

UNHCR and the erosion of refugee protection

by Gil Loescher

For the past half century UNHCR has been at the heart of international debates about human rights and international responsibility.

In no other UN agency are values and principled ideas so central to the institutional mandate and *raison d'être* or committed staff members so willing to place their lives in danger to defend the proposition that persecuted individuals need protection. As UNHCR points out, if the agency did not exist hundreds of thousands, if not millions, of refugees would be left unassisted and unprotected.

However essential the agency is, it is important not to take the rhetoric and self-presentation of UNHCR at face value. While UNHCR has had many successes over the past 50 years, it has also had many failures. Slow and inadequate responses to refugee emergencies and protection crises have sometimes risked the lives of countless numbers of refugees. A number of internal and external constraints inhibit the organisation from achieving its full impact.

Endemic political and financial problems

The absence of an autonomous resource base for UNHCR and the limited mandates and competencies of the organisation continue to limit its response to future refugee crises just as they have done for the past 50 years. Many of the political problems facing UNHCR are those that existed during the Cold War. UNHCR's actions are limited by the practices of states concerning sovereignty, particularly those norms which preclude intervention in the domestic affairs of these states. The attachment to the principle of state sovereignty remains strong among several powerful Western states, Russia, China, India, Iran and many developing and non-aligned states. The major powers, including the United States, have been highly selective about whether and to

what extent to get involved in political crises and humanitarian emergencies. By statute, the High Commissioner is not allowed to address the factors likely to generate refugee flight. UNHCR is not mandated to intervene politically against governments or opposition groups, even where there is clear evidence of human rights violations that result in forcible displacement. In civil war situations, UNHCR staff are often unfamiliar with human rights and humanitarian law and are uncertain of how governments and opposition groups will react to their interventions using these protection norms. Increasingly, the organisation finds itself out of its depth and faced with security and political issues that it has neither the mandate nor the resources to deal with.

Although it characterises itself as non-political, UNHCR is a highly political actor and is clearly shaped by the interests of major governments. In mounting massive relief operations, UNHCR is often at the mercy of its donors and host governments. The agency can only

carry out its enormous emergency and maintenance programmes if it receives funding from the industrialised states. It can only operate in the countries into which refugees move if host governments give it permission to be there. Thus UNHCR is in a weak position to challenge the policies of its funders and hosts even when those policies fail to respond adequately to refugee problems.

Financial vulnerability and reliance on powerful donor governments as well as host states also impedes UNHCR in carrying out its principal function of providing protection to refugees. Response to refugee emergencies and

repatriations are absorbing most of the limited funds available for international assistance. In recent years, in order to demonstrate its 'relevance' to states, UNHCR has regularly cooperated in the containment of the internally displaced within countries of origin and in the enforcement of repatriation programmes that are often less than voluntary. Such instances of 'humanitarian pragmatism', together with the rapid expansion of UNHCR's mandate, have caused widespread concern. Many observers fear that in becoming a general humanitarian agency and a more overt instrument of state policy, UNHCR has diluted its primary function of protecting refugees.

From legal protection to humanitarian action: UNHCR's new culture

Perhaps the most important constraint facing UNHCR results from the shift in focus from legal protection to emergency assistance that has occurred within the agency in recent years.

In its first decades the protection of refugees reflected the core values and practices which gave UNHCR its special meaning, identity and coherence. Since the mid 1980s, as operational activities

have gained precedence over protection, UNHCR's culture of protection has declined.

Organisational changes have sidelined the Division of International Protection (DIP) in favour of the more pragmatic and operational regional bureaux. This shift in identity has accelerated as humanitarian emergencies have come to be perceived chiefly in terms of logistics and as UNHCR has become identified with providing massive relief to refugees. The major humanitarian emergencies of the 1990s have spawned a new cadre of logistics personnel and managers whose priorities are effectiveness of aid delivery rather than protection. The infusion of pragmatic managers, coupled with the departure of mid-career and senior staff from the

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agency, as deeply affected the organisational culture, recruitment policies, socialisation of staff and policy guidelines of UNHCR.

The new culture of the organisation is rapidly becoming entrenched. Recent personnel have little or no knowledge or memory of institutional history and lack appropriate experience or awareness of how UNHCR used to operate before the 1990s. This is unfortunate because UNHCR staff face difficult political and moral dilemmas, often without the benefit of knowledge about either the underlying nature of refugee disasters or about the success or failure of past UNHCR interventions. For UNHCR staff, the general tendency is to perceive emergencies in terms of logistics and not as failures of politics, the development process or ethnic relations. UNHCR's objectives are increasingly pragmatic - to do the best in difficult circumstances and to implement the least bad options - and not chiefly to uphold universal principles.

In recent years UNHCR has not been primarily concerned with the preservation of asylum or protection of refugees. Rather, its chief focus has been humanitarian action. UNHCR is primarily about assistance - the delivery of food, shelter and medicine - to refugees and war-affected populations. Successes and failures of humanitarian action are judged primarily in terms of technical standards of aid delivery and in fulfilling the material needs of refugees and threatened populations. In UNHCR, as in so many large organisations today, success is measured quantitatively - how much relief can be delivered and how quickly. The central importance of human rights protection of displaced and threatened populations is frequently neglected.

This qualitative aspect of the agency's work is less easily measured and less easily sold to donor nations as worthy of funding. While UNHCR and other humanitarian organisations are able to deliver large quantities of humanitarian supplies under extremely difficult conditions, they are much less successful in protecting civilians from human rights abuses, expulsions and ethnic cleansing.

Raising UNHCR's protection profile

Ruud Lubbers, the new High Commissioner, should seize the opportunity to make much-needed changes. A key issue

for UNHCR is to raise the protection profile of the agency. It is true that relief operations provide for the physical security of refugees and give UNHCR staff a presence with which to monitor protection developments in the field. However, material assistance operations must not dominate the agency's policies to such an extent that traditional protection of refugees and asylum seekers is undermined. While the new High Commissioner has signalled that he would like to make the protection of refugees his "core concern", protection issues do not figure consistently as a real priority in UNHCR's management culture.

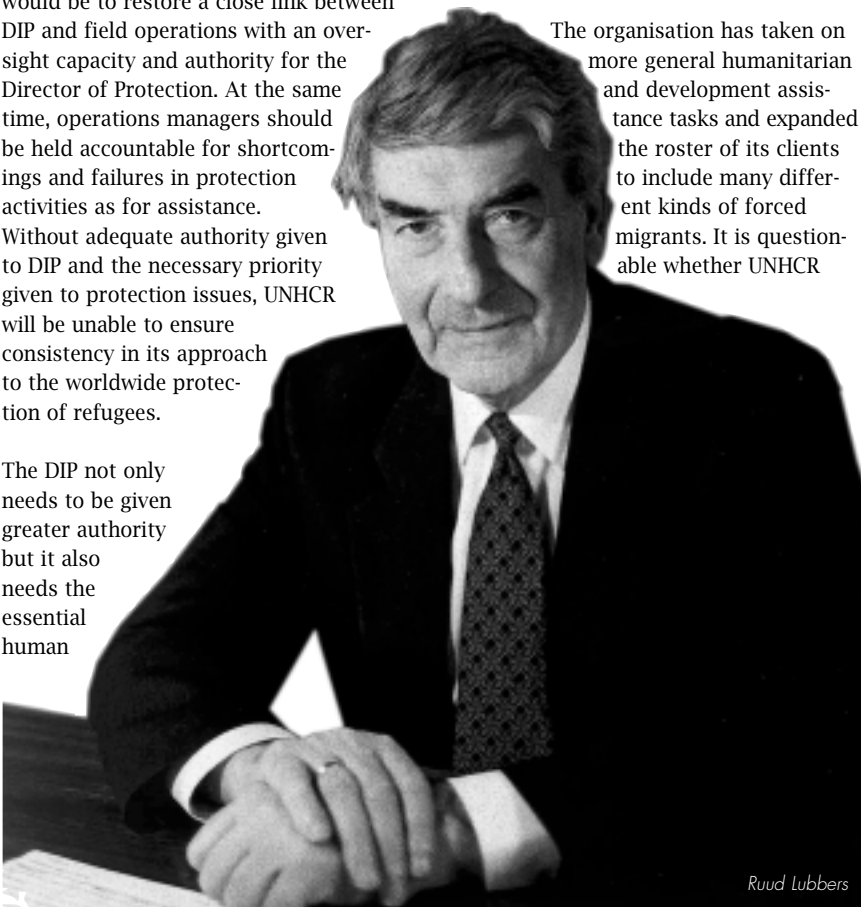
Currently the role of the DIP on operational issues is marginal and the Director of Protection has no independent authority to act, even on the most pressing protection crises. UNHCR staff now see job experience in operations, not in protection, as the way to advance their careers and ensure regular promotions. The sidelining of protection over the past 15 years has not only damaged the traditional protection ethos of the organisation but also severely limits the staff expertise needed to pursue a vigorous protection policy. The most significant step that the High Commissioner could take to redress this imbalance between protection and operations would be to restore a close link between DIP and field operations with an oversight capacity and authority for the Director of Protection. At the same time, operations managers should be held accountable for shortcomings and failures in protection activities as for assistance. Without adequate authority given to DIP and the necessary priority given to protection issues, UNHCR will be unable to ensure consistency in its approach to the worldwide protection of refugees.

The DIP not only needs to be given greater authority but it also needs the essential human

resources to upgrade the role of protection. Adequate resources are required for the comprehensive protection training of UNHCR staff at all levels, particularly at management level. Although progress has been achieved in recent years to improve professional development, UNHCR needs to ensure that all staff receive regular training of all kinds. Recent humanitarian emergencies in Kosovo and elsewhere have revealed a serious shortage of senior staff capable of assuming leadership roles on short notice. A future priority should be for heads of missions to be trained on how to handle emergencies and how to ensure protection for refugees.

UNHCR often seems confused about its identity and role in the international system. At times, UNHCR acts as if it were independent - almost like the International Committee of the Red Cross - with little connection to other parts of the UN system. At other times, it works alongside UN peacekeeping and peace enforcement troops and other UN agencies as part of a broad UN-led effort. UNHCR's overall mission combines international protection and the search for durable solutions with an expanded mandate centred on 'persons of concern'. However, the limits to UNHCR's practical work are not clear.

The organisation has taken on more general humanitarian and development assistance tasks and expanded the roster of its clients to include many different kinds of forced migrants. It is questionable whether UNHCR



Ruud Lubbers

Photo/UNHCR

has the necessary resources or expertise to take on such a broad range of activities. The ambitious, but ambiguous nature, of its expanded mandate and programmes lead to confusion and loss of autonomy, particularly when there have been so few clear policy statements about its overall responsibilities

A key to making its institutional structure stronger and more unified is to identify a particular niche for UNHCR in humanitarian affairs. One of the agency's strengths is its clear original mandate. Only UNHCR has the legitimacy from its Charter to protect refugees and to promote solutions to refugee problems. It is an indispensable organisation which deserves the fullest support of governments. But UNHCR loses authority and autonomy when it steps outside of its mandate to take on tasks that other agencies or governments do better. The advantage of reaffirming and clarifying its original protection mission would be to convey to personnel what is important and to provide them with a sense of overall purpose. A distinctive niche would also provide the external public with a strong message about UNHCR commitment and focus and would build up trust and confidence in the authority of the organisation.

Need to reverse the erosion of refugee protection

UNHCR also has an important role to play in convincing states that it is in their own national interests to find satisfactory solutions to refugee problems. The task ahead is formidable, particularly at a time when political leaders are reluctant to take positions that they feel might expose them to electoral risks. Being the international 'watch dog' on asylum and balancing the protection needs of refugees with the legitimate concerns of states requires courage and a willingness to confront governments when necessary. As the guardian of international refugee norms, UNHCR has a role to play in reminding liberal democracies of their own identity as promoters of international human rights.

Refugee and human rights norms enjoy a special status among Western states because they help define the identities of liberal states. They are also important to non-Western states because adherence to these norms constitute a crucial

sign to others of their membership in the international community of law-abiding states. Most states are not proud of practices and policies that contradict international refugee norms. The most powerful liberal democratic states are particularly sensitive to the criticism they have received for not providing a humanitarian leadership role. Political leaders are floundering in their search for effective responses to refugee movements and are looking for intellectual and political leadership and guidance on this policy issue. UNHCR and other refugee rights advocates have a unique opportunity to insert human rights ideas into the contemporary policy debate about refugees. UNHCR needs to help states transform their perceptions of their national interests and alter their calculations of the costs and benefits of their refugee and asylum policies. While individual governments may feel uncomfortable being criticised, UNHCR will gain greater respect in the long term for speaking up for refugee protection principles than for remaining silent.

UNHCR needs to develop a well-considered and consistent policy on refugee advocacy. Presently, the extent to which agency officials engage in attempts to criticise and pressure governments depends more on personalities and

individual initiatives than on agency-wide policies. The role and example of the High Commissioner is key. If the High Commissioner chooses to utilise the moral authority and prestige of UNHCR, he will set a positive tone and example for the entire agency. While public statements and pressures may prove ineffective in the short term in bringing about improvements for refugees, persistent and well-founded advocacy may well achieve desired change in the long term. A proactive protection policy has the added benefit of contributing to UNHCR's reputation for integrity which is vital to its long-term influence.

UNHCR is not a static organisation but has constantly changed and evolved over the past 50 years. Dramatic and bold steps should now be taken to revitalise UNHCR's primary role as the protector of refugees and the guardian of asylum worldwide.

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