

# UNHCR and the ethics of repatriation

by Michael Barnett

“We would never push refugees across a border at gunpoint,” replied the UNHCR official.

I was in Geneva interviewing officials regarding what they saw as the environmental demands and organisational reasons that accounted for the evolution of the agency’s repatriation policy. This particular official was slightly more vitriolic than most when it came to defending a policy that had been accused of playing fast and loose with traditional refugee rights. He readily agreed that UNHCR no longer clung to the original principles guiding voluntary repatriation and insisted that such departures were warranted because, firstly, states were demanding that refugees return as quickly as possible and, secondly, there was no objectively ‘safe’ benchmark in many ‘post-conflict’ settings. I conceded the broad point that if UNHCR had to wait for the ideal conditions before sponsoring a repatriation exercise then it might have to wait

forever, yet wondered aloud about the opposing danger of sacrificing principles on the altar of pragmatism. “How does the agency know when it is about to go too far? How far would the agency go? At what point are principles stretched beyond recognition?” It was then that he revealed the ethical bottom line: the agency would never physically coerce a return. Certainly many UNHCR staff would repudiate this position and would draw the line closer to original rights and principles but his candidness and position within the agency suggested that his views were hardly unfashionable.

## UNHCR’s new thinking on repatriation

UNHCR’s repatriation policy has shifted dramatically over the years. The crux of voluntary repatriation is that refugees cannot be returned against their will to a home country that in their subjective assessment has not appreciably changed for the better and, therefore, still resembles the situation that triggered their flight. Beginning in the 1980s, however, UNHCR began to weaken this categorical imperative as it developed new concepts like ‘safe return’ and ‘voluntariness’ that

made repatriation possible and desirable under less than ideal conditions.

There is considerable debate regarding what provoked this change. One explanation is that states made UNHCR do it. By the late 1970s, it is argued, Western and Third World states were demanding relief from the heavy burdens placed on them by the refugee regime. Western states were growing agitated by the increasing number of asylum requests from the Third World; viewing many of these requests as bogus, Western states began denying asylum in greater numbers and demanding a change in refugee law. Third World states were also increasingly intolerant of refugee flows that were imposing heavy financial, environmental and political costs. The result was that Western and Third World states demanded that UNHCR become involved in what the High Commissioner referred to as a policy of ‘deterrence’.

The agency acquiesced because it had little alternative: patrons held the purse strings and were going to send refugees back whether UNHCR liked it or not. UNHCR could sit on the sidelines with its principles but would be of no help to refugees in danger. UNHCR had no real choice but to play ball and more fully reconsider its repatriation policy. Only a thick-skinned or self-destructive organisation would have been oblivious to the preferences of its patrons on whom its freedom to act depended.

It is worth pausing to consider the historical convergence between this state-induced pragmatism and the agency’s 1990s presentation of itself as a humanitarian international organisation at the same time as it developed relief activities that were directed at, and situated in, refugee-producing states. Sweeping global changes pre-

pared the groundwork for this humanitarianism. Most significant was a change in the sovereignty regime. In recent history states have leaned on the norm of sovereignty and its principle of non-interference to shield themselves against

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unwanted intrusions into their domestic affairs. Increasingly evident during the Cold War, and then bursting onto the scene after its end, was a growing acceptance that state sovereignty was conditioned by popular sovereignty.

A key aspect of popular sovereignty was said to be the expectation that states should have a degree of domestic legitimacy and respect basic human rights. The implication was that governments could no longer behave monstrously toward their populations without fear of sanction by the international community. This was not only a normative issue but was also related to international peace and security. If illegitimate states were more likely to generate domestic conflicts that had regional and international implications, then domestic governance was related to international governance.

For reasons related to these developments, UNHCR became more deeply involved in the domestic affairs of states. The emerging belief that state sovereignty was conditioned by popular sovereignty permitted UNHCR to enter into once sacred domestic territory. UNHCR increasingly admonished those governments that were causing refugee flight and began to propose concepts such as 'state responsibility'. There were

also security imperatives. Internal conflicts led to refugee flows which, in turn, triggered regional instability and challenged 'human security'.<sup>2</sup>

### UNHCR's humanitarian discourse

UNHCR's growing interest in refugee-producing countries was accompanied and legitimated by a humanitarian discourse - warranted because of a principled concern for the fate of displaced peoples and the desire to relieve their suffering. The agency became increasingly involved in in-country protection, bringing relief to people (rather than waiting for people to reach relief). It widened the definition of refugee to include IDPs and supported development projects to provide refugees with a means of livelihood to ease reintegration back into their country of origin.

If the 1990s can be described as the dawning of the age of humanitarianism its theme song was sung with a statist inflection. UNHCR's expanded humanitarian space was legitimated with reference to a moral discourse around the assuagement of suffering and fostering of 'responsible' states. However, states were willing to license these activities not because of an outpouring of generosity but because of its very

deficit. States were retreating from their obligations to refugees at the same time that the end of the Cold War swelled refugee case-loads. Because they were less willing to house the growing number of refugees and more interested in seeing them speedily return home (and stay at home), states became receptive to the idea that UNHCR should become more involved in the affairs of refugee-producing countries. UNHCR was permitted to expand the humanitarian space in one area because it was being shrunk in another.

### Humanitarianism and the risk to refugee rights

The distressing implication was that refugee rights were possibly at risk because of this actual, living humanitarianism.<sup>3</sup> In-country relief might be permitted because states were now backtracking on their obligations under asylum and refugee law. The desire to get refugees back 'home', in itself unobjectionable, can lead to *refoulement* and involuntary repatriation. The desire to help all those displaced, regardless of which side of an international border they find themselves on, could mean that states are willing to help IDPs because they do not give individuals the opportunity to flee across a border

IDPs prepare to board UNHCR-organised charter flight to Dili, East Timor. Kupang airport, West Timor.



and seek asylum. Though the desire to eliminate the root causes of refugee flows is undoubtedly noble, it could lead to individuals being discouraged from fleeing a country deemed to be 'improving' or 'safe.'

Simply put, this expanding humanitarian agenda has potential to erode the traditional protection guarantees and rights given to refugees. Humanitarianism risks becoming implicated in a system of deterrence and containment which usurps refugee rights. The broad global context - including both state pressures and humanitarian imperatives - has shaped UNHCR's repatriation policy and explains how and why its humanitarian operations might represent a potential threat to refugees.<sup>4</sup>

### The fundamentalist-pragmatist debate

The focus on global forces can obscure the fact that UNHCR is a relatively autonomous organisation. Although states place all kinds of shackles on international organisations such as UNHCR, the agency, nevertheless, retains some autonomy and operational discretion. Moreover, UNHCR is able to use its role as protector of refugee law to place some distance between itself and member states. UNHCR derives autonomy from its standing as a bureaucratic organisation that is increasingly viewed as the authority and the lead agency in refugee affairs. Even the most constrained international organisation has some autonomy and capacity for independent thinking and action.<sup>5 & 6</sup>

UNHCR may have its own reasons for adopting humanitarianism and pushing repatriation, reasons not simply determined by pragmatic compromise but based on moral considerations.

UNHCR staff have thrown light on why the agency has revised its 'exilic' bias and promoted repatriation. In its infancy UNHCR favoured repatriation but was precluded from doing so because of the Cold War context and the circumstances of many refugees. Once the environment and circumstances became more favourable to repatriation UNHCR was ready, willing and able. Moreover, UNHCR was influenced by new developments in refugee law, refugee activities and ethical understandings that revolved around the discourse of 'home' and the 'right of return'. Also, refugees were 'spontaneously repatriating' and UNHCR

began to initiate activities to hasten and ease their reintegration. UNHCR was not a reluctant advocate of repatriation.

A concern, however, was that this enthusiasm for repatriation might undermine the principles of voluntary repatriation and *non-refoulement*. Accordingly, it began to wrestle with how to reconcile its newfound preference for repatriation with its longstanding protection and assistance mission. Opinion within the agency was polarised. Fundamentalists maintained a more 'legalistic' approach that suggested a human rights orientation toward refugee rights. They decried moves toward repatriation lest this new emphasis jeopardize UNHCR's unique role as the agent of refugees and compromise its independence *vis-à-vis* governments.

Pragmatists argued for allying with governments. They held to a more expedient, political and pragmatic view of refugee law because they feared that ignoring systemic trends and pressures might compromise UNHCR's overall effectiveness. They believed that the organisational and doctrinal shift in favour of repatriation righted a defect in a system that had tended to privilege legally-oriented protection officers over those who had specific area expertise.

The ground shifted toward a pragmatic view. UNHCR became much more favourably disposed toward repatriation, convinced that return will inevitably happen under less than ideal circumstances, and that the agency must and should actively promote repatriation as soon as possible.

These changes showed up in various areas. UNHCR's organisational chart was restructured so that regional offices holding more more pragmatic views no longer had to report directly to a Protection Division that saw itself as the 'priest of principles'. The agency developed flexible new norms and rules on repatriation and introduced new terminology and categories of 'safe' return that clearly differentiated repatriation under 'ideal' conditions from repatriation under 'less than ideal' conditions. 'Protection' was increasingly married to repatriation. The 'voluntary' in voluntary repatriation was also transmuted. Whereas once 'voluntary' had implied that the refugee should consent to

return to a country that in his/her view no longer represented a threat to personal safety, concepts like 'voluntariness' meant that refugee consent was no longer necessary. All that was now required was that the situation in the country of origin had appreciably improved or held out the promise of improving. An immediate consequence of these changes was that the principle of voluntary repatriation was stretched to its finite limits.

UNHCR developed a 'repatriation culture' characterised by an organisational discourse, bureaucratic structure and

formal and informal rules that make repatriation more desirable, proper and legitimate under more permissive conditions.<sup>7</sup> The effect of this culture was to

increase the danger that UNHCR would sponsor a repatriation exercise with potential to slide uneasily into involuntary repatriation and *refoulement*. This culture has its origins in a complex mixture of state pressures, pragmatic considerations and organisational learning. The existence of state pressures and the need to choose between the 'least bad' of alternatives certainly forced UNHCR into areas that were not necessarily to its liking. But these pressures and momentary compromises also were institutionalised and legitimated with reference to new understandings. Policies in the 1960s that might have been viewed as a gross departure from acceptable practices increasingly not only became the norm (in its prescriptive meaning) but were also legitimated by a moral discourse.

### Repatriation's ethical basis

We need to recognise that those in both the 'principled' and 'pragmatic' camps within UNHCR use ethical claims to support their positions. Pragmatists refer to a set of ethical principles to legitimate their position, principles largely founded on the desire to give refugees the ultimate form of protection - repatriation. Geneva, therefore, might reasonably decide to promote repatriation if, in its assessment, refugees were more likely to be safer at home than in the host country. In this view, the 'principles' of the principled camp might expose refugees to greater harm in the long run. As one pragmatist said, "The priests care

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more about the refugees themselves.”

## Losing the refugee voice?

Yet the ethics of repatriation under less than ideal conditions is also accompanied by a discursive shift that makes it less likely that refugees themselves will have a voice in determining their future. Voluntary repatriation originally required that refugees give consent to their return. By many accounts this is less likely to be the case. As UNHCR officials concede, the decision to promote repatriation is based not only on the refugees' preference but more fundamentally on UNHCR's objective assessment of whether life is better at home relative to life in the camps (a calculation that can take into account the immediate situation and future circumstances). Where 'protection' is increasingly tantamount to repatriation, UNHCR officials are disposed to the view that getting refugees home, even to highly unstable situations, is preferred and legitimate.

UNHCR might well be correct that refugees should repatriate under less than ideal conditions because their circumstances will become even less ideal if they remain in exile. But the

issue at hand is whose voice counts and what calculations are used to determine the efficacy of repatriation. The shift away from absolute standards regarding the desire by refugees to repatriate given their assessment of the situation in the home country toward a comparative evaluation by agency officials regarding whether refugees would be more secure at home or in the camps has the direct implication of privileging the agency's knowledge claims over those offered by refugees. The ethics of repatriation under less than ideal conditions can be accompanied by a diminution of power accorded to refugees.

## The impact of bureaucratic culture

UNHCR officials occasionally run roughshod over refugee rights - a callousness that some analysts see as a likely consequence of prolonged employment with the agency.<sup>8</sup> They imply that UNHCR staff appear, once socialised into

the organisation's reputation and cultivating the largesse of patrons. They are likely to use political and pragmatic considerations to navigate the moral dilemmas that populate complex emergencies and to develop ethical claims verging on indifference and callousness. None of this means that we need to be saved from our saviours. But it does mean that any discussion of humanitarianism requires a more thorough consideration of the multi-sided and polymorphous ethical field that underlies humanitarian action.

Such observations relate to a broader literature on how bureaucratic culture is an incubator of indifference toward the targets of their policies.

A host of explanations can be offered. There is the possibility that because one's contribution is relatively small it cannot be related to the outcome. The sheer physical, psychological and social distance between the office holder and the subject can make it more difficult to fully comprehend or realise the effects of one's actions until after the event, if at all. If dissident voices are absent within the bureaucracy and complacency has become the norm, then those tempted to protest or dissent have a well-founded fear of ostracism and ridicule. There is evidence that the bureaucratic appeal to broad rules to generalise and find guidance reduces the concern for the particular and makes it more difficult to see and to act in extreme and extenuating circumstances. Not to be forgotten is blind ambition: the belief that one's career prospects are best served by pay-

ing no heed to ethical dilemmas.<sup>9</sup> Also of importance is the influence

of precedents that already departed from previous moral guidelines.

An ethnography of institutional ethics is required to understand the ethical reasons individuals use to guide and legitimate their actions; only after we try to recreate the moral universe as constructed by the participants themselves will we better understand the many ways that bureaucratic culture reorients practical and ethical reason.

## Conclusion

There is a generalised concern that new humanitarians can be disturbingly disconnected from those in whose name they act. Whereas once we likened humanitarian agencies to white knights on muscled steeds charging to rescue the powerless and weak, we are now more likely to recognise that these knights are also interested in the mundane: career advancement, protecting

the agency's reputation and cultivating the largesse of patrons. They are likely to use political and pragmatic considerations to navigate the moral dilemmas that populate complex emergencies and to develop ethical claims verging on indifference and callousness. None of this means that we need to be saved from our saviours. But it does mean that any discussion of humanitarianism requires a more thorough consideration of the multi-sided and polymorphous ethical field that underlies humanitarian action.

**Michael Barnett is Professor of Political Science, University of Wisconsin, Madison. He is the author of *The Right Thing to Do: The United Nations and the Genocide in Rwanda* (Cornell University Press, forthcoming), and is writing a book with Martha Finnemore, tentatively titled *The Power, Politics, and Pathologies of International Organisations*.**

**Email: mbarnett@polisci.wisc.edu**

1 Executive Committee of the High Commissioner's Programme, 'Note on International Protection,' 31 August 1983, p3.

2 Sadako Ogata 'Half a Century on the Humanitarian Frontlines', lecture delivered at Graduate Institute for International Studies, Geneva, 25 November 1999.

3 The term is Alex de Waal's.

4 For a related critique, see B S Chimni 'Globalization, Humanitarianism, and the Erosion of Refugee Protection,' *Journal of Refugee Studies*, 13 (3), 1999, pp243-263.

5 B S Chimni 'The Geopolitics of Refugee Studies: A View from the South,' *Journal of Refugee Studies*, 11 (4, 1998), pp350-74; Michael Barnett & Martha Finnemore 'The Politics, Power, and Pathologies of International Organisations', *International Organisation*, 53 ( Fall 1999), pp699-732.

6 Marjorie Zieck *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, Martinus Nijhoff Publishers, The Hague, 1997, pp438-39.

7 Michael Barnett 'UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture, and the Rohingya Refugees,' presented at the 2000 International Studies Association meetings, Los Angeles, California.

8 See, for instance, Barbara Harrell-Bond 'Repatriation: Under What Conditions is it the Most Desirable Solution for Refugees?', *African Studies Review*, 32 (1), 1989, pp41-69; Mark Walkup 'Policy Dysfunction in Humanitarian Organisations: The Role of Coping Strategies, Institutions, and Organisational Culture', *Journal of Refugee Studies*, 10 (1), 1997, pp37-60; Liisa Malkki 'Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization', *Cultural Anthropology*, 11 (1996), pp377-404; and Fiona Terry *Condemned to Repeat?: The Paradoxes of Humanitarian Intervention*, PhD thesis submitted to Department of International Relations, Australian National University, February 2000.

9 Mark Bovens *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations*, Cambridge University Press, 1998.