



UNITED NATIONS MECHANISM FOR THE PROTECTION OF REFUGEES' RIGHTS: A CASE STUDY OF UNHCR

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INTRODUCTION

A humanitarian and non-political organization, the United Nation High Commission for Refugees (UNHCR) is mandated by the UN to protect refugees and help them find solutions to their plight. As the problem of displacement has grown in complexity over the past half century, UNHCR has expanded from a relatively small, specialized agency with as envisioned three-year lifespan to an organization of over 4000 staff members with offices in nearly 120 countries and an annual budget of one billion US dollars. In addition to offering legal protection, UNHCR now also provides materials relief in major emergencies, either directly or through partner agencies. In its first fifty years, UNHCR has protected and assisted more than 50 million people and its work has earned two noble prizes.¹

At the international level, UNHCR promotes international refugee agreements and monitors government's compliance with international refugee law. UNHCR staffs promote refugee law among all people who are involved in refugee protection, including border guards, journalists, NGOs, lawyers, judges and senior government officials.

At the field level, UNHCR staff work to protect refugees through a wide variety of activities, including responding to emergencies, relocating refugee camps away from border areas to improve safety; ensuring that refugee women have to stay in food distribution and social services; reuniting separated families; providing information to refugees on conditions in their home country so they can make informed decisions about return; documenting a refugee's need for resettlement to a second country of asylum; visiting detention centers; and giving advice to governments on draft refugee laws, policies and practices.²

UNHCR seeks long-term solution to the plight of refugees by helping refugees repatriate to their home country, if conditions are conducive to return, interate into their countries of asylum, or resettle in second countries of asylum.³



THE MANDATE OF UNHCR

For its part, UNHCR has been given a mandate to provide international protection to refugees and seek permanent solutions to their problems through its statute adopted by the UN General Assembly in December 1950.

The Statute sets forth the high commissioners functions, including his/her authority to protect refugees as defined in terms similar, although not identical, to the refugee convention. Over the years, the General Assembly has expanded UNHCR's responsibility to include protecting various groups of people who are not covered by the refugee convention and protocol. Some of these people are known as "mandate" refugees; others are returnees, stateless persons and, in some situations, internally displaced persons.

UNHCR's mandate is now, therefore, significantly more extensive than the responsibilities assumed by state parties to the refugee convention and protocol. One of the challenges facing refugees and countries of asylum today consists of bridging the "protection gap" which exist in situations where UNHCR seeks to protect persons with respect to whom concerned states do not recognize that they have a responsibility under any of the refugee instruments.⁴

PERSONS OF CONCERN TO UNHCR

Persons of concern to UNHCR are all persons whose protection and assistance needs are of interest to the UNHCR. They include: (a) refugee under the refugee convention; (b) persons fleeing conflict or serious disturbances of the public order (that is, refugees under the OAU convention and Cartagena declaration definitions); (c) returnees (that is, former refugees); (d) stateless persons; and (e) internally displaced persons (in some situations).⁵

UNHCR's authority to act on their behalf is either based on the 1951 UN Convention and the OAU Convention, the Cartagena Declaration, or on UN general Assembly resolutions.

(i) Mandate and Convention Refugees

Mandate refugees are persons considered by UNHCR to be refugees according to its statute or under the broader mandate given by UN General Assembly, UNHCR's determination of refugee status is not dependent upon the country of asylum being party to the refugee convention or protocol.

On the other hand, convention refugees are persons recognized as refugees by the authorities of states that have acceded to the convention and/or protocol. As



such, they are entitled to claim the rights and benefits that those states have agreed to accord to refugees.⁶

(ii) Stateless Persons

A stateless person is someone who is not considered to be a national by any state under the operation of its law. He/she may be, but is not necessarily, a refugee. There are millions of stateless persons around the world.⁷

In 1996, the UN General Assembly called on UNHCR to promote accession to the two international conventions on statelessness and to provide governments with technical and legal advice on their nationality legislation, helps coordinate emerging legal systems, assists and advises on individual and group cases of statelessness, and helps negotiate treaties related to statelessness.

UNHCR's involvement with stateless persons is based on the strong links between statelessness and displacement. For example:

- (1) Displacement can cause statelessness:- when for example, a person's displacement is followed or accompanied by a redrawing of territorial boundaries.
- (2) Displacement can be a consequence of statelessness:- when Statelessness and denationalized populations are forced to leave their usual place of residence.
- (3) Statelessness can be an obstacle to the resolution of refugees problems:- when, for example, countries refuse to readmit former refugees on grounds of statelessness.⁸

Statelessness is a problem that states should resolve. Governments must take steps to ensure they do not withdraw or withhold the benefits of citizenship from whole sectors of the population who can demonstrate a genuine and effective link with that country and who, without state action, would otherwise be stateless.

The 1954 convention relating to the status of stateless persons helps regulate and improve the status of stateless persons and helps ensure that stateless persons enjoy fundamental rights and freedoms without discrimination.

The 1961 convention on the reduction of statelessness¹⁰ defines ways in which persons who would otherwise be stateless can acquire to retain nationality through an established link with a state through birth or descent. The convention covers such issues as the granting of nationality, the loss or renunciation of



nationality, deprivation of nationality and transfer of territory. Retention of nationality, once acquired, is also emphasized.

Accession to the 1954 convention provides stateless persons with many of the rights necessary to live a stable life. Accession to the 1961 convention helps resolve many problems which results in statelessness. It also serves as a reference point for national legislation.

Nationality is a status from which other rights derive. The 1961 convention states that a person may not be deprived of his/her nationality on racial, ethnic, religious or political ground; sketches out measures to prevent statelessness resulting from the transfer of territory; and established rules for the granting of nationality to persons born in a country who would otherwise be stateless. It stipulates that a UN body would supervise claims under the convention. That body was never established as such, but UNHCR has been entrusted with its function by the UN General Assembly.¹¹

(iii) Internally Displaced Persons (IDPs)

Globally, an estimated 20-25 million persons live within the borders of their home countries. These are people who fled their homes often during a civil war or internal armed conflict, but have not sought refuge in other nations. In general IDPs have many of the same protection needs as refugees but, since they have not crossed an international border, they are not covered by the refugee convention or by the UNHCR's statute.¹²

International concern for the plight of IDPs has acquired a degree of urgency in recent years as greater numbers of persons, uprooted by internal conflict and violence, are exposed to danger and death. However, here is no single international agency, nor is there an international treaty, that focuses on internal displacement. As a result, the international response to internal displacement has been selective, uneven and in many cases, inadequate. Large numbers of IDPs receive no humanitarian assistance or protection at all. The international community is now exploring ways to provide more sustained and comprehensive protection and assistance to this group of people.¹³

UNHCR has a concern in IDPs because the causes and consequence of their forced flight are frequently linked closely with those of refugees. This concern, arising from UNHCR's humanitarian mandate and endorsed by successive UN General Assembly resolutions may take the form of UNHCR activity to:-

1. Advocate on behalf of IDPs
2. Mobilize international support of them



3. Strengthen the organization's capacity to respond to their problems
4. Take the lead in protecting and assisting them in certain situations.

UNHCR has been involved with IDPs periodically since the early 1970s, whenever the UN General Assembly or the secretary-general called upon it to participate in UN humanitarian operations in which UNHCR has particular expertise and experience. But the scale and scope of UNHCR's activities on behalf of IDPs have increases dramatically in recent years. As of this writing, UNHCR is priding protection and assistance to some 5.2 million IDPs around the world.¹⁴

ASSISTANCE AND PROTECTION

Assistance is help provided to meet the physical and materials needs of person of concern. It may include food items, medical supplies, clothing, shelter, seeds and tools, social services, physiological counseling and the building or rebuilding of infrastructure such as schools and roads.

Humanitarian assistance on the other hand, refers to assistance provided by humanitarian organizations for humanitarian purposes, that is, non-political, non-commercial and non-military purposes. In UNHCR's practice, assistance supports and complements protection.¹⁵

When large numbers of refugees flee in short periods of time, it is critical to be able to move food, shelter supplies, medical supplies and other basic goods quickly. Material and logistical support can be procured in or provided by the country of asylum or from neighboring or other donor countries. To respond rapidly to emergencies, UNHCR keeps emergency stockpiles in warehouses in a number of locations around the world.¹⁶

In several recent refugee operations, it has been necessary to use the logistical capacity of the military forces of some donor countries to deliver humanitarian assistance. This is done only in exceptionally large emergencies. assistance measures require additional funding and are not deployed at the expense of funds that would otherwise have been available to UNHCR.¹⁷

While the use of military forces to deliver humanitarian assistance has undoubtedly saved lives, it has also raised questions about the relationship between humanitarian organizations and the military. UNHCR's approach is that humanitarian operations must maintain their civilian character and appearance. The principles of impartiality and independence from political considerations must be respected.¹⁸



When UNHCR was founded, it operated primarily in Europe, where material assistance was generally provided by the countries that had granted asylum to refugees. Later, as many refugee problems began to arise in developing countries, UNHCR, with the support of the international community, was called upon to provide material assistance and protection to refugees in those countries as well.¹⁹

In practice, protection and assistance are often interrelated. Makeshift tents made from UNHCR blue plastic sheeting have become immediately recognizable symbols of protection in major emergencies from the Balkans to Central Africa to East Timor. Though UNHCR's mandate remains refugee protection, offering assistance often helps a country accept refugees, since it relieves some of the financial responsibilities of hosting them. Refugees need effective legal protection, but they must be able to meet their basic needs:- shelter, food, water, sanitation and medical care. UNHCR coordinates the provision and delivery such items, and has designed specific projects for women, children and the elderly who, together, make up 80 percent of a typical refugee population.²⁰

Aware of the gap that usually exist between emergency assistance and longer-term development aid undertaken by other agencies, UNHCR developed the concept of quick impact projects. These assistance projects, first implemented in Central America and later in other parts of the world, usually involve rebuilding or repairing basic infrastructure, such as schools, clinics, roads, bridges and wells. As their name suggests' the projects aim to restore a sense of normalcy to life as soon as possible after a displacement crisis.²¹

Table 1: Persons of Concern to UNHCR per Category – 1-1 – 2000

Region	Refugees	Asylum Seekers	Returns	IDPs etc.	Total
Africa	3523250	61110	933890	1732290	6250540
Asia	4781750	24750	617620	1884740	7308860
Europe	2608380	473060	952060	3252300	7285800
Latin American/ Caribbean	61200	1510	6260	21200	90170
North American	636300	605630	X	X	1241930
Oceania	64500	15540	X	X	80040
Total	11675380	1181600	2509830	6890530	22257340

Source:- UNHCR, Geneva, 2001, at p. 39.

**Table 2: Persons of Concern to UNHCR by Region**

Region	Total Concern 1-1-99	Total Concern 1-1-200
Africa	6284950	6250540
Asia	7474740	7308860
Europe	6212550	7285800
Latin American/ Caribbean	102400	90170
North American	1305400	1241930
Oceania	79510	80040
Total	21459550	22257340

Source:- UNHCR, Geneva, 2001 at p. 38.

UNHCR'S PARTNERSHIP WITH STATES, ICRC AND NGOS:

Governments work with UNHCR by granting asylum to refugees and permitting them to stay in their countries. Many governments also help refugee settle in their country by providing financial assistance. UNHCR works with government to help share the responsibility of protecting refugees and encourages governments to resolve the causes of refugees flows. When internal disputes cause an international refugee problem, it is the responsibility of all nations, especially neighboring countries, to help restore peace and security within the troubled country. Countries of asylum shoulder the heaviest burden during a refugee crisis, since providing refugee often means disrupting in the areas in which refugees arrive. But these countries need not assume the responsibility alone. Other countries, both in the region and beyond, can share the responsibility by providing support, both financial and material, to maintain and protect refugees. UNHCR helps mobilize and channel this assistance.

In some countries, UNHCR assists the government in examining the claims of peoples seeking asylum. UNHCR's participation varies depending on the circumstances and need in each country.

Another key partner in protection is the International Committee of Red Cross (ICRC), an independent agency that acts to help all victims of war and internal violence and tries to ensure implementation of humanitarian rules restricting armed violence. As a neutral intermediary, ICRC offers protection and assistance to victims of both international and internal conflict and unrest. Internally displaced persons constitute one of the primary target groups for ICRC's activities. During the year 2000 ICRC developed programmes aimed at protecting and assisting IDPs in 31 countries around the world.²³



Through its national Red Cross and Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies (IFRC) also compliments UNHCR's work by providing humanitarian relief to people affected by emergencies and by promoting international humanitarian law. Another key implementing partners are the NGOs. They vary greatly in size, breadth of programmes, source of funds and style of operation. Some are international, some are national, but have international activities, others are solely nationally or locally based. The importance of NGOs' role in protecting refugees was recognized by the UN General Assembly when, in adopting UNHCR's statute, it called on the High Commissioner to establish contact with NGOs dealing with refugee questions and to help coordinate the efforts of those organizations.²⁵

UNHCR works with more than 500 NGOs as implementing partners. Most NGOs working with refugees provide material assistance and/or assist in the establishment and maintenance of camps and other settlements, putting them in the position to monitor and report on rights violations that may occur in the camps or settlements.²⁶

Other types of private professionals or religious based organizations offer legal counseling or representation to asylum-seekers, visit detention centers, assist resettled refugees and advocate for individual refugees and for national laws and procedures that will implement their country's international conventions to offer protection to refugees. Through their work, however, many NGOs operate under mission statements that commit them to providing protection. In doing so, they perform an urgent and valuable service that can make a critical difference in the effective protection of refugees.²⁷

CONCLUSION

Having critically analyzed the role of the UNHCR in refugee's rights protection, the paper demonstrated the specific ways in which the UN human rights bodies, representatives, treaties and procedures can be used by international and national NGOs to support and strengthen the protection of refugees. As with most human rights endeavors at the UN, little will be achieved in the protection of refugees' rights without the active and sustained effort on NGOs.



NOTES AND REFERENCES

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See UNHCR, Geneva and IPU: Handbook for Parliamentarians No. 2, 2001: A Guide to International Refugee Law, at P. 24.

Ibid at P. 24.

Entered into force on 6 June 1960: As at September 2001, 58 states parties had signed the Convention.

Entered into force on 13 December 1975: As at September 2000, 25 states parties had signed the Convention.

UN G.A Resolution 327 (xxix).

See <http://www.UNHCR.ch/issues/idp.htm>, p.1 dated 4/24/2000.

Ibid at p.2.

UNHCR, Supra note 7, at p.27.

See UNHCR, Geneva: The state of the world's refugees 1993: The Challenge of Protection, Penguin Books, 1993



16. According to UNHCR, three of the most common global protection challenges are: Responding to a refugee emergency; protecting refugee women, children and families; and seeking durable solutions to refugees' problems.
17. Supra note 15.
18. Ibid.
19. Supra note 6.
20. UNHCR supra note 2.
21. Ibid.
22. Ibid.
23. See ICRC Geneva: International Review of the Red Cross September 2001, Vol. 83, No. 843, p.781.
24. Ibid.
25. UNHCR, Geneva: Protecting Refugees: A field guide for NGOs, 1999.
26. Ibid.
27. Ibid.