in finding a compromise that could satisfy all parties. The general impression is that it is easier for the Danish authorities and public to accept a liberal humanitarian policy on refugees and asylum seekers as long as there is no excessive pressure at

⁵⁰ Actually, the current Aliens Act is the result of various revisions to the first Aliens Act issued in 1983, a very liberal one which gave Denmark the reputation of the leader in humanitarian refugee policy.

⁵¹ For further aspects of the debate on asylum seekers in Denmark see D.Coleman and E. Wadensjö, *Immigration to Denmark*, Aarhus University Press, 1999.

the country's borders. In this sense Denmark is not very much different from many other Western countries. What is different and positive in a way is that the political struggle is keeping the attention on such a sensitive and important issue, forcing somehow the relevant people to look for the best solutions, or at least for those with fewer shortcomings. Nonetheless, difficulties still remain in finding the perfect balance between State's interests and asylum seekers and refugees' rights. This contrasted attitude towards asylum issues is very well represented in relation to the right to education for refugee and asylum seeking children.

3.2 The Danish educational system for asylum seeking children

From a comparative look at the different educational provisions for asylum seekers and refugees in the European Union,⁵² Denmark appears to be a particular case for two reasons. First of all, in the Danish system of education for refugee and asylum seeking children there is a clear distinction between refugees and asylum seekers in the enjoyment of their rights. If on the one hand this is a good practice because, as discussed in the previous chapter, it helps in assessing differentiated needs and granting proper protection, on the other hand it is also doubtful because in the case of Denmark it can give the impression that asylum seekers are treated «less equally» than refugees. This assumption can be better explained by an analysis of the current situation, which also leads to the second reason: Denmark is the only European country, together with Portugal, where asylum seeking children do not have access to compulsory education in the national school system.

3.2.1 General provisions

The general rule is that in Denmark education is compulsory for all children aged between 7 and 16 years.⁵³ This applies to all children living in the territory of the country, therefore to refugees

⁵² *Overview national situation - Free access to compulsory education for refugees, humanitarian refugees and asylum seekers.* [Http://www.refugeenet.org](http://www.refugeenet.org)

⁵³ «All children in Denmark have a right to receive free education in the primary and lower secondary school (Folkeskolen). Education is compulsory in Denmark, but there is no compulsory school attendance. Compulsory education may thus be performed through education in the Folkeskole, in a private school or as private instruction in the pupil's home. Education is compulsory for children from the 1 August of the calendar year in which the child attains the age of 7 years until the 31 July after the child has received regular education for a period of nine years.» Committee on the Rights of the Child, *Initial Reports of State Parties due in 1993: Denmark*, Document

and asylum seekers as well. The difference is that in the so-called Danish model, refugee children can go to normal school with Danish children, while asylum seeking children are not allowed to enter mainstream schools and they actually go to special schools. As a matter of facts, according to the terms of the Danish «Aliens (Consolidation) Act» of 26 June 1999

«Children of school age staying in Denmark and whose applications for residence permit pursuant to section 7 have been taken up for examination, or whose parents fall within section 42.a(5), shall participate in separately arranged tuition. The Ministry of the Interior may lay down more detailed rules for the study programmes and activities to be offered and may decide after negotiation with the Ministry of Education to what extent the said children can participate in the tuition of the municipal school system.»⁵⁴

This general provision has been further detailed in the «*Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.*» (Regulation on education and activation of asylum seekers).⁵⁵ According to it, separately organized education must be offered by a collaborator after agreement with the Danish Immigration Service.⁵⁶ Even if there are three centres run by The Danish Emergency Management Agency and one case where education is organised by the Danish Refugee Council, the rule is that asylum seeking children are taught in asylum schools run by the Asylum Department of the Danish Red Cross.⁵⁷

Education is provided in 13 schools spread all over the country. Some of them are situated in the asylum seekers' centres, while the majority is located in a central position that serves more than one asylum centre. In this way it is possible to have more permanent facilities in order to overcome the problem of having centres that open and close accordingly to the number of

CRC/C/8/Add.8, 12 October 1993, paragraph 36.

⁵⁴ The Danish Ministry of the Interior, *Aliens (Consolidation) Act N. 539 of 26 June 1999*, paragraph 42.c (1).

⁵⁵ For the complete text, both in Danish and in English, see Appendix 6 , p. 74.

⁵⁶ The Danish Ministry of the Interior, *Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.*, Chapter 2, paragraph 3.

⁵⁷ Today the Danish Red Cross runs 41 asylum seekers centres: 2 registration centres, 31 residence centres, 4 special centres for unaccompanied children and people with psychological problems, 4 centres for refugees from Kosovo, and a Culture House. Danish Red Cross, Asylum Department, *The Danish Model*, 1999. The numbers can vary according to the flow of asylum seekers and refugees.

presences. Children living in one of the centres without educational infrastructures or activities are provided with a bus service to the nearest Red Cross school.

As far as the aims of this kind of education are concerned, it is interesting to observe that they reflect the general aims of the right to education analysed in the first chapter. In fact the *Bekendtgørelse* establishes in paragraph 4 that

«Education is intended, in collaboration with the asylum children's parents, to:

- 1) promote the children's acquiring of knowledge, skills, working methods and expressions that will help the child's full development,
- 2) give the children knowledge of the Danish culture and contribute to their understanding of other cultures and human interaction with nature,
- 3) bring the children to an understanding of participation, responsibility, rights and duties in a free and democratic society, by an education built on intellectual liberty, equality and democracy, and
- 4) prepare the children for their future lives, disregarding whether they get the residence permit or not.»⁵⁸

The last point is very important in our case because it represents the guiding principle of education for asylum seeking children in the Red Cross schools: the subjects they learn should be helpful and useful for them regardless of whether they are permitted to stay in Denmark or asked to leave the country.

On the whole, from the reading of the specific regulation, it can be said that the educational system for asylum seeking children is very similar to the public system for Danish children, even though some differences are inevitable. The number of students and the proportion between them and the teachers, for example, varies on a daily basis with the varying of the refugee flows, but in general it is easier for the teachers to better follow the pupils. In this respect, some data could help to better understand the situation. According to statistics, approximately 1,000 children come to Denmark every year. As of January 2000, the Red Cross multi-ethnic centres hosted 1042 children aged between 7 and 17 years, while the Kosovo centres accommodated 474

⁵⁸ The Danish Ministry of the Interior, *Bekendtgørelse om undervisning og aktivisering m.v. af asylansøgere m.v.*, Chapter 2, paragraph 4.

children in the same group of age.⁵⁹ As far as the schools are concerned, last year there was an average of 12,3 pupils per class and the average attendance rate was about 80 per cent.

It is interesting to notice that this attendance rate also reflects the fact that in Denmark going to school is not compulsory. As a matter of fact, not all the asylum seeking children attend classes: some of them are educated at home (in the centres) by their parents. On the other hand, though, this 80 per cent is also an indicator of the fact that other asylum seeking children, especially the older or the unaccompanied ones, are not motivated or do not want to go to school. In their case alternative tuition, usually in the form of vocational or informal education, has to be organized.⁶⁰

At the primary school level, instead, the kind of education that asylum seeking children receive is comparable to the one normally organized for bilingual students: from 20 to 28 hours classes a week according to age and previous educational background. The subjects taught include, among others, Danish, English, mathematics, physical education. To be more precise, the above-mentioned *Bekendtgørelse* provides that:

«Education in the residence centres must match in content and proportion the education offered to bilingual children in the Danish public schools [...]

Education includes: 1) training in Danish, 2) training in English, 3) training in other subjects of the primary school (Danish Folkeskole) [...]

The weekly time of education for asylum seeking children must respond to the minimum time for the same class level in the Folkeskole [...]

The time for education in the reception centres is 20 hours a week.»⁶¹

Therefore, it is expressly mentioned that the subjects and the amount of lessons taught are at a great extent the same as in ordinary schools. Still, the teaching is rather different.

⁵⁹ See Appendix 7, p. 80.

⁶⁰ Actually the Danish Red Cross Asylum Department is considering the possibility of setting up special schools for young asylum seekers on the model of the Danish Folkehøjskole. These are typical Danish schools that combine physical activities with intellectual courses. Classes vary in content and length: one can attend one-week or one-month or even one-year lessons in painting, poetry, literature, history, handcrafting, but also specialize in physical training or socio-political subjects. Indeed, more than schools they could be called «meeting points» of discussion and represent very well the democratic tradition in Denmark.

⁶¹ The Danish Ministry of the Interior, *Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.*, Chapter 2, paragraph 6, part 1 and 2 and paragraph 8, part 1 and 2.

3.2.2 Structural difficulties of the system

There are, indeed, various structural aspects that impede to use normal teaching methods and systems.

Replacement, for example, is a never-ending obstacle: due to the temporary situation of asylum seekers and the continuous flow of new arrivals, it is almost impossible to organize fixed programmes, schedule activities and plan lessons for the entire year. Accordingly, the curriculum is rather flexible and the content of the lessons varies depending on the needs of the moment. This makes it possible for a child to enter the educational process at anytime during the year without being left behind with the programme.

Also, the activities are different depending on the school: if it is situated in a registration centre, then the children go through a simpler educational process before entering the regular system in the other centres. They have just arrived and they are staying in the reception centre only for a very limited period of time, therefore the method consists of teaching them only Danish and mathematics just in order not to lose even one day of school.⁶²

Another structural problem is the presence of children from many different countries, speaking many different languages.⁶³ In this respect the regulation is very open and, even if establishing that the language of instruction is Danish, it leaves the door open for lessons in the mother tongue and other foreign languages, especially if education is carried out in cooperation with the asylum seekers themselves.⁶⁴

⁶² In this context, the *Bekendtgørelse* states in Chapter 2, paragraph 5, that «education in the reception centres must give the children an introductory knowledge of the Danish language and society» and, in paragraph 6, that «the asylum seeking children staying more than 6 weeks at the reception centre must be offered the same education as established in part 1-3.»

⁶³ For an overview on the ethnic composition of the refugee flow see Appendix 4-5, p. 72-73.

⁶⁴ The Danish Ministry of the Interior, *Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.*, Chapter 2, paragraph 6, part 3 and paragraph 8.

In practice, the centres are supposed to offer also three hours of education in the student's mother tongue, but usually this is not possible due to the lack of interpreters, of qualified teachers, financial resources. The Red Cross educational advisers have been suggesting and trying to employ refugees or asylum seekers themselves to teach the children, but they experienced what they call a «honeymoon» phase: at the beginning many refugees or asylum seekers are willing to take the task, if only to prove that they can manage to give a sense to their days; but then, after some months of stay, disillusion and doubts about their situation discourage some of them and make them abandon the idea of teaching. This does not happen in all cases, but the point is that what could be a very good solution to the language problem actually proves to be unstable and unreliable.⁶⁵ The alternative could be teaching in a neutral language such as English, but here the problem is that not all asylum seekers speak English and even if they do, being in Denmark speaking a language which is neither their mother tongue nor the local one could result in additional stress and confusion for them.

As seen in the previous chapter, the language problem brings with it also the question of cultural identity. Living for months in a Danish context could in the long-run make these children lose contact with their culture, values and traditions. Notwithstanding the fact that asylum seeking children still spend most of their time with the family or other asylum seekers from the same country, the simple idea of being left in a sort of waiting vacuum certainly could bring growing alienation and affect the way they perceive their identity. The Red Cross staff are very well aware of this issue and have decided to try to cope with it through the use of computers. Until now, five schools are equipped with modern up-to-date computer facilities and Internet connections so that the children can use them to establish links with other children speaking the same language and to keep in touch with their home country. Moreover, learning how to use a computer can result very helpful in any case: information technology is important everywhere in the world and opens a lot of possibilities for the full development of these children.

⁶⁵ The only case where this practice worked rather well has been the Kosovo experience. Kosovar refugees were accommodated in special centres only for them, thus the language was only one and the Red Cross staff could try a mixed teaching in both Danish and Kosovo-Albanian.

3.2.3 Practical procedure

From a practical point of view, the normal procedure is that the day after the children arrive at the asylum seekers centres they are accompanied to the school and start their educational activities in a small group with teachers used to work with new comers. Usually the «first class» is the one where they attend Danish classes and where they become accustomed to the new system. The length of their stay in this class depends on their capacities, skills and abilities: every different child has his or her personal times of learning. Moreover, many of their learning skills and abilities depend on their previous background.

In this respect, the provision in the *Bekendtgørelse* establishes that

«Education is planned under consideration of the particular situation of the asylum seeking children. The planning must consider the individual child's age and background and give the individual child the possibility to use and build on already acquired knowledge and skills.»⁶⁶

This rule is fully in line with the good solutions proposed in the previous chapter of this paper. Besides, the actual practice is even better. As a matter of fact, the teachers in the Red Cross centres pay very much attention to the child's history, psychology and personal situation. Before starting school an interview takes place with the child, his or her parents, the school headmaster and an interpreter. The scope of this interview is to exchange information from both sides: the parents and the child are explained how the Danish system works and the headmaster is informed about the child's previous experiences, knowledge, education. Then, after the first period in the preparatory class, the asylum seeking pupil is put in the level corresponding to his or her qualifications.

Beyond the moment of the reception in the school, parents are also constantly involved in their child's educational activities. Indeed, the intention of the Red Cross is to cooperate with parents as much as in the case of normal schools, therefore they are invited twice a year for a

⁶⁶ The Danish Ministry of the Interior, *Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.*, Chapter 2, paragraph 10.

consultation about the progress of their child and to at least two other events organized for all parents.⁶⁷

A final distinguishing practice of the system is that the centres arrange open house meetings with students from public schools in order to get an insight in the daily life and an understanding of the culture and experiences of asylum seeking children. For the latter it is also a good opportunity to meet other children and peers of the same age.

From this overview it is clear that every effort is made to maintain the asylum centres' schools as similar and as well organized as the normal ones. Still, as repeatedly stated along this paper, the situation of asylum seekers requires attention and different approaches. From a practical and didactic point of view, it is the task of the Danish Red Cross to take into account all the particular issues of the case and find the best solutions, which is not always easy. Indeed, the role of the Red Cross staff is particularly delicate, especially when considering that the personnel has to maintain a neutral position about the subject.

In facts, as for any other situation, also in its work with asylum seekers the Danish Red Cross abides by the so-called 7 principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Moreover, the Asylum Department has established some goals in the asylum work both for the asylum seekers and the organization in general. As the goals for asylum seekers are concerned, for example, the Asylum Department must make sure that the asylum seekers keep their culture, language and identity; that they make the best use of their personal resources and that priority is given to the most vulnerable groups, i.e. children, unaccompanied minors, torture victims, persons with special needs. On the other hand the organization itself must make sure, among other characteristics, that the staff members have the right and necessary qualifications, that it evaluates and develops itself on an on-going basis so to adapt to the changes of the society and to make its professional expertise available whenever it is the case.⁶⁸

⁶⁷ Also in this case the *Bekendtgørelse*, in paragraph 13, part 3, is very clear: «The parents of the asylum seeking children will regularly be involved in the scheduled teaching, including parents meetings and consultations.»

⁶⁸ Danish Red Cross, Asylum Department, *The Danish Model - Goals for the Asylum Work*, 1999.

It is very important, in my opinion, that such a delicate task is entrusted to a neutral institution. Evidently, though, adhering to the above-mentioned goals and remaining impartial requires a great deal of energy, enthusiasm and commitment. And it is often difficult not to react or take positions when realizing that some aspects could be managed in a better or fairer way. In the case of asylum seeking children's education, for instance, the situation presents some questionable points that also the Red Cross would like to see better addressed. But unfortunately at this level responsibility resides in the political authorities.

As a matter of fact, the entire issue of the right to education for asylum seeking children in Denmark depends very much on political decisions and goodwill. In this sense it is important to consider what are the positive and negative aspects of the system in order to evaluate its compliance with international provisions, normative contents and guiding principles.

3.3 Debatable points

The Danish system of education for asylum seeking children presents some very good aspects that could be taken as guiding examples for other countries.

As explained above, both the Danish authorities and the Red Cross, who is the actual educational responsible, are attentive to the particular needs of asylum seeking children. The recognized assessment of the educational background, the inter-cultural approach to teaching, the involvement of the child and the parents and the provision for education of the same standard and content as for the mainstream one, enhanced by the use of modern technology, are undoubtedly very positive records in the Danish approach to the matter and represent already some of the good practices suggested in the previous chapter.

At the same time, though, there are some issues that could lead to relevant questions: how are practical problems and structural obstacles influencing the implementation of the right to education for asylum seeking children? Does the system respect the features of the right to education? Is it discriminatory in some ways?

3.3.1 Respect for the features of the right to education

Maybe the best way of approaching these problems is to start from the features of the right to education as examined in the previous chapters.

3.3.1.1 Availability and accessibility

With reference to Denmark there is no doubt that availability is fulfilled and respected. Asylum seeking children do have the opportunity to go to school; educational institutions and programmes do exist for them in sufficient quantity all over the country.

Problems arise when considering accessibility. Recalling the definition from the Committee on Economic, Social and Cultural Rights, education should be accessible without discrimination, within safe physical reach and affordable to all. The last two conditions are completely met: first of all, even in cases where the school is not in the centre where the child is living in, the Red Cross provides for the means of transportation, and secondly asylum seekers do not have to pay for it because it is subsidized by the State. But when it comes to non-discrimination, practice becomes more complicated, as will be discussed further on.

3.3.1.2 Acceptability

As far as acceptability is concerned in the example of Denmark, the substance of education and the curriculum could be said to be relevant and culturally appropriate for asylum seeking children. They are certainly of good quality, the teachers are very well prepared to cope with the particular situation, especially in the most difficult cases, and, more importantly, every effort is made to take into consideration the cultural identity, values and traditions of both the children and the host country. In this sense it is acceptable to them.

Some problems could rise, though, in relation to the teaching methods. It is useful in this case to mention the example of an experience with asylum seekers from Kosovo. Their case is particular because they were admitted in Denmark under the temporary protection system in agreement with the UNHCR. They were accommodated in special centres just for them and they received a slightly better treatment than other asylum seekers in that they received the same type of

education as the others with, in addition, 5 lessons a week in their mother tongue. What is relevant here is that the system for them provided for teaching from both Kosovo-Albanian and Danish teachers. This experience has shown that it is not always easy to find a common way of teaching when the methods are completely different. The Kosovars are used to a very tight and detailed planning whereas the Danes follow a general scheme that adapts in each case to the needs of the moment and of the children. In this case it was very difficult for the Kosovars to find the Danish system acceptable for them, especially in the eyes of the teachers. And on the other side it was very hard for the Danish teachers to find the Kosovar system acceptable, especially in front of some propaganda that occurred meanwhile.

Apparently, also this case underlines that it is not always possible to find a single solution when confronted to different practical difficulties.

3.3.1.3 Adaptability

As seen in the previous chapter, one of the problems with education for asylum seeking children is that they can have different educational backgrounds, different experiences, different levels of knowledge. They have differentiated needs and education should adapt to them, taking into consideration also their culture, values and language. In the case of Denmark adaptability is already respected by the fact that children undergo an educational assessment and are put in the right level corresponding to their needs and capabilities. Moreover, the procedure is also going to improve through a small screening system based on a non-verbal assessment of the child's previous background. In this way it will be even easier to create a «personal programme» for every child according to his or her needs and education will definitely be adaptable to each single case.

From this overview about the features of the right to education it could be concluded that in Denmark the system is functioning quite well with many positive achievements: after all almost all the features are respected and improvements are on the way. But one cannot help of thinking that the entire situation depends on settlement expectations: asylum seeking children cannot go to the normal schools as long as they do not know if they are going to be granted refugee status and permitted to stay in Denmark.

Under this perspective, the case leads to other debatable points.

3.3.2 The role of settlement expectations

Making education dependent on settlement expectations is very dangerous because attention is focussed on political matters to the detriment of the real meaning of education. When deciding that asylum seeking children should attend separately arranged tuition, the danger is to differentiate them or to maintain them in an inferior position within the host society. It is impossible for them to integrate even temporarily within the local community and they stay in the periphery. Even if the intention is not to exclude them from the Danish society, they might feel that they are treated differently from the others.

But what is more dangerous is that remaining for a long time in one of the special schools could prove detrimental for the full development of the child. In Denmark a decision about refugee status could take little more than 6 months, but in many cases also 1 year and even longer. If the child is going to stay that long in the Red Cross school there are few chances that his or her education could go further, especially considering that it could be very difficult to find a personalized programme that fits the needs of a child who is far ahead of the others because of a longer stay. To be precise, it is true that in few special cases asylum seeking children are allowed to attend a normal Danish school, but this could only happen under the condition that they are proficient in Danish.⁶⁹ If in the best perspective it is very good that the door has been left open to this possibility, in the worst case the language requirement could also be seen as an obstruction to the full enjoyment of the right to education.

From all this it is clear that everything seems to be dependent on status determination and not on the real needs of asylum seeking children. Moreover, it is not clear if equality is fully met. At this point one could wonder what happens to the fundamental principles of non-discrimination and the best interest of the child.

⁶⁹ The Danish Ministry of the Interior, *Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.*, Chapter 2, paragraph 15, part 2.

3.3.3 Granting non-discrimination

As seen before, one of the main issues about the right to education and its accessibility is that they should be provided to anyone without discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the case of asylum seeking children's education in Denmark one could wonder if the fact that they go to separate schools is a case of «other status» discrimination. Are they separated from the other children just because of their status of asylum seekers? On the one hand one could argue that it is already good that there is at least an educational system in place for them, but on the other the opposite question is to understand why preventing them from being together with the others. Is it really necessary to keep them into special schools?

Already the wording used in the Aliens Act gives an indication of the fact that asylum seekers should not be integrated into Danish society before their status as refugees is determined. As a matter of fact, the official reason is that they do not know if they are going to stay in Denmark or not, therefore the authorities do not want to give hopes in vain.

This reasoning is quite understandable, especially if considering also the disruption impact that it could have to insert asylum seeking children in normal classes only for some months. It could affect not only asylum seekers but also Danish pupils: the programmes and planning should be adapted to the specific situation of the new comers, both sides should adapt to each other and at the end, if the decision on the case is negative, all these efforts will result somehow useless. Indeed, if on the one hand it is certainly true that it could always be a good experience to learn to know other cultures, on the other hand for asylum seeking children it could be very difficult to leave the country after having spent some time in the local school, adapted to the new situation, made new friends. To pull up roots once more and start the process all over again in another country could prove to be another traumatic experience. On the other side, for the Danish students it could also imply the loss of a friend, the delay in the normal educational programme and discontinuity in the school year.

At the same time, though, the percentage of recognition as refugees is rather high, amounting to

65-70% of the cases. Therefore, one could wonder if the idea of avoiding false hopes is only a convenient arrangement.

In this context another consideration comes into play: it is questionable that asylum seekers must learn the local language if they are not supposed to integrate in the Danish society. A positive aspect is that it is good for them to go through the learning of a foreign language because it proves useful always and wherever in life. Even if they are never going to use this language again, at least they can get used to the methodology and the mental approach anybody needs to speak another language. But the negative side, in the sense that it controverts the official justification, is that learning the local language can help very much in making them feel already part of the society. Every contact they have with the Danish reality, whether it is represented by the teachers or the headmaster or the Red Cross staff, is carried out in Danish. It does not take a lot of time to feel integrated in this way.

Apparently, the issues at stake present contradictory aspects which are very difficult to be solved. Undoubtedly the Danish authorities must have found it hard to come to a solution that could be supported from both the more liberal and the more conservative parties. And there are also no doubts that the current provision is better than the previous one where asylum seeking children were not granted the same right to education as Danish children. Moreover, it is interesting to see that it was especially because the previous legislation was said to be discriminatory that the new system was proposed and approved.⁷⁰ Still, it is questionable to allow asylum seeking children to get educated only in separately arranged tuition. One should always consider if the criteria for this differentiated treatment are objective and reasonable, if they pursue a legitimate aim and if they are proportionate to it.

An argument in favour of the current system is that as long as these separately arranged institutions offer the same treatment, equivalent access and same standards as normal schools, they cannot be deemed to constitute discrimination. Certainly the fact that asylum seeking

⁷⁰ The previous legislation provided for only 15 hours lessons for asylum seeking children, therefore at least 5 hours less than the amount provided for Danish students. Thanks to the critical pressure by the Danish Centre for Human Rights, the legislation has been revised and changed in favor of the current one.

children receive the same amount of lessons and learn the same subjects as Danish children is respectful of article 22 of the Refugee Convention, but quantity is not enough. As a matter of fact, notwithstanding all the efforts to make these special schools and programmes as similar as possible to the mainstream ones, the fact that these children meet only other asylum seekers, stay in residential centres quite isolated from the rest of the population, live in their small separated world, cannot be seen as the ideal solution for them. It becomes very difficult to understand and clearly state that the objective of these institutions is not to secure the exclusion of the group. Knowing how difficult it is in Denmark to maintain the balance between openness to and fear of asylum seekers, doubts remain about a non-discriminatory policy. Moreover, as seen in the first chapter of this paper, the principle of non-discrimination has to be secured immediately and fully, without being subject to progressive realization. Therefore, any consideration which is delaying its full respect should not be allowed.

3.3.4 The best interest of the child

As underlined in the second chapter, in order to respect one of the most important principles in implementing the rights of the child, what is best for him or her should be considered before any other matter. Political, economic, social considerations are always to be taken into account only after an evaluation of the impact they could have on the child. In the case of the right to education for asylum seeking children their special needs and interests should come before any political decision about the asylum procedure.

From this point of view, the Danish authorities might say that it is in the best interest of the child that he or she attends a separate school because it prevents disillusionment and disappointment in case the decision on his or her case is going to be negative. It is better for him or her not to become too accustomed to the Danish way of living, to make too many Danish friends, to feel too early as part of the Danish society if he or she is later on asked to leave the country. Moreover, another justification might be that it is in the asylum seeking children's interest to keep them in centres where they are protected and followed in their progress instead of letting them attend a public school where they could have problems in being accepted by the others.

All these arguments could be sound and right in a way, but one could always argue if they are really weighted against the actual needs of the children or only adopted as the less dangerous

solution if compared to total integration. Considering the struggle between humanitarian concerns and restrictive rules for refugees and asylum seekers in Denmark, it is not difficult to imagine that other interests are playing a very heavy role.

In addition to this, one can also wonder what happens if asylum seeking children, who have already been through the traumatic experience of losing their home and old friends, or of being treated in such a discriminatory way that they had to leave the country of origin, feel that this separately arranged tuition is once again keeping them apart and away from «normal people». Would that reinforce the feeling of being considered as different and undermine their self-esteem? And would this be in their best interest?

The entire meaning of education is based on the development of self-respect, personality and potentialities. Amongst the objectives of the right to education, respect for the human dignity and promotion of understanding, tolerance and friendship among all racial, ethnic or religious groups are of utmost importance. If the educational system itself presents some lacks and shortcomings in this respect, then it is hardly possible to say that it fulfills the best interest of the child and all the requirements of the right to education.

As seen in this general overview, the Danish system of education for refugee and asylum seeking children seems to be good in many aspects and controversial in others. On the one hand it is mostly in line with the international provisions, their normative content, the features of the right to education. On the other hand, it shows how difficult it is to find the right interpretation and adopt the best solutions when it comes to concrete application, especially because a human right approach is always confronted with daily practical and structural difficulties, the specific socio-politico-economic situation of the country, its government's will and commitment. But what is more important is that it clearly illustrates that full respect and implementation of international provisions is not attained if the two principles of non-discrimination and the best interest of the child are not taken as guiding principles not only in theory but also in practice.

Conclusions

Education is a life-long process that allows every human being to develop his or her personality, to master his or her life at the best of his or her potentialities and to create a framework of social relations based on respect for others and for their rights.

The right to education is the beginning, the means and the objective of this process. Its implementation requires the States to assume different obligations: to respect, to protect and to fulfill. Clearly these obligations depend upon the content of the right to education. If the main features are availability, accessibility, acceptability and adaptability, then the first duty of the State is to provide for an educational system that avoids any kind of discrimination, is accessible and available to all for free, offers learning tools and contents of good quality and relevant to the different experiences and needs of the person who is being educated.

The immediate targets of these obligations are the State's citizens, but it is of utmost importance to underline, in the first place, that human rights are inherent in every human being as such and, secondly, that the principle of non-discrimination extends to all persons residing in the territory of the State. When applied to the right to education, it means that equality of educational opportunities is fully met only when education is guaranteed as a right to all children, regardless of their background or status.

This implies particular consequences when implementing the right to education for vulnerable groups as refugee and asylum seeking children. They have experienced hard moments and situations that could have caused significant, enduring and disproportionate harm to their normal growth and development. They should not suffer any more deprivation, especially if it means limiting their educational opportunities. But what is more important is that in their case particular attention should be paid to their specific needs and experience, to their background and capabilities. At the same time careful consideration should be given to structural limits, resource constraints and socio-politico-economic concerns.

Therefore, practical implementation of the right to education in this specific case requires the recognition and understanding of these determining factors in order to adopt good solutions or

practices informed by a human right approach and respectful of the principles of non-discrimination, the best interest of the child and assessment of needs.

Taking Denmark as an example for the implementation of the right to education for refugee and asylum seeking children has shown how difficult it is in practice to abide by these principles.

Despite the existence of a good system of education for asylum seeking children that meets on the whole the main features of the right to education and the principle of assessment of needs, it is still clear that the two principles of non-discrimination and the best interest of the child are not respected. The fact that these children are allowed to enter only separately arranged tuition and that the reason for it is that the authorities do not want to give false hopes is controversial and can be conveyed to a major political issue: the asylum procedure. Unfortunately, this prominence of other concerns proves to be fatally harmful for the rights of these children. As far as the length of the procedure to determine refugee status is influencing the decisions about what kind of education asylum seeking children should receive, it will not be possible to consider the system as fully implementing the different requirements of the right to education. The positive aspects it presents are not sufficient and the entire educational structure for asylum seeking children risks being undermined if non-discrimination and the best interest of the child are not completely met.

But what matters here is that the entire topic is so difficult because it depends on political will, commitment, openness, balance of powers. Asylum issues are dealt with, today more than ever, as political and economic questions. Settlement policy decisions are taken in the political arena; practical implementation of national and international standards is built on and around socio-political debates. But one can always ask in what way asylum is a matter of integration policy and if it is a real problem or just a constructed one. In the context of the right to education for asylum seeking children the risk of politicization of the asylum seekers' situation can only have a bad effect on learning and educational opportunities. Attention is focussed on other aspects to the detriment of what is in the child's rights.

In the light of what has been underlined in the first two chapters and proved through the example of Denmark in the third chapter of this paper, it can be concluded that implementing the right to education for refugee and asylum seeking children is not only a matter of complying with international obligations, but also a matter of fully applying the guiding principles of non-discrimination and the best interest of the child making them the starting point of any action by the State.

It is true that it is not easy because in fact, there is no single solution and the entire matter is living on the struggle between what is desirable and what is concretely applicable, between promises held in international instruments and reality in a particular country. Nonetheless, it is my hope that the relevant political institutions become aware of these shortcomings and try to remedy to them through a serious commitment to the two guiding principles. Only in this way Denmark will become the real leader in humanitarian asylum policy and set the stage for an effective implementation of the right to education for all the refugee and asylum seeking children in the world.

APPENDIX 1

List of acronyms

CRC	Convention on the Right of the Child
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGO	Inter-governmental Organization
NGO	Non-governmental Organization
OAS	Organization of American States
OAU	Organisation of African Unity
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

APPENDIX 2

Relevant articles of the Danish Aliens (Consolidation) Act

7. (1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees, 28 July 1951.

(2) Upon application, a residence permit will also be issued to an alien who does not fall within the provisions of the Convention relating to the Status of Refugees, 28 July 1951, but who, for reasons similar to those listed in the Convention or for other weighty reasons resulting in a well-founded fear of persecution or similar outrages, ought not to be required to return to his country of origin. An application as mentioned in the first sentence hereof is also considered to be an application for a residence permit under subsection (1).

(3) The issue of a residence permit may be refused if the alien has already obtained protection in another country or if because of a prolonged stay or close relatives living there or other like circumstances, the alien has closer ties with another country where he must be deemed to be able to obtain protection.

(4) Subsections (1) and (2) apply correspondingly to an alien who is not in Denmark, if because of the alien's prolonged lawful stay in Denmark, of close relatives living in Denmark or of other similar attachment, Denmark must be deemed to be the country nearest to affording protection to that alien. The rule in the first sentence hereof does not apply to aliens staying in another EC country.

(5) An alien who has been refused entry on arrival or expelled pursuant to section 48 a (1) may only be given a residence permit under the rules in subsection (4).

8. Upon application, a residence permit will be issued to an alien who arrives in Denmark under an agreement made with the United Nations High Commissioner for Refugees or similar international agreement.

42 c. (1) Children of school age staying in Denmark and whose applications for residence permit pursuant to section 7 have been taken up for examination, or whose parents fall within section 42 a(5), shall participate in separately arranged tuition. The Minister of the Interior may lay down more detailed rules for the study programmes and activities to be offered and may decide after negotiation with the Minister of Education to what extent the said children can participate in the tuition of the municipal school system.

APPENDIX 3

Recognised refugees in Denmark 1956-1996

APPENDIX 4

Number of asylum decisions on applications lodged in Denmark - 1999

Annex 2: Number of asylum decisions on applications lodged in Denmark 1999 *

Authority	A) The Danish Immigration (1st instance)				B) The Refugee Board (Appeal instance)			
	Geneva Convention	De facto	Refusal	Total (A)	Geneva Convention	De facto	Confirmed	Total (B)
Nationality								
Afghanistan	237	79	124	440	32	27	58	117
Albania			6	6			7	7
Algeria		1	13	14		1	14	15
Armenia	4	7	59	70	2	20	92	114
Azerbaijan		1	3	4		2	2	4
Bangladesh			19	19			19	19
Bosnia-Herzegovina	5	7	106	118		21	135	156
Burundi	1	23	6	30			1	1
Cameroun	2		13	15	1		16	17
Croatia			2	2		4	32	36
Czech Republic			22	22				0
Dem. Rep. Congo	6	8	2	16				0
Ethiopia	10	2	1	13			6	6
FRY	347	35	42	424	69	7	48	124
Georgia	3		37	40	3		44	47
India		3	55	58	1	7	17	25
Iran	18	19	134	171	24	25	118	167
Iraq	88	1.648	182	1.918	3	38	177	218
Lebanon	10	6	47	63		2	35	37
Moldova	3		5	8			11	11
Nigeria			25	25			20	20
Pakistan		4	92	96	1		44	45
PRC China	5	3	19	27	4		15	19
Romania			8	8			1	1
Russia		6	52	58	3		29	32
Rwanda	9	4	1	14				0
Slovak Republic			783	783	5		56	61
Somalia		432	45	477		69	22	91
Sri Lanka	2	45	48	95	1	3	33	37
Stateless	2	3	2	7			1	1
Stateless Palestinians	167	7	60	234	11		26	37
Sudan		1	2	3		1	1	2
Syria	6	7	23	36		2	11	13
Turkey	2		40	42	2	1	44	47
Ukraine	3	1	11	15		10	9	19
Vietnam	15		22	37		1	30	31
Others	18	8	145	171	11	17	70	98
Total 1999	963	2.360	2.256	5.579	173	258	1.244	1.675
Total 1998	911	2.638	2.558	6.107	191	224	1.401	1.816

* Incl. decisions in the manifestly unfounded procedure. Data excludes decisions on asylum applications lodged at Danish Embassies abroad.

The percentage of asylum-seekers that the Danish Immigration Service selects for examination in the manifestly unfounded procedure: 1996: approx. 15 %, 1997: approx. 15 %, 1998: approx. 12 % and 1999: approx. 19 % of all asylum applications lodged in the given year.

The percentage of vetoes in manifestly unfounded cases, i.e. cases where the Danish Refugee Council disagrees with the Danish Immigration Service that the asylum case is manifestly unfounded: 1995: 40 %, 1996: 45 %, 1997: 25 %, 1998: 25 % and 1999: 12 %.

Source: The Danish Immigration Service, *Statistical Overview 1999*

APPENDIX 5

Total number of persons granted refugee status or other status in Denmark - 1999

Annex 3: Total number of persons granted refugee status or other status in Denmark 1999

Types of decision	A) Refugee status						B) Other status				Total	
	Applications lodged in Denmark					Quota refugees *	Sec. 7 (4) **	Humanitarian ***	Exceptional reasons ****	Bosnians *****	Serbs *****	(A+B)
	1st instance		2nd instance									
	Geneva Convent	De facto	Geneva Convent	De facto								
Nationality	Geneva Convent	De facto	Geneva Convent	De facto								
Afghanistan	237	79	32	27	156	12	9	17				569
Albania												0
Algeria		1		1								2
Armenia	4	7	2	20			5	1				39
Azerbaijan		1		2								3
Bangladesh												0
Bosnia-Herzegovina	5	7		21						100		133
Burundi	1	23										24
Cameroun	2		1		1							4
Croatia				4					2			6
Czech Republic												0
Dem. Rep. Congo	6	8			20							34
Ethiopia	10	2			1							13
FRY	347	35	69	7	13				12	1		484
Georgia	3		3						2			8
India		3	1	7								11
Iran	18	19	24	25	139	5	1	3				234
Iraq	88	1.648	3	38	129	8		3				1.917
Lebanon	10	6		2	1							19
Moldova	3											3
Nigeria							2					2
Pakistan		4	1				1					6
PRC China	5	3	4				2	3				17
Romania								3				3
Russia		6	3				1	2				12
Rwanda	9	4				1		1				15
Slovak Republic			5				4					9
Somalia		432		69	6	6	4	8				525
Sri Lanka	2	45	1	3		1		16				68
Stateless	2	3										5
Stateless Palestinians	167	7	11		1		6	1				193
Sudan		1		1								2
Syria	6	7		2	9							24
Turkey	2		2	1								5
Ukraine	3	1		10			1	1				16
Vietnam	15			1	1		1	2				20
Others	18	8	11	17	41		2	4				101
Total 1999	963	2.360	173	258	518	33	39	81	101	0		4.526
Total 1998	911	2.638	191	224	444	34	42	83	174	17		4.758

* Quota refugees are invited to Denmark under an agreement with the UNHCR (section 8).

** Refugee status granted on the basis of asylum applications lodged on Danish embassies abroad (section 7 (4)).

*** Humanitarian residence permits (section 9 (2) (ii)). Granted by the Minister of the Interior.

**** Incl. e.g. unaccompanied minors and residence permits to asylum-seekers that cannot be returned (section 9 (2) (iv)).

***** Temporary residence permits to Bosnians (section 9 (2) (v)).

***** Temporary residence permits to Serbs (section 9 (2) (vi)).

Source: The Danish Immigration Service, *Statistical Overview 1999*

APPENDIX 6

Relevant articles of the Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.v.

Kapitel 2

Undervisning af asylansøgerbørn m.v.

§ 2. Asylansøgerbørn i aldersgruppen 7-16 år skal, uanset om de er indkvarteret på indkvarteringssteder, deltage i særskilt tilrettelagt undervisning efter dette kapitel, eller i en undervisning, der står mål med, hvad der almindeligvis kræves efter den særskilt tilrettelagte undervisning.

§ 3. På eller i tilknytning til indkvarteringsstederne skal en samarbejdspartner efter aftale med Udlændingestyrelsen tilbyde særskilt tilrettelagt undervisning efter reglerne i dette kapitel for de i § 2 nævnte asylansøgerbørn.

§ 4. Undervisningen har til formål i samarbejde med asylansøgerbørnenes forældre at

- 1) fremme asylansøgerbørnenes tilegnelse af kundskaber, færdigheder, arbejdsmetoder og udtryksformer, der medvirker til det enkelte asylansøgerbarns alsidige udvikling,
- 2) give asylansøgerbørnene kendskab til dansk kultur og bidrage til deres forståelse for andre kulturer og for menneskets samspil med naturen,
- 3) bibringe asylansøgerbørnene en forståelse for medbestemmelse, medansvar, rettigheder og pligter i et samfund med frihed og folkestyre, ved at undervisningen bygger på åndsfrihed, ligeværd og demokrati, og
- 4) ruste asylansøgerbørnene til deres fremtidige liv, hvad enten asylansøgerbørnene meddeles opholdstilladelse eller afslag herpå.

§ 5. Undervisningen på modtagecentre skal give asylansøgerbørnene et indledende kendskab til det danske sprog og samfund, jf. dog § 6, stk. 4.

§ 6. Undervisningen på opholdscentre skal i indhold og omfang svare til den undervisning, der tilbydes tosprogede elever i den danske folkeskole, jf. dog stk. 3 og § 7.

Stk. 2. Undervisningen omfatter

- 1) undervisning i dansk,
- 2) undervisning i engelsk og
- 3) undervisning i folkeskolens øvrige fag.

Stk. 3. Undervisning i modersmål tilbydes i det omfang, der er mulighed herfor.

Stk. 4. Asylansøgerbørn, som opholder sig mere end 6 uger på et modtagecenter, skal tilbydes tilsvarende undervisning som i stk. 1-3.

§ 7. Asylansøgerbørn, hvis udvikling kræver en særlig hensyntagen eller støtte, kan gives specialundervisning i det omfang, der er mulighed herfor.

Stk. 2. Særlige undervisningsordninger kan etableres for fysisk og psykisk handicappede asylansøgerbørn.

§ 8. Undervisningssproget er dansk med undtagelse af timer i modersmål og andre fremmedsprog.

Stk. 2. Undervisningssproget ved undervisning, der gennemføres ved asylansøgers medvirken, jf. § 33, kan, hvor dette ikke strider mod formålet med undervisningen, være et andet sprog end dansk.

§ 9. Den ugentlige undervisningstid for asylansøgerbørn skal mindst svare til minimumstimetallet for det tilsvarende klassetrin i folkeskolen, jf. folkeskolelovens § 16.

Stk. 2. Timetallet for undervisning på modtagecentre er dog 20 timer om ugen.

§ 10. Undervisningen tilrettelægges med udgangspunkt i asylansøgerbørnenes særlige situation. Tilrettelæggelsen skal tage hensyn til det enkelte asylansøgerbarns alder og forudsætninger og give det enkelte asylansøgerbarn mulighed for at anvende og udbygge allerede tilegnede kundskaber og færdigheder.

Stk. 2. § 5, § 6, § 8 og § 9 kan fraviges, hvis det enkelte asylansøgerbarns særlige situation taler herfor. Indberetning herom sker til Udlændingestyrelsen.

§ 11. En samarbejdspartner kan i særlige tilfælde efter aftale med Udlændingestyrelsen undlade at tilbyde særskilt tilrettelagt undervisning, hvis det ikke er muligt at tilbyde undervisning på et indkvarteringssted eller at transportere asylansøgerbørnene til et andet indkvarteringssted, hvor der tilbydes undervisning.

Stk. 2. Undervisningen på et indkvarteringssted afbrydes kun, så længe det som følge af flytning af indkvarteringsstedet eller de indkvarterede eller som følge af andre særlige forhold ikke er muligt at fortsætte undervisningen. Indberetning herom sker til Udlændingestyrelsen.

Stk. 3. Undervisning i folkeskolens øvrige fag, jf. § 6, stk. 2, nr. 3, kan i særlige tilfælde tilrettelægges under hensyn til de undervisningslokaler, indkvarteringsstederne råder over, jf. § 13, stk. 1 og 2.

§ 12. Hvis hensynet til den undervisning, der tilbydes på et indkvarteringssted, gør det nødvendigt, kan et asylansøgerbarn, der udviser en forstyrrende adfærd eller øver vold mod andre eller ødelægger eller beskadiger ting, af læreren overføres til anden undervisning på indkvarteringsstedet i enkelte timer eller resten af dagen.

Stk. 2. Er der ikke mulighed for overførsel til anden undervisning på indkvarteringsstedet, kan et asylansøgerbarn som nævnt i stk. 1 af læreren udelukkes fra undervisningen i enkelte timer eller resten af dagen.

Stk. 3. For at afværge, at et asylansøgerbarn, der følger undervisningen på et indkvarteringssted, øver vold mod andre eller ødelægger eller beskadiger ting, kan der anvendes magt i nødvendigt omfang. Legemlig straf må ikke anvendes.

Stk. 4. Vedkommende samarbejdspartner træffer over for et asylansøgerbarn som nævnt i stk. 1 beslutning om de nødvendige foranstaltninger, herunder udelukkelse fra undervisning eller overførsel til anden undervisning på eller uden for indkvarteringsstedet.

Stk. 5. I de tilfælde, hvor der er grund til at antage, at en uhensigtsmæssig opførsel af et asylansøgerbarn som nævnt i

stk. 1 skyldes sociale og emotionelle vanskeligheder, skal vedkommende samarbejdspartner i stedet for iværksættelse af foranstaltninger efter stk. 4 tilbyde specialundervisning efter § 7, stk. 1, i det omfang, der er mulighed herfor.

Stk. 6. Hvis et asylansøgerbarn eller dets forældre ikke kan tilslutte sig en beslutning om foranstaltninger truffet af vedkommende samarbejdspartner efter stk. 4, træffer Udlændingestyrelsen afgørelse herom. Udlændingestyrelsens afgørelse kan indbringes for Indenrigsministeriet, jf. udlændingelovens § 46.

§ 13. Undervisning af asylansøgerbørn kan iværksættes i samarbejde mellem indkvarteringsstederne.

Stk. 2. Den samarbejdspartner, der driver undervisningen på et givet indkvarteringssted, kan indgå aftaler om samarbejde med de kommunale skolemyndigheder om undervisningen, herunder om lån eller leje af faglokaler m.v.

Stk. 3. Forældre til asylansøgerbørn inddrages løbende i undervisningsforløbet, herunder gennem afholdelse af forældremøder og -konsultationer.

§ 14. Asylansøgerbørn i aldersgruppen 7-16 år kan deltage i folkeskolens undervisning eller i undervisning ved andre skoleformer, jf. folkeskolelovens § 33.

Stk. 2. Optagelse af asylansøgerbørn i henhold til stk. 1 sker efter godkendelse fra de kommunale skolemyndigheder henholdsvis vedkommende institution.

Stk. 3. Fuld undervisning i folkeskolen eller tilsvarende undervisning ved andre skoleformer, jf. folkeskolelovens § 33, træder i stedet for undervisning efter dette kapitel. Modersmålsundervisning, jf. § 6, stk. 3, tilbydes dog fortsat i det omfang, der er mulighed herfor, medmindre modersmålsundervisning modtages i folkeskolen eller ved andre skoleformer, jf. folkeskolelovens § 33.

§ 15. Vedkommende samarbejdspartner kan fremsætte anmodning om optagelse i folkeskolen over for de kommunale skolemyndigheder

1) hvis der i forhold til et privat indkvarteret asylansøgerbarn ikke er et indkvarteringssted, der tilbyder undervisning inden for en rimelig afstand,

2) hvis et asylansøgerbarn er indkvarteret hos en herboende, der har forsørgerpligten,

3) hvis et asylansøgerbarn er indkvarteret på et indkvarteringssted, hvor der ikke tilbydes særskilt tilrettelagt undervisning efter reglerne i dette kapitel, jf. § 11, stk. 1, eller

4) hvis undervisning i folkeskolen i særlige tilfælde i øvrigt vil være til gavn for det enkelte asylansøgerbarn.

Stk. 2. Ved beslutning efter stk. 1, nr. 4, tages hensyn til det enkelte asylansøgerbarns sproglige og faglige modenhed samt til varigheden af asylansøgerbarnets ophold her i landet. Er asylansøgerbarnet indkvarteret på et indkvarteringssted, tages der tillige hensyn til den forventede varighed af asylansøgerbarnets ophold på indkvarteringsstedet.

§ 16. Reglerne i dette kapitel finder tillige anvendelse for personer i aldersgruppen 7-16 år, hvis forældre er omfattet af udlændingelovens § 42 a, stk. 5, uanset om de er indkvarteret på indkvarteringssteder.

Regulation on education and activation of asylum seekers

(translated for Angela Melchiorre by Ulla Wang Smitt)

Please note that «children» in this context always means «asylum seeking children».

Chapter 2

Education of asylum seeking children

§2 Asylum seeking children in the age of 7-16 must, regardless of accommodation, participate in separately (=specific) organised education according to this chapter, or in an education that resembles what is usually demanded after a separately organised education.

§3 In connection to the places of residence a collaborator must, after agreement with Udlændingestyrelsen (Danish Immigration Service), offer a separately organised education following the rules in this chapter for the asylum children mentioned in §2.

§4 The education is intended, in collaboration with the asylum children's parents, to:

- 1) Promote the children's acquiring of knowledge, skills, working methods and expressions, that will help the child's full development
- 2) give the children knowledge of Danish culture and contribute to their understanding of other cultures and human interaction with nature,
- 3) bring the children an understanding of participation, responsibility, rights and duties in a free and democratic society, by an education building on intellectual liberty, equality and democracy, and
- 4) prepare the children for their future lives, disregarding whether they get the residence permit or not.

§5 Education in the reception centres (modtagecentre) must give the children an introductory knowledge of the Danish language and society, cf §6 part 4.

§6 Education in the residence centres (opholdscentre) must in content and proportion match the education offered bilingual children in the Danish public schools, but cf part. 3 and §7.

Part 2. Education includes

- 1) training in Danish
- 2) training in English
- 3) training in other subjects of the primary school (Danish Folkeskole)

Part 3. Training in mother tongue is offered to the extent this is possible.

Part 4. The asylum seeking children staying more than 6 weeks at a centre of reception (modtagecenter), must be

offered the same training as part. 1-3.

§7 Children, whose development requires a special care or support, can be offered special training to the extent this is possible.

Part 2. Special training can be established for physical or psychical disabled children.

§8 The language of instruction is Danish except lessons in mother tongue and other foreign languages.

Part 2. The language of instruction at training that is carried out in cooperation with the asylum seekers, can, if this is not contradictory to the purpose of the training, be in another language than Danish.

§9 The weekly time of education for asylum seeking children must respond to the minimum time for the same class level in the Folkeskole, cf folkeskoleloven § 16.

Part 2. The time for education in reception centres is 20 hours a week.

§10 The education is planned under consideration of the particular situation of the asylum seeking children. The planning must consider the individual child's age and background (forudsætninger) and give the individual child the possibility to use and build on already acquired knowledge and skills.

Part 2. §5, §6, §8, and §9 can be deviated from, if the individual child's particular situation should indicate that. Report on this should be given to Udlændingestyrelsen.

§11 A collaborator can in certain cases, after agreement with the Udlændingestyrelsen, omit to offer a specific planned education, if it is not possible to offer education at an accommodation centre or to transport the children to another place of accommodation, where education is offered.

Part 2. The education at a place of residence is only interrupted if it is no longer possible to carry out the training due to the moving of place or persons or other specific conditions. Report on this is given to Udlændingestyrelsen.

Part 3. Education in other subjects of the public school (Folkeskolen), cf §6 part 2, no. 3, can in certain cases be planned in consideration of the teaching facilities (halls), that the places of residence have, cf §13, part 1 and 2.

§12 If it is necessary, because of consideration of the education, then a child who has a disturbing or violent behaviour, or who destroys things, may, by the teacher, be moved to separate education at the place of residence for some hours or the rest of the day.

Part 2. If it is not possible to move the child to other education at the place of residence, the teacher may shut the child out from the education for a few hours or the rest of the day, see part1.

Part 3. To avoid that a child (who is being educated) resorts to violence or destroys things, force may be used if necessary. Physical punishment is not allowed.

Part 4. The given collaborator takes the decisions about a child, including exclusion from education or transfer to another education on or outside the place of residence.

Part 5. In cases, where inappropriate behaviour is considered due to social and emotional difficulties, the collaborator must, instead of following part 4, offer special education following §7, part 1, to the extent this is

possible.

Part 6. If an asylum seeking child or her parents cannot agree to the arrangements made by the collaborator following part 4, then Udlændingestyrelsen makes a decision. Udlændingestyrelsen's decision can be brought to Indenrigsministeriet, cf. Udlændingeloven § 46.

§13. Education of asylum seeking children can be carried out in cooperation between the different places of residence.

Part 2. The collaborator, who runs the education on a given centre, can make arrangements on collaboration with the local school authorities about education, including borrowing or renting of rooms etc.

Part 3. The parents of the asylum seeking children will regularly be involved in the scheduled teaching, including parents meetings and consultations.

§14 Children in the age 7-16 can participate in the public school teaching or in teaching by other school forms, cf. Folkeskoleloven § 33.

Part 2. Acceptance of asylum seeking children following part 1 is made after agreement with the local school authorities and the given institution.

Part 3. Full education in the public school (folkeskolen) or corresponding education by other school forms, cf. folkeskoleloven § 33, is replacing education after this chapter. Mother tongue teaching though, cf §6 part 3, is still offered to the extent possible, unless teaching of mother tongue is done in the public school or by other school forms.

§15 The given collaborator can request an acceptance in a public school at the local authorities

- 1) if for a privately accommodated child there is no place of residence which offers education within a reasonable distance,
- 2) if a child is accommodated at a Danish citizen, who has the duty to support,
- 3) if a child is accommodated at a place, where specific planned education according to the rules of this chapter is not offered, cf §11 part 1, or
- 4) if education in a public school, in particular cases, would further benefit the individual child.

Part 2. At a decision following part 1, no.4, the individual child's linguistic and professional maturity should be taken into consideration, as for the duration of the residence in the country. If the child is accommodated at a residence centre, the expected length of the stay there, is also to be taken into consideration.

§16 The rules in this chapter also apply for children between 7-16 of age, whose parents are covered by udlændingeloven § 42 a, part 5, regardless of place of residence.

APPENDIX 7

Number of asylum seekers in the Danish Red Cross centres

Nøgletal januar 2000

Multietniske centre	7096 pers.
0-6 år	878
7-17 år	1042
18- år	5176
 Kosovo-centre	 1862 pers.
0-6 år	354
7-17 år	474
18- år	1034

Source: The Danish Red Cross - Asylum Department

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Abstract

Everything seems to be simple and plain: there is a right, there are obligations deriving from it, there is a State transforming them into practice. But we all know that it is not always either that simple or that plain.

If we consider the right to education, for example, on paper its contents, objectives and features are clear: it is not only a self-contained right but also a prerequisite for all other rights; it must be granted to all without discrimination; States have the obligation to respect, protect and fulfill it, taking into account the best interest of the child.

Still, in practice, conditional factors impede its full realization, especially in the case of vulnerable persons like refugee and asylum seeking children. Special needs and specific situations should be considered, practical obstacles should be overcome, political will and commitment should be assured.

The purpose of this paper is to consider to what extent promises held in the international provisions on the right to education can be kept in national realities dealing with refugees and asylum seekers. The example of Denmark is intended to illustrate that even in a democratic society with a good educational system for refugee and asylum seeking children, full respect of all the requirements of the right to education cannot be guaranteed. Only when human rights considerations are given priority over economic, social and political interests, then promises will become reality.

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«Education starts at home, with the family as the first source of learning»

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«and then develops freely and thoroughly as the child grows up, lives, studies, communicates ideas and values, participates in the life of the world surrounding him or her.»

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