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### **UNHCR from 1950 to 1970: Defining the Notion of International Refugee Protection**

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*To my mother Dubravka.*

*Thank you for your endless faith in me,  
the most precious support on my path.*

## **Acknowledgments**

Researching the topic of international refugee protection and writing my Master thesis on this subject was a very emotional process for me. The Yugoslav War started in the year I was born. I was lucky enough to spend that time safe in Belgrade, not to remember it, and to not be directly affected by it. However, it remained a large symbol of my childhood. As a result of this war, a significant part of my family resettled from Bosnia in other parts of the Balkans and the rest of Europe. Consequently, this war brought the term refugee into my life from an early age. I had refugees as members of my family, as playmates in my neighborhood and as friends in my class, without completely understanding the term's meaning. Therefore, I am forever grateful to my mother's big and beautiful family for their stories and reliving painful memories while answering the excessive number of questions I had while growing up. Most of the answers I received from them were tragic and sad, but they also carried hope, new beginnings, and forgiveness. Now, after my research is over and I am able to compare it with my family's experiences, I am once again assured how important it is not to observe refugee issues as a simple legal and financial matter, because being a refugee carries psychological and emotional, not only material misfortune, and leaves a mark on a person's life forever.

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This Master thesis marks the end of my dream, but also an end to the three years long and completely new life I've experienced. It was an amazing experience and I am curious where the road will take me next. But because I have such special people in my life, who were with me this whole time, I consider myself lucky and blessed. Because of them, I am convinced that everything is possible. Therefore, I will be forever grateful for the love and support, to my mother Dubravka, my sister Jelena and my brother Luka; to my father Zoran, who was following me in my heart every step of the way; to the rest of my family in Serbia, Bosnia, Croatia, Germany and Denmark; to my love Vukašin and the whole Tomić family; and to my dear friends in Belgrade and Vienna.

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## **List of Abbreviations**

ECOSOC	United Nations Economic and Social Council
ExCom	Executive Committee
ICEM	International Committee of European Migration
IDP	Internally displaced person
ILO	International Labour Organisation
IOM	International Organisation for Migration
IRO	International Refugee Organisation
OAU	Organisation of African Unity
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNKRA	United Nations Korean Reconstruction Agency
UNRRA	United Nations Relief and Rehabilitation Agency
UNRWA	UN Relief and Works Agency for Palestine Refugees in the Near East
USEP	United States Escapee Programme

## Introduction

As a leader in a global refugee regime, the UNHCR directly affected the creation of the notion of what is international refugee protection and how it is supposed to be conducted.<sup>1</sup> Because the UNHCR represents itself as a global organization, this leads many to the expectation that it provides help equally on a global scale. However, during the process of its establishment, definitions and ideas created by this organisation limited the scope of its work. With the spread of the influence of the UNHCR, many other organizations, governments and individuals accepted these limitations as a standard in international refugee protection. My main research question, is what kind of notion of international refugee protection has this organisation set in the first two decades of its existence? What are those firmly established principles and standards of protection of refugees, framed with the 1951 Convention and the 1967 Protocol, and which are still valid today? Were those standards correspondent with the everyday practices of refugees and were they applied equally to all refugees? Finally, how did the systematic function of the UNHCR affect the international protection of refugees? I find this kind of research very important for scientific community because the main ideas, goals and approach to refugees by the UNHCR has not changed substantially for the past seventy years. Its scope of work has widened, becoming more inclusive over time, but the core values and philosophy remain similar to those in the 1950s. Therefore, many issues that are criticized today regarding the work of the UNHCR are traceable to the very beginnings of activity by this organization, and these issues bring us back to the basic questions regarding our own comprehension of who are refugees, what is the right way to help them, and how did the UNHCR affect that perception?

However, there is an insufficient amount of systematic analyses of the establishment and evolution of the UNHCR since its conception. The UNHCR itself deals more with current crises than with researching and learning from its previous work.<sup>2</sup> Research and debate regarding the UNHCR most commonly follow discussions about the ethics and power of this organization, institutional autonomy, failures in providing help, etc. My analysis, on the other hand, is focused not only on the positive and negative sides of the work of the UNHCR, but also on the wider perspective of

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<sup>1</sup> Alexander Betts, "Institutional Proliferation and the Global Refugee Regime," *Perspectives on Politics* 7, no. 1 (2009): pp. 53-58, accessed May 28, 2020, <http://www.jstor.org/stable/40407214>, 53.

<sup>2</sup> Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford Univ. Press, 2001), 4.

what exactly that work is and how the notion of refugee protection is defined? Therefore, I have based my research on the first two decades of the work of the UNHCR; the time when its foundations were developed. I have researched not only successes and failures of the UNHCR, but also aspects that were completely overlooked and neglected by this organization.

I aim to contribute to the research field with my Master thesis with the way I have approached the work of the UNHCR. My analysis is based on primary, rather than secondary information. I have used the self-representation of the UNHCR and its ideas expressed in the annual reports and conventions, thereby constructing an image regarding what kind of notion of international refugee protection this organisation have envisioned. These reports show the development of the ideas, failures and plans of the UNHCR, but also the problems that are continuously ignored. Annual reports of the High Commissioner to the Economic and Social Council and General Assembly have been published since 1952. Averaging between 50 to 90 pages, these reports explain ideas, projects, achievements and problems within the organization. They contain information about the system of action and decision making of the UNHCR, the donors and the funding, immigration policies of different countries and their progress, the work of other organizations and collaboration with them, predictions of success, analysis of the failures of some actions, etc. The annual reports of the High Commissioner can be considered reliable for many reasons. They are indeed mostly based on the information received from the states, because signing members of the 1951 Convention were, by doing so, making a commitment to inform the High Commissioner on all internal matters regarding refugees. Furthermore, those facts are also very often backed by the data provided by the Branch Offices of the UNHCR or missions conducted in the respective countries. Therefore, these reports contain not only appraisals but also thoughts on what should be changed and improved and, more importantly, they show us which aspects of refugee treatment by the states were accepted as normal and not criticized. Annual reports are valuable sources because they show many different aspects necessary to understand what the organisation comprehend as being proper international refugee protection and its own role in doing so. They are also the source of thoughts and logic behind the development of work and the mandate of the UNHCR. Since the UNHCR, as a UN agency, imposes itself as the patron of the refugee issues, it is important to analyze how it has shaped the notion of international refugee protection while at the same time shaping itself.

United Nations High Commissioner for Refugees (UNHCR) today represents itself as “a global organisation dedicated to saving lives, protecting rights and building a better future for refugees, forcibly displaced communities and stateless people”.<sup>3</sup> This organisation was created by the United Nations General Assembly as of January 1, 1951. That same year the *United Nations Convention Relating to Refugees*, referred to as the 1951 Convention, was also created, which, together with the *Protocol Relating to the Status of Refugees* from 1967, represents the base of the UNHCR work. These two documents determine who is a refugee, what are the rights of refugees and what are obligations of the states toward them. The guardian of these documents is the UNHCR. In the annual report for 1954, the High Commissioner described the creation of the 1951 Convention as the “most important event in the sphere of international action for the protection of refugees” and the document itself as “the most comprehensive codification of rights of refugees so far embodied in an international instrument.”<sup>4</sup> Because this document is setting the foundation of international refugee protection, with the first article it is, expectedly, determining who has the right to have refugee status. In this category are people that fulfill three main conditions: they are outside of their country of nationality, they have a well-founded fear of being persecuted on specific grounds if they return home, and these first two criteria must be a consequence of the events that happened before January 1, 1951.<sup>5</sup> Upon signing the 1951 Convention, the states had the right to decide which groups of refugees it would be applied to, to refugees from Europe only or refugees worldwide. With the 1967 Protocol, the geographical and the temporal limits are erased.

International refugee protection existed before the UNHCR, but with different ideas and scope. With the establishment of the UNHCR and the 1951 Convention, for the first time, a formal system of standards and action around refugee protection was created.<sup>6</sup> The minimum standards on which refugees would be treated were determined and the importance of these standards was once again confirmed with the Declaration from 2001, which reaffirmed the commitment of the signatory

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<sup>3</sup> “About Us,” UNHCR Website, accessed September 1, 2020, <https://www.unhcr.org/about-us.html>.

<sup>4</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees A/2648* (United Nations General Assembly Official Records: Ninth Session, 1955), accessed July 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ac68c420/report-united-nations-high-commissioner-refugees.html>, para. 10.

<sup>5</sup> UNHCR, *Convention and Protocol Relating to the Status of Refugees. With an Introductory Note by the Office of the United Nations High Commissioner for Refugees* (Geneva: UNHCR, 2010), accessed June 1, 2020, <https://www.unhcr.org/3b66c2aa10>, 14.

<sup>6</sup> UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (2000), accessed February 1, 2020, <https://www.unhcr.org/publications/sowr/4a4c754a9/state-worlds-refugees-2000-fifty-years-humanitarian-action.html>, 2.



members of the 1951 Convention.<sup>7</sup> Over the course of the past seven decades, the UNHCR went through many internal and external transformations. It developed from a small temporary organisation with a narrow mandate into a massive, global, and permanent UN organisation that shaped the way we perceive refugees and their needs.<sup>8</sup> As its main task, the UNHCR considers the international protection of refugees. The international refugee protection, according to the UNHCR Statute, consists of the cooperation of states with the UNHCR by signing certain conventions and agreements, admitting refugees into their territories, assisting the High Commissioner in promoting solutions, providing documents to refugees, allowing refugees to transfer their assets (especially in case of resettlement) and finally, in providing data about refugees to the High Commissioner.<sup>9</sup> The solutions that the UNHCR envisions for refugees, the so-called durable solutions, remain the same as in 1951 and they are: voluntary repatriation, local integration, and resettlement.<sup>10</sup>

The UNHCR has a very complex system of functioning. The pillars of this system are the UN General Assembly, Economic and Social Council (ECOSOC), High Commissioner, and the Executive Committee (ExCom). The UN General Assembly and ECOSOC are governing, while the High Commissioner, appointed by the UN General Assembly, leads the organization. As paragraph 3 of the Statute of the UNHCR dictates: “The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council”.<sup>11</sup> The ExCom, established by the ECOSOC as a subsidiary organ of the General Assembly, consists of the representatives of the UN member states. While the General Assembly and ECOSOC provide policy directives to the High Commissioner, ExCom has an executive and advisory role regarding programmes, fund raising and budget targets.<sup>12</sup> Funding of the UNHCR originates almost completely from voluntary contributions, mostly from governments, but also from inter-governmental organizations and the private sector. One percent of the financial resources available

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<sup>7</sup> UNHCR, *Reaffirming the 1951 Geneva Refugee Convention* (2001), accessed July 27, 2020, <https://www.unhcr.org/news/updates/2001/12/3c18d5e24/reaffirming-1951-geneva-refugee-convention.html>.

<sup>8</sup> Michael N. Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004), 120.

<sup>9</sup> UNHCR, *Statute of the Office of the United Nations High Commissioner for Refugees* (1950), accessed July 25, 2020, <https://www.unhcr.org/4d944e589.pdf>, 6-7.

<sup>10</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action* (2011), accessed July 10, 2020, <https://www.refworld.org/pdfid/4d9430ea2.pdf>, 187-188.

<sup>11</sup> UNHCR, *Statute*, 8.

<sup>12</sup> “Executive Committee,” UNHCR Website, accessed May 25, 2020, <https://www.unhcr.org/executive-committee.html>.

to the UNHCR derives from the UN budget and is used for administrative costs. In addition to financial help, the UNHCR also accepts in-kind contributions, such as medications, tents, etc.<sup>13</sup>

According to the UNHCR, today we are living in a world where 1 percent of the human population, approximately 79.5 million people, have fled their homes. Among them are refugees, returnees, internally displaced persons (IDPs), and asylum seekers. Additionally, there are an estimated 4.2 million stateless people across 76 countries, meaning people without nationality and basic rights such as education, health care, employment, and freedom of movement.<sup>14</sup> All of these categories the UNHCR is presenting as “persons of concern” to this organisation and claims that so far it has helped millions of people through its work.<sup>15</sup> The UNHCR is active in 135 countries with personnel of almost 17,500 people and an annual budget of 8.6 billion dollars for the year 2019.<sup>16</sup> The 1951 Convention and/or the 1967 Protocol are signed by 149 states.<sup>17</sup> All of these numbers represent the immensity of this organisation in the present day. However, the UNHCR has undergone a long process to acquire this power and scope of work. It started as a very small organisation of limited functions and autonomy. During the first couple of decades, the refugees under the UNHCR mandate were the only persons of concern to this organization. The annual budget for the first year was 300,000 dollars<sup>18</sup>, which would in today’s currency be only 3.2 million dollars.<sup>19</sup> To make a better comparison, the International Refugee Organisation (IRO), the predecessor to the UNHCR, had an annual budget of 150 million dollars.<sup>20</sup> The initial mandate of the UNHCR was three years and it was created as an organisation dealing only with refugees from WWII, not with the new cases. It proscribed only legal protection, not material relief, and the High Commissioner was required to ask for permission from the General Assembly, even for raising funds for any kind of initiative. The UNHCR was meant to assist the so-called “difficult cases” that remained in European camps after the IRO ceased to exist. This group of refugees has consisted mainly of elderly and sick persons, as well as those that did not want to resettle, for which the IRO did not manage to find a solution. It became clear however, that refugee issues are

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<sup>13</sup> “Figures at a Glance,” UNHCR Website, accessed July 1, 2020, <https://www.unhcr.org/figures-at-a-glance.html>.

<sup>14</sup> Ibid.

<sup>15</sup> “Who We Help,” UNHCR Website, accessed July 1, 2020, <https://www.unhcr.org/who-we-help.html>.

<sup>16</sup> “Figures at a Glance,” UNHCR Website

<sup>17</sup> “The 1951 Convention,” UNHCR Website, accessed December 1, 2020, <https://www.unhcr.org/1951-refugee-convention.html>.

<sup>18</sup> “Figures at a Glance,” UNHCR Website.

<sup>19</sup> “US Inflation Calculator,” accessed October 10, 2020, <https://www.usinflationcalculator.com/>

<sup>20</sup> Loescher, *The UNHCR and World Politics*, 51.

not a one-time problem, but are part of the new reality, and that there was a constant emergence of new refugees. The UNHCR was initially created for refugees in camps in Austria, Federal Republic of Germany, Greece, China, Italy and the Free Territory of Trieste, an independent territory ruled by the governor appointed by the Security Council of the United Nations, that existed from 1947 to 1954.<sup>21</sup> However, soon these refugees started to be categorized as “old refugees”, since historical events created the influx of many refugees emerging from the wars worldwide, resulting in the creation of the “new refugees” category. The UNHCR used these “new refugees” to successfully expand its rights and activities.<sup>22</sup> This was due partly to the perseverance of the High Commissioners and partly because of the new situations; a strong need for one powerful organisation that would deal with refugee problems, both old and new, was increasingly raised as an issue.

Major refugee movements in the 1950s and 1960s allowed the UNHCR to expand its scope of work. In 1956, after the Soviet invasion of Hungary, around 200,000 Hungarians fled their homes to Yugoslavia and Austria.<sup>23</sup> Officially, these refugees were not under the mandate of the UNHCR, because their displacement was not a consequence of the events that happened before 1951, as demanded by the mandate. However, the High Commissioner argued that his office was morally obligated and also very capable of solving that crisis. After member states agreed, the General Assembly authorized the UNHCR to act and with this authorization, a precedent was set for expansion of the UNHCR mandate.<sup>24</sup> The UNHCR declared that the reasons for the Hungarian crisis can be traced to the period before 1951, and since the individual determination was impossible for 200,000 persons, which the UNHCR was statutorily supposed to apply, the UNHCR gave temporary refugee status to all those fleeing, leaving the assessment whether an individual refugee had fled because of persecution or not until a later time. With this crisis, the UNHCR proved to be useful but also that its mandate is formally too restrictive.<sup>25</sup>

Another group of refugees that represented a precedent for the expansion of the UNHCR activities were refugees who emerged from the 1949 Chinese Revolution. In two years after the creation of

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<sup>21</sup> Glenda Sluga, “Trieste: Ethnicity and the Cold War, 1945-54. *Journal of Contemporary History*”, 29, no. 2 (1994), 285-303, accessed November 10, 2020, <http://www.jstor.org/stable/260891>, 296.

<sup>22</sup> Loescher, *The UNHCR and World Politics*, 9.

<sup>23</sup> Ibid., 82.

<sup>24</sup> Barnett and Finnemore, *Rules for the World*, 86.

<sup>25</sup> Ibid., 87.

People's Republic of China, around 700,000 Chinese refugees fled to Hong Kong, massively increasing its population and creating financial difficulties for the UK.<sup>26</sup> Although the High Commissioner declared that his office was ready to assist, the political situation was too complex for a UN organisation to get involved. The United Kingdom was one of the first Western powers to establish relations with Mao's China and did not want to endanger them by categorizing these people as refugees. Therefore, it avoided doing so by claiming that they were fleeing because of economic circumstances and not persecution.<sup>27</sup> To get around these political complications, the General Assembly in November 1957 requested the High Commissioner to use his "good offices" to encourage contributions to the Chinese refugees in Hong Kong. This solution gave the High Commissioner opportunity to expand his mandate by assisting refugees who were not formally under his mandate and without a determination that the government of origin was persecuting its people. This way of avoiding the rules remained in the UNHCR. In the future, whenever action was necessary regarding refugees that do not fall under the UNHCR mandate, the "good offices" system was invoked. Additionally, this system enabled the High Commissioner to provide material assistance, contrary to the main idea behind the creation of the UNHCR, which was focused on international protection only.<sup>28</sup>

The Algerian crisis also created an opportunity for the UNHCR to further expand its mandate. The Algerian Civil War started in 1954, with Algerian refugees fleeing into Morocco and Tunisia. However, there were two major obstacles facing the High Commissioner in order to intervene in this crisis. This war did not occur as a consequence of the events that happened before 1951 and many members signed the 1951 Convention with the condition that they will deal only with European refugees. The High Commissioner did not want to act only in Europe and saw the Hungarian crisis as precedent enough to use it for the Algerian case. After number of refugees in Morocco and Tunisia reached nearly 200,000, General Assembly authorized the UNHCR to use "good offices" to assist them. The UNHCR did not specifically identify these groups but referred to them as refugees who do not fall within UN competence.<sup>29</sup>

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<sup>26</sup> Loescher, *The UNHCR and World Politics*, 93.

<sup>27</sup> Barnett and Finnemore, *Rules for the World*, 88.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid., 89.

In the 1960s, emboldened by previous precedents, the High Commissioner wanted to get involved in solving refugee problems caused by decolonization in Africa. The General Assembly passed a series of resolutions that enabled the UNHCR to help refugees in Burundi, Uganda, Congo, etc. All of these events and authorizations caused the UNHCR to act confidently in ways outside of its initial mandate and to expand its work. Consequently, improvement of the formal mandate of the UNHCR was discussed between the High Commissioner and member states in the mid-1960s.<sup>30</sup> The 1967 Protocol was created as a result, which was merely a confirmation of the new order already in power. The timeframe of my research is exactly within these first two decades, because in this period the UNHCR, as an organisation finalized the basic development of its goals and methods of operation. It went from an organisation dealing mainly with European refugees resulting from WWII, to a seemingly global organisation dealing with new problems as they occurred worldwide. This period is also valuable for researching the appearance of standardization in international refugee protection that the UNHCR was trying to make.

For my study, I had to define what exactly the UNHCR is. Is it the one individual; the High Commissioner and the close circle around him? Is it the Executive Committee which decides the actions of the High Commissioner? Is it the most powerful government in this Committee, or is it the whole United Nations system in the form of the General Assembly? This is significant because, while reading about the process of decision making, a reader can easily get lost making these distinctions. The High Commissioner is supported by the entire system, but he or she also has to interact with that very system for every decision made. For this reason, it can sometimes seem like the decisions made by this organisation has nothing to do with the High Commissioner, but as the wish of one powerful country that wants to pursue its own interests. On the other hand, the person carrying the title of High Commissioner proved to be very important. According to their thoughts and ideas, the work of this organisation has drastically changed throughout history. The personal aspirations of the High Commissioner have a great impact on the UNHCR and therefore his or her role cannot be ignored.<sup>31</sup> Therefore, I have decided that, since my study relates to the shaping of international refugee protection and not the UNHCR only, the system of the UNHCR will be the object of my research, naturally, but I will mainly observe it as one unity; as a whole.

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<sup>30</sup> Barnett and Finnemore, *Rules for the World*, 90.

<sup>31</sup> Loescher, *The UNHCR and World Politics*, 109.

I have divided my Master thesis into four parts. I have started with a brief chapter about the international refugee protection that existed before the UNHCR, in order to create a perspective of what factors were inherited and what were innovative aspects of the refugee protection after 1950. The second chapter is describing who is a refugee according to the UNHCR and who is eligible for international refugee protection. The following chapter is dedicated to standardization of international refugee protection and to its discrepancies in theory and practice. The fourth and the last chapter is dedicated to the function of the UNHCR and the analysis of how its limitations confine the notion of proper international refugee protection.

## 1. International Refugee Protection Before the UNHCR

There have always been people fleeing their homes. Refugee movements are not a recent occurrence, and religion, political-ideological belief and nationalism can be seen as the three major causes throughout history. Some of the examples are massive displacements and collective expulsions in the Middle Ages and in modern European history caused by religious intolerance, or huge banishments on ideological grounds of the opponents of the French and American Revolutions in the 18<sup>th</sup> century.<sup>32</sup> However, during the 20<sup>th</sup> century, refugee problems intensified, partly because of major and long-lasting conflicts and wars and partly because of the creation of significant numbers of new nation states. The emergence of multiple new nation states in the 20<sup>th</sup> century triggered a large quantity of forcibly moved people, but also restricted immigration and border-crossing, leaving many people in unsolvable situations. Before the 20<sup>th</sup> Century, asylum was being granted on an ad hoc basis, without standardized procedures.<sup>33</sup> Although control of movement existed long before development of modern states, it was mostly on a private level, not on a state level. Landlords controlled the movement of serfs, and the movement of slaves depended entirely on the permission of slaveholders.<sup>34</sup> Stricter control of population flows on a state level embodied in immigration laws, ethnic and number quotas, passports and other barriers, came with the enhanced development of nation states.<sup>35</sup> Before the 20<sup>th</sup> century, persecuted and poor persons in Europe could often simply move to another country without significant restrictions or required permissions.<sup>36</sup> There were large groups of people in the pre-WWI period, particularly in Europe, that would have been characterized as refugees in the 1920s, but they had open frontiers and could move more freely in search of a new life.<sup>37</sup>

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<sup>32</sup> Philipp Ther, *The Outsiders: Refugees in Europe since 1492* (Princeton, NJ: Princeton University Press, 2019), 8-9.

<sup>33</sup> Barnett and Finnemore, *Rules for the World*, 76.

<sup>34</sup> John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge, United Kingdom: Cambridge University Press, 2018), 9-10.

<sup>35</sup> Barnett and Finnemore, *Rules for the World*, 76.

<sup>36</sup> Andreas Zimmermann et al., "Part One, Background, Historical Development of International Refugee Law," in *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary* (New York: Oxford University Press, 2011),

<https://opil-ouplaw-com.uaccess.univie.ac.at/view/10.1093/actrade/9780199542512.001.0001/actrade-9780199542512-chapter-1?prd=OSAIL>, para. 2.

<sup>37</sup> John Hope Simpson, "The Refugee Problem," *International Affairs (Royal Institute of International Affairs 1931-1939)*, Vol. 17, no. 5 (1938): pp. 607-628, accessed July 1, 2020, <https://www.jstor.org/stable/3020054?seq=1>, 607.

As a result of the dissolution of empires and the expansion of nation states, millions of refugees emerged during and after WWI. Many people lost their citizenship because of language, religion or ethnicity in the process of the creation of nation states.<sup>38</sup> There were an estimated 7 million people that fled their homes at the beginning of the 1920s.<sup>39</sup> Around two million Poles migrated to Poland, one million Germans to Germany, and several hundred thousand Magyars to Hungary. Armenians were fleeing in huge numbers to Soviet Armenia, Syria and other states in Europe and the Middle East. Around one million Anatolian Greeks and Armenian refugees were displaced as a consequence of the Greco-Turkish War in 1922. The problem of the Russian refugees was one of the main factors behind the inception of international refugee protection. Between one and two million Russians fled from the Russian Empire, mainly to Germany and France, because of the civil war and the famine in 1921.<sup>40</sup> In the early 1920s, the Soviet Union started revoking the citizenship of many Russians that already fled the Soviet Union and without national identity papers they could not legally move across the borders. In addition to that, governments started closing borders and expelling displaced people. Because the voluntary agencies that were helping Russians were exhausted by 1921, the International Committee of the Red Cross initiated the creation of the system that would deal with refugees on an international level and as a consequence of this initiative, the League of Nations established the High Commissioner for Refugees. By this method, the international refugee protection, based on international instruments, was created at the beginning of the 1920s.<sup>41</sup> Therefore, even though refugees were always part of history, international efforts in refugee protection have existed for merely one hundred years.

The first High Commissioner was Fridtjof Nansen, a Norwegian explorer that was negotiating in 1920 for the repatriation of Russian war prisoners.<sup>42</sup> He proved to be of great importance and influence, and today is still praised for his work. The UNHCR continued to use the term “Nansen passport” when referring to the documents for refugees that he created and in 1955 a Nansen Medal Award for the achievements in refugee protection was introduced,<sup>43</sup> which continues to be awarded

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<sup>38</sup> Loescher, *The UNHCR and World Politics*, 22-23.

<sup>39</sup> Ther, *The Outsiders*, 2.

<sup>40</sup> Loescher, *The UNHCR and World Politics*, 23.

<sup>41</sup> *Ibid.*, 24.

<sup>42</sup> *Ibid.*

<sup>43</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees A/2902 and Add.1* (United Nations General Assembly Official Records: Tenth Session, 1956), accessed November 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c6c0/report-united-nations-high-commissioner-refugees.html>, para. 34.



by the UNHCR today. The beginnings of the League of Nations organisation for refugees were, however, very modest. Initially, the High Commissioner's responsibilities were tied only to Russians. His mandate was temporary and the funds he had at his disposal were only for the administration of this organization, and not for relief.<sup>44</sup> With time however, Nansen managed to expand his mandate. Voluntary agencies and governments, under the League of Nations, helped thousands of Greek, Bulgarian, and Armenian refugees to resettle and find employment. Nansen also included the International Labour Organisation in increased effort to provide employment possibilities for refugees.<sup>45</sup> However, although Nansen's work was of great importance, his impact was limited and completely dependent on the cooperation of states.<sup>46</sup> Most fleeing people were not recognized as refugees and the initial help was based mostly on providing documents only. Additionally, the first treaties made in the 1920s were not legally binding, meaning that they were on a level of recommendation only, without implied legal obligations.<sup>47</sup>

The first treaty of the High Commissioner Nansen was regarding identity certificates for refugees. The other four treaties in the 1920s were about spreading this so-called 'Nansen system' to others, by expanding the definition of a refugee to other nationalities. Some of these treaties were also recommending to the governments the proper treatment of refugees regarding issues such as personal status, divorce, labour regulations, taxations,<sup>48</sup> but the Nansen passport and legalization of refugees is the main characteristic of this initial international refugee protection. With this first initiative, Nansen addressed the need for the recognition of refugees and acknowledged that they were severely affected by immigration and mobility restrictions that intensified after WWI, with the main factor being passports. In 1920, at the League of Nations conference in Paris, passports were introduced. Their purpose was to enable people to travel, but at the same time to manage issues like controlling spies entering the country, refugee flows, regulating the labour market and preventing the spread of epidemics.<sup>49</sup> Interestingly at that time, many creators of this travel regime

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<sup>44</sup> Loescher, *The UNHCR and World Politics*, 24.

<sup>45</sup> Ibid., 25-26.

<sup>46</sup> Barnett and Finnemore, *Rules for the World*, 77.

<sup>47</sup> Zimmermann, *Part One, Background, Historical Development*, para. 28.

<sup>48</sup> Gilbert Jaeger, "On the History of the International Protection of Refugees," *Revue Internationale De La Croix-Rouge/International Review of the Red Cross* 83, no. 843 (2001): pp. 727-738, accessed March 1, 2020, <https://doi.org/10.1017/s1560775500119285>, 729.

<sup>49</sup> Mark B. Salter, *Rights of Passage: The Passport in International Relations* (Boulder, CO: Lynne Rienner Publ., 2003), 77-78.

thought that the passports would be necessary only until the world returns to normal.<sup>50</sup> However, this traveling system left millions of refugees excluded, since they did not have the governments that would provide them these documents. They were left without any identity confirmation that would enable them to travel and to resettle in another country. This was the reason behind the creation of the ‘Nansen passport’ system, which was initiated with the *Arrangement with Respect to the Issue of Certificates of Identity to Russian Refugees*, known as The 1922 Arrangement, from the intergovernmental conference in Geneva of 16 European countries.<sup>51</sup> According to this arrangement, a government could issue certificates, i.e. passport, to a refugee without making a commitment to grant citizenship along with it.<sup>52</sup> The purpose was to provide more secure legal status to Russian refugees and to enable them to travel to other states, with the possibility to obtain a visa as any other foreigner could, and to enable governments to oversee refugee flows.<sup>53</sup> These certificates did not differ much from other passports prescribed by the 1920 Paris Conference, also containing photography, facial description and basic data.<sup>54</sup> Nansen passports were accepted by 52 governments by the end of the 1920s.<sup>55</sup> With the next League of Nations' arrangement of this type, the so-called 1924 Plan, the Nansen passport system was expanded to Armenian refugees, so they obtained the same identity and travel documents as Russian refugees.<sup>56</sup> In the first two arrangements, the word refugee was used as a well-known expression, without any kind of definition, simply stating in the title of the documents that the arrangements are concerning Russian, i.e. Armenian, refugees. However, from that point onward, the literal definition of a refugee was stated as an indication of which group of people are relevant to the respective arrangement. With these kinds of definitions, it was strictly determined which groups of people the Nansen passport system would be extended to. The first international definition of the term ‘refugee’ in this sense, was in the third League of Nations treaty regarding refugees; in the *Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees* from 1926.<sup>57</sup> According to this arrangement, the refugee status was tied to those of Russian and

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<sup>50</sup> Salter, *Rights of Passage*, 77.

<sup>51</sup> Zimmermann, *Part One, Background, Historical Development*, para. 4-5.

<sup>52</sup> Torpey, *The Invention of the Passport*, 158.

<sup>53</sup> Zimmermann, *Part One, Background, Historical Development*, para. 6.

<sup>54</sup> League of Nations, *Arrangement with Respect to the Issue of Certificates of Identity to Russian Refugees* (Treaty Series Vol. XIII No. 355, 1922), accessed June 1, 2020, <https://www.refworld.org/docid/3dd8b4864.html>, 241.

<sup>55</sup> Zimmermann, *Part One, Background, Historical Development*, para. 7.

<sup>56</sup> *Ibid.*, para. 8.

<sup>57</sup> *Ibid.*, para. 13.

Armenian origin and the protection of a government. If a person had Armenian or Russian origins and was lacking their nationality and government protection, it was decided that in the case of Armenians it referred to the protection of the Turkish government and in case of Russians to the Soviet government, the requirements for obtaining a refugee status according to this arrangement were fulfilled.<sup>58</sup> With two treaties from 1928, *Arrangement of 30 June 1928 relating to the Legal Status of Russian and Armenian Refugees* which was made to clarify the legal status of these refugees,<sup>59</sup> and the *Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees*, the same reasoning was applied and the status of refugees, under the same conditions, was expanded to include people of Assyrian, Assyro-Chaldaean and Turkish origin, too.<sup>60</sup> Therefore, in the first decade after WWI, only displaced people of Russian, Armenian, Assyrian, Assyro-Chaldaean and Turkish origin were recognized as refugees on an international level. The basic criteria for the initial international refugee protection system in the 1920s proved to be the lack of state protection, and more importantly, the origin of a certain nationality.

The 1933 Convention was the first binding treaty regarding international refugee protection.<sup>61</sup> It does not contain the new definition of a refugee, but applies to “Russian, Armenian and assimilated refugees, as defined by the Arrangements of 12 May 1926, and 30 June 1928.”<sup>62</sup> Addressed issues were regarding Nansen passports, labour conditions, relief, education, non-refoulement, namely the refugee right to be admitted and not to be expelled without justification, etc. The 1933 Convention represented more serious dedication to solving problems of refugees, but it was ratified by only nine states.<sup>63</sup> During the 1930s, two treaties were created for the German refugees in 1936 and 1938. An Additional Protocol from 1939 extended these treaties to refugees from Austria. They were providing special identity certificates for refugees from Germany since they were not

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<sup>58</sup> League of Nations, *Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees* (League of Nations Treaty Series Vol. LXXXIX, No. 2004, 1926), accessed July 9, 2020, <https://www.refworld.org/docid/3dd8b5802.html>, para. 2.

<sup>59</sup> League of Nations, *Arrangement Relating to the Legal Status of Russian and Armenian Refugees* (League of Nations Treaty Series, Vol. LXXXIX, No. 2005, 1928), accessed July 14, 2020, <https://www.refworld.org/docid/3dd8cde56.html>, 1.

<sup>60</sup> League of Nations, *Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees* (League of Nations, Treaty Series, 89 LoNTS 63, 1928), accessed July 9, 2020, <https://www.refworld.org/docid/42cb8d0a4.html>, 65.

<sup>61</sup> Zimmermann, *Part One, Background, Historical Development*, para. 28.

<sup>62</sup> League of Nations, *Convention Relating to the International Status of Refugees* (League of Nations, Treaty Series Vol. CLIX No. 3663, 1933), accessed July 14, 2020, <https://www.refworld.org/docid/3dd8cf374.html>, article 1.

<sup>63</sup> Jaeger, *On the History of the International Protection of Refugees*, 730.

part of the Nansen system.<sup>64</sup> In the arrangement of 1936, under the definition of a “refugee coming from Germany”, were persons who have only German nationality yet did not enjoy the protection of the German government.<sup>65</sup> The definition from the 1938 Convention was very similar to the one from 1936, but with the addition that it does not include persons that left Germany for personal convenience.<sup>66</sup> Germans from Austria were included with the Additional Protocol of 1939, with the almost identical definition as the one from 1938.<sup>67</sup> In the refugee definitions from the 1930s, as with the ones from the 1920s, it was not pointed out that the refugee must cross the border. For that reason, in the texts from 1938, John Hope Simpson noted that the 1938 Convention seems to cover the people in concentration camps inside Germany too. Those people lost the protection of the German government, and the definition was dependent on protection, not the border crossing.<sup>68</sup> However, the 1938 Convention had weaker regulations, it was not mentioning non-refoulement and it even enabled the returning of Germans to Germany in some cases.<sup>69</sup> Only seven countries signed the 1938 Convention and it did not come into force before WWII.<sup>70</sup>

In 1943, Western powers created the United Nations Relief and Rehabilitation Agency (UNRRA) that assisted millions of displaced persons. It was not an organisation dedicated strictly to refugees, because it dealt with all displaced people as a consequence of the war and it also helped restore local production, public health, education, etc. The goal of this organisation was to provide relief and return people to their homes and for that vast amounts of money for relief purposes were spent. During the period of existence (from the end of 1943 to mid-1947) and provided by its 44 member states, UNRRA expended almost 3.6 billion dollars, of which 2.8 billion was from the US.<sup>71</sup> The main function of the UNRRA was repatriation. In the first five months after the war, the UNRRA repatriated three quarters of the displaced people in Europe, without paying attention to the fact

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<sup>64</sup> Jaeger, *On the History of the International Protection of Refugees*, 731.

<sup>65</sup> League of Nations. *Provisional Arrangement concerning the Status of Refugees Coming from Germany* (League of Nations Treaty Series, Vol. CLXXI, No. 3952, 1936), accessed July 14, 2020, <https://www.refworld.org/docid/3dd8d0ae4.html>, article 1.

<sup>66</sup> League of Nations, *Convention concerning the Status of Refugees Coming from Germany* (League of Nations Treaty Series, Vol. CXCII, No. 4461, 1938), accessed July 14, 2020, <https://www.refworld.org/docid/3dd8d12a4.html>, article 1.

<sup>67</sup> League of Nations, *Additional Protocol to the Provisional Arrangement and to the Convention concerning the Status of Refugees Coming from Germany* (League of Nations Treaty Series Vol. CXCVIII No. 4634, 1939), accessed July 14, 2020, <https://www.refworld.org/docid/3dd8d1fb4.html>, 141.

<sup>68</sup> Simpson, *The Refugee Problem*, 609.

<sup>69</sup> Jaeger, *On the History of the International Protection of Refugees*, 731.

<sup>70</sup> Phil Orchard, *Protecting the Internally Displaced: Rhetoric and Reality* (Florence: Routledge, 2018), 68.

<sup>71</sup> Loescher, *The UNHCR and World Politics*, 35.

that many of them did not want to be repatriated, leading large numbers of people straight to Stalin's labour camps. Because of the resistance of many to repatriate, and because of the worsening of Western-Soviet relations, by the end of 1946 repatriation missions stopped and many Soviet nationals remained outside the Soviet Union.<sup>72</sup> The West and Soviet Union eventually made a deal; that the UNRRA would continue to provide help to the ones that do not want to be repatriated but only for a period of six months. However, even though it seemed like the compromise was made, the US was highly critical of repatriation to the Soviet bloc and decided to cease funding. Very soon after that, the UNRRA ceased to exist, and the International Refugee Organisation (IRO) replaced it as an organisation that completely supported US wishes.<sup>73</sup> The IRO was created in 1946, according to the UN resolution, and it lasted until 1952. Its main activity was resettlement, but it was also in charge of protecting refugee rights.<sup>74</sup> The IRO was the first organisation that tried to create an image of a refugee that was more universal; a definition that was not fitting only to groups of people based on their nationality, but to individuals.<sup>75</sup> Additionally, condition for acquiring refugee status as established by the IRO, was that the person crossed country borders while fleeing.<sup>76</sup> IRO started to work in 1948 with the task to assist nearly one million displaced people and estimated that five years would be enough to complete the task. In the next three years, this organisation settled more than 700,000 refugees at the cost of nearly 400 million dollars.<sup>77</sup> However, after WWII and the end of repatriation and resettlement missions by UNRRA and IRO, a considerable number of refugees remained in Central Europe, the Near East and the Far East.<sup>78</sup> The UNHCR was created as a result of international action initiated in the General Council of the IRO, as a matter of refugee protection after IRO ceased to exist.<sup>79</sup> The fact that the 1951 Convention inherited main components for the refugee definition from the IRO Constitution, supports the claims of researchers dedicated to refugee issues who consider that the

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<sup>72</sup> Loescher, *The UNHCR and World Politics*, 36.

<sup>73</sup> Ibid., 37-38.

<sup>74</sup> Jaeger, *On the History of the International Protection of Refugees*, 732.

<sup>75</sup> Loescher, *The UNHCR and World Politics*, 38.

<sup>76</sup> Charles I. Bevans, *Treaties and Other International Agreements of the United States of America, 1776-1949* (Washington, DC: United States Government Printing Office, 1968), 297.

<sup>77</sup> Barnett and Finnemore, *Rules for the World*, 79.

<sup>78</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees A/2394* (United Nations General Assembly Official Records: Eighth Session, 1954), accessed October 10, 2020,

<https://www.unhcr.org/excom/unhcrannual/3ae68c968/report-united-nations-high-commissioner-refugees.html>, para. 10.

<sup>79</sup> Ibid., para. 16.

UNHCR is created as a past and not future-oriented organization. They assert that it was made to help only those who were already refugees, and not those who were yet to acquire refugee status.<sup>80</sup>

All refugee definitions after WWI testify to the strong belief that if a person is lacking the protection of a home government and has not obtained any other nationality, then that person is a refugee.<sup>81</sup> However, besides criteria of the lack of government protection, the crucial criteria for a person to be defined as a refugee by the international community, in the mid-war period, was a particular national origin. That condition was responsible for excluding large numbers of people from international refugee protection.<sup>82</sup> Narrowness in defining refugees shows that the international community was not ready to help everyone in need, or recognize that there were so many people in a refugee-like position. Decisions on who should be defined as a refugee were political, made by the League of Nations. There are theories that the mandate of the High Commissioner was deliberately narrowed, and without a universal definition in the period before the UNHCR not only because the governments were not ready for a wider help to refugees, but also because they were not ready to recognize political dissidents from allied states. That is, for example, how refugees from fascist Italy and Spain were left without help from the League of Nations.<sup>83</sup>

Because national origin was the main determination in the mid-war period in selection of groups of resettled persons that will receive international refugee protection, significant numbers of people were left excluded from receiving help. Estimates are that in 1926, when the first definitions of a refugee were stated and included only Russians and Armenians, there were around 10 million refugees in Europe.<sup>84</sup> Nansen has in his 1926 report recognized many groups of people in a similar position to Russians and Armenians in several different countries, among them being Assyrians, Assyro-Chaldeans, Ruthenians, Hungarians, stateless Jews from the Russian Empire, etc. But the governments were not forthcoming to all of them and the Arrangement from 1928 extended the Nansen passport system only to persons of Assyrian, Assyro-Chaldaean and Turkish origin.<sup>85</sup>

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<sup>80</sup> Barnett and Finnemore, *Rules for the World*, 81.

<sup>81</sup> Zimmermann, *Part One, Background, Drafting History*, para. 9.

<sup>82</sup> Ibid.

<sup>83</sup> Loescher, *The UNHCR and World Politics*, 27-28.

<sup>84</sup> Zimmermann, *Part One, Background, Drafting History*, para. 8.

<sup>85</sup> Zimmermann, *Part One, Background, Historical Development*, para. 19.

Another example of denial of reality by the international community is the 400,000 refugees that fled from Germany in the period from 1933 to 1939, with about 80 percent of them being Jewish people, who were not considered as ‘Nansen refugees’. Previous ad hoc solutions for refugees and the absence of a universal definition of the refugee enabled the international community not to react. Because the governments were not willing to extend their protection to Nazi refugees, the League of Nations created a separate system for them. The High Commissioner for Refugees (Jewish and Other) coming from Germany was introduced, but it did not have financial support.<sup>86</sup> In 1936 this institution even had ‘optimistic’ predictions with ‘only’ 2400 refugees per year, which was considered manageable.<sup>87</sup> Furthermore, since the idea was to avoid conflict with Nazi Germany, the High Commissioner for Refugees coming from Germany restricted its work only to refugees that already left the country, even though the arrangements and conventions from 1920s and 1930s did not specify border crossing as the condition for receiving status.<sup>88</sup>

International refugee protection in the first two decades proved to be either blind to the major groups of refugees in need, or blind to their wishes and needs by forcibly returning them to their countries of origin without paying attention to the possible consequences. The organizations created were often underfunded or more influenced by international politics, rather than with refugee needs. However, these actions represent the first acknowledgment of international responsibility towards refugees. Legal norms started to develop and the category of refugees was established in international law. It was for small defined national groups and it included only minimal protection, but it was an important step and the first international effort to create norms for the protection of refugees.

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<sup>86</sup> Zimmermann, *Part One, Background, Historical Development*, 69.

<sup>87</sup> Ibid., para. 71.

<sup>88</sup> Ibid.

## 2. Universality of the Refugee Definition

Today, four different categories of displaced people are recognized - colonial, refugee, labour and family migrants.<sup>89</sup> Therefore, not every person that leaves their home and country of origin is a refugee. The root of the word *refugee* is to be found in the Latin language. *Refugium* means “shelter” and *refugere* “to run away, to escape”.<sup>90</sup> However, the origin of the word *refugee* in the English language comes from 17<sup>th</sup> century France. According to the Merriam Webster Dictionary, the French word *réfugié* was referring to the Protestant Huguenots who fled France because of the revocation of the Edict of Nantes in 1685. With the revocation of this edict, Huguenots lost religious liberty and civil rights, causing around 400,000 of them to escape from the country, with many of them leaving for England and Prussia. As a result, within a decade the word refugee started to be used in the English language for any person that was forced to relocate.<sup>91</sup> However, in the context of international refugee protection, the definition of a refugee is not that easy to explain as simply as “a person forced to run away”. It has not maintained a constant meaning in the past hundred years, nor is it a globally unified term.

Even if the reason the person left home was fear or danger, it does not necessarily mean that all the requirements under the international standards for the refugee status are fulfilled. As seen in the previous chapter, ever since the work on international protection of refugees started, the first step in any arrangement was most often to categorize and define who is a refugee. With this initial step, it would be clearly stated to whom the agreement is dedicated, i.e. for whom the protection will be provided. Therefore, although the word refugee was centuries old and already widely familiar, in the 20<sup>th</sup> century, with the development of international refugee protection, it was redefined many times. Creating a clear definition of the term refugee became very important, but also a political matter. It represented a determinant for the ones fleeing their homes that “deserve”<sup>92</sup> or “qualify”<sup>93</sup> for international help, and it became an accountability measurement of the

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<sup>89</sup> Marlou Schrover and Deirdre M. Moloney, *Gender, Migration and Categorisation: Making Distinctions between Migrants in Western Countries, 1945-2010* (Amsterdam: Amsterdam University Press, 2013), 255.

<sup>90</sup> “Origin and Meaning of ‘Refugee,’” Merriam Webster Dictionary, accessed July 1, 2020, <https://www.merriam-webster.com/words-at-play/origin-and-meaning-of-refugee>

<sup>91</sup> Ibid.

<sup>92</sup> UNHCR, *Protection Training Manual for European Border and Entry Officials*, Session 3, 2011, accessed February 25, 2020, <https://www.unhcr.org/4d944c319.html>, 4.

<sup>93</sup> “Key Migration Terms,” International Organisation for Migration Website, accessed July 7, 2020, <https://www.iom.int/key-migration-terms>.



international community, and individual governments, for the help they do or do not provide. Bearing all that in mind, ‘refugee’ in the language context can be observed as much more than just a word or a term. It represents a whole idea with many variations that go in extremes, from privilege and a chance for a better future to suffering and fleeing home; from sympathy and a human right to an economic burden for society.<sup>94</sup> In order to understand how the notion of international refugee protection was defined, one has to start from the definition of a refugee, a determinant of who is entitled to international protection.

## **2.1. The UN Definition of a Refugee**

- **The 1951 Convention as a Benchmark**

The 1951 Convention was the first UN human rights treaty created after WWII, and together with the UNHCR represents the foundation of international refugee protection regime.<sup>95</sup> Drafting process officially lasted from 1946, when the General Assembly initiated it with Resolution 8(I), until the UN Conference of Plenipotentiaries in Geneva in 1951 when it was adopted.<sup>96</sup> Most discussed aspect of this treaty was the definition of the term refugee, since it was changed many times during the drafting process.<sup>97</sup> In the foreword of the Oxford Law Commentary from 2010, Erika Feller, former Assistant High Commissioner, wrote that the 1951 Convention is setting standards of the treatment of refugees and with its adoption, the international community “agreed on a universal definition of the term ‘refugee’”.<sup>98</sup> Whether we interpret this expression as a ‘universal definition’, like the definition that applies to everyone or that it is understood by everyone in the same manner, it raises some questions. It is widely considered that the 1951 Convention and the 1967 Protocol are the most important instruments of international refugee protection. In the aforementioned Oxford Law Commentary, they are described as the essential part of the contemporary refugee law, as “the benchmark” for every national and regional

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<sup>94</sup> Emily M. Feuerherm and Vaidehi Ramanathan, *Refugee Resettlement in the United States: Language, Policy, Pedagogy* (Bristol: Multilingual Matters, 2015), accessed July 4, 2020, <https://doi-org.uaccess.univie.ac.at/10.21832/9781783094585>, 36.

<sup>95</sup> Zimmermann, *Part One, Background, Drafting History*, para. 1.

<sup>96</sup> *Ibid.*, para. 22.

<sup>97</sup> *Ibid.*, para. 24.

<sup>98</sup> Zimmermann, *Foreword*

regulation regarding refugee law.<sup>99</sup> Another indicator of the established influence of the 1951 Convention is the great number of signatory member states, together with the fact that seventy years after its creation, it still carries such great importance.

The definition of a refugee is set in article 1, as an opening point of the Convention, and another indicator of its importance as an initial step for every refugee process:

“For the purposes of the present Convention, the term “refugee” shall apply to any person who:

2) As a result of events occurring before 1 January 1951 and owing to 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>100</sup>

Therefore, the definition clearly states that not only has a person had to flee the country of origin and cross the borders because of the events that happened before 1951 and because of justified fear of persecution in order to receive refugee status, but the reasons of the persecution were also particularly selected and emphasized.

The 1951 Convention also defines who is not eligible, among them being people who committed a crime, refugees who benefit from other kinds of UN assistance or protection, and refugees with equivalent status like nationals in their country of asylum.<sup>101</sup> The definition of a refugee according to the 1951 Convention is very different than all the previous ones, with the exception of the definition created by the IRO. In comparison to the League of Nations, the UN definition is much more inclusive and comprehensive. It does not contain the most exclusive condition that existed in previous ones, the national origin. It recognizes refugees according to their personal experiences, not according to their membership of a particular group. Regarding the previous work on international refugee protection, with article 37 the 1951 Convention is characterized as a

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<sup>99</sup> Zimmermann, *Preface*

<sup>100</sup> UNHCR, *Convention and Protocol*, 14.

<sup>101</sup> *Ibid.*, 16.

replacement for all former agreements and conventions<sup>102</sup>, highlighting the continuance of international refugee work from 1921 to 1951. That acceptance of all previous definitions and the idea of replacing them altogether is part of the universality idea. However, the first article of the Convention, named “Definition of the term ‘refugee’”, begins with: “For the purposes of the present Convention, the term “refugee” shall apply to any person who... .”<sup>103</sup> By adopting expressions such as “for this purpose” or “to refugees as defined in article 1 of the Convention”<sup>104</sup>, space for questioning the comprehensibility of this definition is left in the same manner as before 1951. Were there definitions of refugees for some other purpose? Were there refugees that are not defined by article 1? That kind of phrasing challenges the idea of a ‘universal’ definition of refugee, which will in time and practice show that the term ‘universal’ is also something that needs to be defined.

This is only one example of the terminology used by the UN system that can be seen as problematic. The universalist message of the new refugee definition was strong, but some terms following it were unspecified. Meaning of the terms ‘persecution’ or ‘well-founded fear’ in it, for example, are still part of the scholarly debate. In addition to that, a great effort to define who is a refugee was introduced, but no single article of the 1951 Convention was dedicated to the procedure of determination, which was left to the national institutions.<sup>105</sup> Because the process of the determination of refugee status was not made universal through the 1951 Convention, it leads us to the other perception of universality – the definition that is understood in the same manner by everyone. Although 149 countries signed the 1951 Convention and/or the 1967 Protocol, for every country there was a possibility to make limitations, i.e. possibility to avoid some parts of the Convention upon ratification, accession and succession. Additionally, the possibility that was directly affecting the universality in the way of both global interpretation and inclusion of all refugees was that the Convention did not cover the persons that became refugees because of the events that occurred after 1951, only before, and that the governments had the right to declare themselves on which way they are going to accept the Convention; for the ones connected to events only in Europe or also elsewhere.<sup>106</sup> The mandate of the UNHCR evolved over time and included

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<sup>102</sup> UNHCR, *Convention and Protocol*, 31-32.

<sup>103</sup> Ibid., 14.

<sup>104</sup> Ibid., 10.

<sup>105</sup> UNHCR, *Protection Training Manual*, 4.

<sup>106</sup> Loescher, *The UNHCR and World Politics*, 45.

wider groups of people, but this freedom of interpretation enabled many governments to take a restrictive stance and deny the status of refugees to many displaced persons.<sup>107</sup> Unlike almost any other UN human rights treaty, there is no international authority for interpretation of refugee law, leaving it to the national judges<sup>108</sup>, and because of that, the interpretation is not the same in every country.<sup>109</sup> Paragraph 8 of the UNHCR Statute and article 35 of the 1951 Convention give the right to the UNHCR for overseeing these procedures and implementation of the 1951 Convention. In some countries, the UNHCR even conducts determination on behalf of the country.<sup>110</sup> However, the only obligation the governments have is to apply the Convention in good faith following the Vienna Convention on the Law of Treaties.<sup>111</sup>

The true motives behind the creation of the 1951 Convention have caused many discussions. Most of the theories concern the Cold War, even when it comes to the definition of a refugee. There are arguments that refugee protection was used by the Western countries as a weapon against the Soviet bloc. That escapees represented an asset and the idea that their migration to the West represented disapproval of communism was established. Accordingly, the US equated national security and refugee issues, and as the main criteria for giving refugee status took the fact that the person requesting it was fleeing communism.<sup>112</sup> Choosing persecution as the main criteria for the refugee status can also be seen as the consequence of the Western perception of refugees from the East at the beginning of the Cold War, in which the Eastern rulers are perceived and represented as persecutors.<sup>113</sup>

Later on, in the 1960s and the 1970s, the Cold War spread beyond Europe. As a consequence of decolonization and wars, a large number of refugees emerged, and since the West and the East began fighting for influence over Asia and Africa, helping refugees became a political matter. As a result, by the 1980s, the UNHCR dealt almost exclusively with refugees in non-European states.<sup>114</sup> The US was considering international refugee protection as an asset against the East even

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<sup>107</sup> Zimmerman, *Foreword*

<sup>108</sup> James Hathaway, "Food Deprivation: A Basis for Refugee Status?," *Social Research* 81, no 2 (2014): pp. 327-339, accessed July 20, 2020, <https://www.jstor.org/stable/26549618?read-now=1&seq=11>, 330.

<sup>109</sup> Zimmermann, *Part One, Background, Interpretation of the 1951 Convention*, para. 2.

<sup>110</sup> UNHCR, *Protection Training Manual*, 5.

<sup>111</sup> Zimmermann, *Part One, Background, Drafting History*, para. 2.

<sup>112</sup> Loescher, *The UNHCR and World Politics*, 7.

<sup>113</sup> *Ibid.*, 44.

<sup>114</sup> *Ibid.*, 9-10.

before the UNHCR, by funding and leading the IRO. Allegedly, the West, especially the US, pressured the IRO to apply the refugee definition more freely, to accept a big number of escapees.<sup>115</sup> There are arguments against the idea that the Cold War influenced the formation of the 1951 Convention as a weapon against the East because, for example, Western powers such as France, United Kingdom and USA were disagreeing with the universal definition of a refugee, with the US not even ratifying the 1951 Convention.<sup>116</sup> However, many valid indicators go against this objection. Firstly, the socialist bloc did not participate in the making of the UNHCR nor the 1951 Convention because they did not want to protect refugees whom they saw as traitors. Therefore, this global instrument for solving refugee problems is created without communist countries.<sup>117</sup> From the twenty-six countries involved in the negotiations about the 1951 Convention, Yugoslavia was the only one from the Soviet bloc.<sup>118</sup> And by that time Yugoslavian-Soviet relations had seriously deteriorated since the Tito-Stalin split had already happened in 1948. Secondly, when the 1956 Hungarian crisis happened following invasion by the Soviet Army, the UNHCR immediately responded by helping to resettle nearly 200,000 refugees to Austria and Yugoslavia, successfully finding a way to avoid the exclusion clauses of the 1951 Convention. The High Commissioner decided that the cause of this crisis can be traced to the events before 1951 and that it is acceptable to consider all Hungarians in Austria and Yugoslavia as *prima facie* refugees, because the number of displaced persons did not enable them to determine the individual status of a refugee.<sup>119</sup> Therefore, whether or not the Cold War was the driving force behind the creation of the UNHCR and 1951 Convention and its definition of who is a refugee, they were used by the Western powers when needed and as a method of spreading their influence.

The definition of the refugee that the UN system set in 1951 is the guiding principle of action for this and many other organizations and governments to this day. But its content shows that, although the international community of 1951 tended to create something new and innovative, old ideas about who are considered refugees are deeply rooted in society and not easily changeable. Many aspects of every definition created during the period of three decades, from 1921 to 1951, could be traced to earlier definitions. Although the UNHCR improved previous international refugee

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<sup>115</sup> Loescher, *The UNHCR and World Politics*, 39.

<sup>116</sup> Zimmermann, *Part One, Background, Drafting History*, para. 43.

<sup>117</sup> Loescher, *The UNHCR and World Politics*, 43.

<sup>118</sup> *Ibid.*, 45.

<sup>119</sup> *Ibid.*, 85-86.

policy in many ways, with this continuity, it also inherited many flaws and mistakes of previous organizations.

- **The 1967 Protocol as a Truly Universal Definition**

Disagreements among states during the preparation of the 1951 Convention concerned the universality of the definition, not its substance. There were issues about the territorial applicability, but everything else seemed adequate as the solution for every known case.<sup>120</sup> As already discussed, the general notion was that the idea of universality prevailed with the creation of the 1951 Convention, because it included all people regardless of their nationality.<sup>121</sup> But that can only be a matter of perception if it is compared solely to the previous definitions and not to all the people that were excluded. Despite the conviction of the universality, the geographical and time limitations of the 1951 Convention soon became too big of an obstacle for the UNHCR, which did not have those kinds of limitations in its statute, to impose itself as a leading refugee organization. Because of these limitations, African countries were not willing to sign the 1951 Convention and to commit to cooperation with the UNHCR, leaving this organisation powerless in Africa.<sup>122</sup> The idea of the High Commissioner was that the 1951 Convention remain the principal global guideline for international refugee protection. When the Organisation of African Unity (OAU) started working on an African refugee convention, the wish of the UNHCR was to make it a subsidiary instrument. Therefore, as a result of the African initiative and of the activities of the UNHCR that were already widely outside of Europe, the idea of the limitless definition was gaining more attention in the UNHCR, leading to the creation of the 1967 Protocol.<sup>123</sup> In his explanation to the ExCom, the High Commissioner emphasized that the biggest differences between the 1951 Convention and the proposed African convention would disappear with the removal of the temporal limitation from the 1951 Convention.<sup>124</sup> The proposal was submitted by the UNHCR to ECOSOC and the *Protocol to the Convention Relating to the Status of Refugees*,

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<sup>120</sup> Zimmermann, *Part One, Background, Drafting History*, para. 40.

<sup>121</sup> Ibid., para. 41.

<sup>122</sup> Ibid., para. 70.

<sup>123</sup> Ibid., para. 71.

<sup>124</sup> Ibid., para. 75

the so-called 1967 Protocol, was formally adopted and entered into force in 1967.<sup>125</sup> This was the only amendment to the 1951 Convention that was made.<sup>126</sup>

It is a treaty supplement to the 1951 Convention, with almost the same obligations and definition, but with the idea to make international refugee protection limitless, without temporary and geographical boundaries. Even though the 1967 Protocol is referring directly to the 1951 Convention, it is an independent instrument, so signing it is not conditioned by first signing the Convention.<sup>127</sup> Cabo Verde, the United States of America and Venezuela signed only the 1967 Protocol, not the 1951 Convention.<sup>128</sup> The UNHCR considers that the Protocol gave the Convention “a universal coverage”.<sup>129</sup> The Protocol, however, showed that in the international community opinion prevailed that only the geographical and temporal limits of the 1951 definition should be changed, not the content itself. In the meantime, the UN refugee definition led to so many obstructions in providing help for refugees, by its limitations and by the political meaning that the term refugee was carrying with it, that in practice, many years before the creation of this Protocol, ad hoc solutions in the form of the good offices system had to be created.

To avoid the political consequences, the General Assembly had to allow the provision of help to Chinese refugees in Hong Kong without determining them as refugees, because the UK wanted to avoid to name Mao Zedong as a persecutor of its people at any cost, since the UK was one of the first states to establish relations with People’s Republic of China.<sup>130</sup> Later on, in 1959, this system was officially empowered when the UN General Assembly permitted the UNHCR to decide to which group of refugees was going to use this system, without the permission of the General Assembly.<sup>131</sup> After the 1967 Protocol, this kind of ad hoc solution was not supposed to be necessary anymore. The UNHCR could, under its mandate, address all refugees in every continent, no matter the event that caused displacement. However, the good offices system had to stay in use

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<sup>125</sup> Zimmermann, *Part One, Background, Drafting History*, para. 78

<sup>126</sup> UNHCR, *Convention and Protocol*, 2.

<sup>127</sup> Zimmerman, *Part One, Background, Drafting History*, para. 68.

<sup>128</sup> UNHCR, *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol* (2015), accessed June 5, 2020, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>, 1.

<sup>129</sup> UNHCR, *Convention and Protocol*, 2.

<sup>130</sup> Loescher, *The UNHCR and World Politics*, 93.

<sup>131</sup> *Ibid.*, 100.

because the 1967 Protocol did not make the UNHCR mandate global enough to include all displaced persons, the biggest being internally displaced persons.

Before the creation of the 1967 Protocol, awareness about the IDPs and their need for protection existed, but the UNHCR was not willing to take responsibility for them. In 1966, a year before the 1967 Protocol was created, President Kennedy appealed to the UNHCR to assist the refugees in South Vietnam, but the High Commissioner rejected this appeal with the explanation that the internally displaced persons were not under their mandate.<sup>132</sup> Later, when the IDPs could not be ignored anymore, they received help from the UNHCR through ad hoc solutions, and that is how the good offices system remained in the UNHCR's work, helping, for example, internally displaced people in Laos, Vietnam<sup>133</sup> and the South Sudan Operation in the 1970s.<sup>134</sup> This is one of the examples that show that the character of the 1967 Protocol seemed universal only because it made the existing refugee definition more widely acceptable, not because it included all other people in refugee-like situations.

The process of the creation of the 1967 Protocol and its content shows that not much had changed in the period between then and 1951. The definition was still seen as fitting and the temporary and geographic limitations were the only issues that the international community tried to solve, even though other issues were already familiar by that time.<sup>135</sup> Everything else that had to be fixed, until today, stayed within the good offices system because it proved to be highly practical. It does not have temporal and geographic restrictions and this system is allowed to assist refugees without the persecution determination. In addition to that, it is less demanding since the good offices system usually provides material assistance only and not legal protection.<sup>136</sup> The introduction of the good offices system by the Resolution of 1959 was a recognition of the limits of the UN definition, acknowledgment that many refugees were overlooked by the 1951 Convention. Although the good offices system could not provide benefits to the refugees in the same manner as the refugee status

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<sup>132</sup> Loescher, *The UNHCR and World Politics*, 144.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid., 150.

<sup>135</sup> Zimmermann, *Part One, Background, Drafting History*, para. 79.

<sup>136</sup> Barnett and Finnemore, *Rules for the World*, 88.



under the 1951 Convention, it did introduced help for the refugees that were not included in the UNHCR mandate.<sup>137</sup>

In the end, the definition of the OAU that was one of the reasons the 1967 Protocol was even considered, proved to be more inclusive than the UN definition, because it includes accidental victims of violence.<sup>138</sup> The first part of their definition is identical to the one from the 1951 Convention. However, it has an additional part:

“The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality.”<sup>139</sup>

This means that, unlike the 1951 Convention, the OAU recognized as refugees not only persons that fled their homes because of specific reasons of persecutions, such as political opinion or religion, but also persons that fled because they felt unsafe as a result of the situation in their surroundings, for example because of war.

The interpretations of the governments of the refugee definition were further limiting the protection according to their interests. The states of the first asylum would often interpret the 1951 Convention in a more restrictive way. By 1970, 59 states were signing members of the Convention and 43 of the Protocol. Until then, all major states of asylum, like Austria, the Federal Republic of Germany and France, did not sign the 1967 Protocol. Additionally, of the 59 States, 14 made reservations to consider only persons who are refugees because of the events in Europe.<sup>140</sup> Therefore, not only did the Protocol not address many issues that existed in international refugee protection, but it also did not have a great response in the first couple of years.

Today, the 1951 Convention and the 1967 Protocol remain the core international instruments for protecting refugees. Until now, they have been complemented with regional instruments, most

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<sup>137</sup> Austin T. Fragomen, “The Refugee: A Problem of Definition,” *Case Western Reserve Journal of International Law* 3, no. 45 (1970): pp. 45-70, accessed July 22, 2020, <https://scholarlycommons.law.case.edu/jil/vol3/iss1/4>, 59.

<sup>138</sup> Zimmermann, *Part One, Background, Drafting History*, para. 80.

<sup>139</sup> Organisation of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), 1969, accessed July 7, 2020, <https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>, 3.

<sup>140</sup> Fragomen, *The Refugee: A Problem of Definition*, 59-60.

importantly the 1969 OAU Convention and the 1984 Cartagena Declaration, which both have broader refugee definitions.<sup>141</sup> Similarly to OAU Convention, in Cartagena Declaration criteria for refugee status is also generalized danger and war. It declares that under the persons eligible for refugee status, besides the ones fulfilling the criteria according to the 1951 Convention, also includes “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”<sup>142</sup> This provision became incorporated into the legislation of most Latin and Central American countries.<sup>143</sup> Therefore, at least two more inclusive instruments for refugee protection were created after the 1951 Convention and 1967 Protocol. Interestingly, in the Handbook for Parliamentarians made in 2017, the UNHCR reiterates that the 1951 Convention and the 1967 Protocol are core instruments,<sup>144</sup> but it also encourages the governments to accept the refugee definitions from the OAU Protocol and Cartagena Declaration.<sup>145</sup>

## 2.2 Limitations in Defining

- **The Excluded Ones**

The refugee problems today for many seem unsolvable; a never-ending issue that remains a permanent part of our reality. One of the main reasons for that pessimistic view is the awareness that international refugee protection is dealing with consequences only, without any interference in solving the cause. However, at the time when the UNHCR was created, the refugee issues were observed in a much more optimistic way. The end of the refugee problems seemed in sight, so this organization, like the IRO before it, started with a predetermined duration. With time, however, it became impossible to ignore the fact that the refugee community is much larger than it was initially

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<sup>141</sup> UNHCR, *A Guide to International Refugee Protection and Building State Asylum Systems. Handbook for Parliamentarians* N° 27 (2017), accessed September 1, 2020, <https://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>, 146.

<sup>142</sup> Ibid., 252.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid., 15.

<sup>145</sup> Ibid., 220.

perceived. Today, the number of refugees recognized by the UNHCR is much greater than 70 years ago. In 1951 the UNHCR was protecting 2,1 million people out of 2,5 billion world population, while in 2019 that number was 20,4 million out of 7,7 billion population.<sup>146</sup> Speaking in percentages, in seven decades the UNHCR went from protecting 0,08 percent to protecting 0,2 percent of the human population. Those include only refugees officially under the mandate, additionally the UNHCR developed significantly in many ways in the meantime. The initial mandate was three years and for the next half of century, it was prolonged for a couple of years more. In 2003, however, the UNHCR became the permanent UN organisation for dealing with the refugee problems, when General Assembly extended its mandate until “the refugee problem is solved”.<sup>147</sup> Additionally, today many other groups besides refugees, namely “people of concern”, receive some kind of help from the UNHCR. With time, the flaws of the refugee regime were detected; more people were included in international protection with instruments such as the good offices system, the OAU Convention and the Cartagena Declaration. However, it remains questionable if the percentage of refugees recognized by the UNHCR increased because of the development of the UNHCR ideas or because of the simple increase of the world population and displaced persons as a consequence of violence and wars that happened in the meantime. The UNHCR protection regime did develop but through recommendations and ad hoc solutions. The basis and its main work remained firmly tied to the 1951 Convention and the 1967 Protocol, instruments which proved to be very limited in recognizing refugees. Definition of a refugee established with these instruments either deliberately excluded or simply overlooked many groups of people, forcing the UNHCR to find ad hoc solutions to help people that did not have a way to become a part of its mandate as long as the 1951 Convention and the 1967 Protocol are in force.

In the same way, as the 1951 Convention defines who is entitled to refugee status, it also gives strict criteria who is not. In this group, are persons that are receiving assistance from some other UN agency, persons in possession of the same rights and obligations as the nationals of the country in which they took refuge, or “any person with respect to whom there are serious reasons for

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<sup>146</sup> “Refugee Statistics,” UNHCR Website, accessed September 1, 2020, <https://www.unhcr.org/refugee-statistics/download/?url=Ns8D>.

“World Population by Year,” Worldometer, accessed September 1, 2020, <https://www.worldometers.info/world-population/world-population-by-year/>.

<sup>147</sup> “Governance and Organization,” UNHCR Website, accessed May 24, 2020, <https://www.unhcr.org/ceu/147-enabout-usgovernance-and-organization-html.html>

considering” that has committed several different categories of crime or “has been guilty of acts contrary to the purposes and principles of the United Nations.”<sup>148</sup> The 1951 Convention also states that persons lose their refugee status because of the re-acquisition of their own or acquisition of a new nationality, voluntarily return to the country from which they have fled or when the situation that caused their refugee status ceases to exist and they can return home.<sup>149</sup> As they are similar in defining the ones deserving of refugee status, the 1951 Convention and the UNHCR Statute have similar rules for the ones that are not eligible.<sup>150</sup> For the successful and international acceptance of the 1951 Convention, it was necessary to protect the reputation of receiving countries and the whole refugee protection regime.<sup>151</sup> That is why the article 1 forbids the ones that have committed crimes to gain refugee status and article 33 of the 1951 Convention declares that it is not valid for refugees that are perceived as dangerous, for “whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”<sup>152</sup> Therefore, persons that committed crimes are excluded from the right to asylum, even if there is a real chance that they will be persecuted when they return to their country of origin. That decision was made to attract the states to sign the 1951 Convention, with France insisting on it most prominently. Belgium and the UK were initially against it, but eventually adhered to it.<sup>153</sup>

States can admit whomever they want, but it is mandatory that they cannot grant refugee status to anyone that falls under this exclusion clause. This clause is problematic because, firstly, it is not aligned with the international human rights law, which says that the person cannot be returned where torture or inhuman treatment is awaiting.<sup>154</sup> Secondly, the governments decide who is guilty or not, according to the “serious reason for considering” criterion, which creates a lot of space for restricted interpretation of the refugee definition.<sup>155</sup> The matter of perception is bringing more confusion because not every crime is seen in the same way in every state. For example, a crime may not be judged as a serious crime in the country of origin of the refugee, while it may be in the

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<sup>148</sup> UNHCR, *Convention and Protocol*, 16.

<sup>149</sup> *Ibid.*, 15.

<sup>150</sup> UNHCR, *Statute*, 11.

<sup>151</sup> James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge: Cambridge University Press, 2014), 566.

<sup>152</sup> UNHCR, *Convention and Protocol*, 30.

<sup>153</sup> Hathaway, *The Law of Refugee Status*, 525-526.

<sup>154</sup> *Ibid.*, 528-529.

<sup>155</sup> *Ibid.*, 532-533.

country of refuge, and vice versa.<sup>156</sup> In addition to this, it is questionable whether it's legitimate to deny refugee status to the person that has already served their sentence.<sup>157</sup> The definition of who is not a refugee had the same importance as defining who the refugee is in the creation of the 1951 Convention, which put them both in the same position, sharing the first article. However, together with many other parts of the Convention, the criterion is not strictly defined, leaving a lot of room for different interpretations. That is also the case with the condition regarding the UN purpose and principles, where it is not clearly defined what that represents. Therefore, this loose definition of the ones that are not refugees only confirmed the case that a person can be a refugee in one country while at the same time being denied that status in the other, leading us back to the discussion about the universality of the 1951 definition.

As already mentioned in the previous pages, internally displaced persons are also left out of the 1951 Convention. One of the theories as to why that was the case, was because of the American pressure on narrowing the definition of a refugee.<sup>158</sup> The US wanted to limit the power of the UNHCR and focus more on the US Escapee Program and the Intergovernmental Committee on Migration, future International Organisation for Migration (IOM), which would help refugees from communist countries, as they were the main American concern regarding refugee issues.<sup>159</sup> In the opinion of the US government, including IDPs would demand big material expenses and not only legal protection from the UNHCR, but also assistance operations. Although the UK, Canada, Belgium, Turkey and some other countries wanted a wider definition, they did not succeed. France was the biggest ally of the US and their idea of narrow interpretation prevailed, leaving the internally displaced persons out of the refugee definition.<sup>160</sup> Even though at the beginning of the international refugee protection, initial definitions, made in the 1920s and 1930s, were dealing with the lack of state protection, not border crossing.

Recognition that the organized help for IDPs was necessary came with time and led to the creation of the appointment of the Representative for IDPs in 1991 by the UN Secretary-General. Nonetheless, the UNHCR did not have a great enthusiasm for helping them.<sup>161</sup> Some basic

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<sup>156</sup> Hathaway, *The Law of Refugee Status*, 547.

<sup>157</sup> Ibid., 543.

<sup>158</sup> Orchard, *Protecting the Internally Displaced*, 64.

<sup>159</sup> Ibid., 74.

<sup>160</sup> Ibid., 77-78.

<sup>161</sup> Loescher, *The UNHCR and World Politics*, 293.

guidelines for the UNHCR work with the IDPs was set in 1993, but they were intentionally broad and flexible. The UNHCR did not want any commitment, only the opportunity to be involved when they see fit, which these loose guidelines enabled them to do.<sup>162</sup> That same year, in 1993, in one interview High Commissioner Sadako Ogata declared that she sees the problem of the IDPs as the problem of the states.<sup>163</sup> Therefore the IDPs remained outside of the mandate of the UNHCR and the High Commissioner received only a General Assembly authorization for some operations in certain circumstances. The formal criteria that the General Assembly has created in the 1990s, under which the UNHCR can assist IDPs, among others include authorization of the General Assembly and the state concerned and adequate resources.<sup>164</sup>

As already mentioned in the introduction, there are 79.5 million displaced persons around the world. The UNHCR represents itself as an organisation that is in charge of all of them. As people of concern, it lists not just refugees, but asylum seekers, IDPs and stateless persons as well. The problem is that from this self-representation it is not very clearly explained that not all of them are on equal footing regarding international protection, and that only 20.4 million of these people are officially under the UNHCR mandate. The biggest part of these 79.5 million people, 45.7 million people, are IDPs and the fact is that they are falling outside the definition of a refugee.<sup>165</sup> Because they did not cross the border while they were fleeing their homes, they do not have legal status and protection as refugees do. They do not have a special status in international law, and according to the UNHCR, unlike the term refugee which carries distinct rights with it, the term internally displaced person is “merely descriptive.”<sup>166</sup> In the annual report for 1954, the High Commissioner demanded that: “it must never be forgotten that the refugees are people who have made a sacrifice for the sake of freedom”.<sup>167</sup> If leaving home is a necessary sacrifice for receiving international help, then where is the difference between refugees and IDPs? The High Commissioner gave the answer to that question in the same statement: “Every refugee who has reached freedom is entitled to normal, decent and independent life”<sup>168</sup>, highlighting the border crossing and “reaching

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<sup>162</sup> Loescher, *The UNHCR and World Politics*, 294.

<sup>163</sup> Ogata Sadako et al., “The Evolution of UNHCR,” *Journal of International Affairs* 47, no. 2 (1994): pp. 419-428, 1994, accessed July 20, 2020, <http://www.jstor.org/stable/24357289>, 420.

<sup>164</sup> “IDPs”, UNHCR Emergency Handbook.

<sup>165</sup> “Figures at a Glance”, UNHCR Website

<sup>166</sup> “Questions and Answers about IDPs,” OHCHR, accessed September 10, 2020, <https://www.ohchr.org/EN/Issues/IDPersons/Pages/Issues.aspx>.

<sup>167</sup> *Report A/2648*, 1955, para. 268.

<sup>168</sup> *Ibid.*, para. 269.

freedom” as the precondition for entitlement for receiving international help and a “normal life”. There is no organisation with the mandate to protect IDPs and the UNHCR remained of the opinion that they are the states' responsibility throughout the whole 20<sup>th</sup> century.<sup>169</sup>

On the question of how does the UNHCR prioritize the refugee situations, High Commissioner Ogata in 1993 replied using the example of Burundi. She said that Burundi at that time had to be a priority because in two weeks 675,000 people became refugees, that she is aware that there are many left that did not cross the border, that the UNHCR will try to involve other organizations to help them, but that IDPs are not under their mandate and that “the very absence of the IDPs in our mandate creates prioritization”. She also added that “We may be able to choose among those who did not cross borders, but we must give attention to all those who have.”<sup>170</sup> These kinds of statements, together with many exceptions that the UNHCR is making, show that the established rules of this organisation often serve as an excuse for what is not done, and less as a guideline of what needs to be done. Practice of the UNHCR showed that the rules can always be bent with ad hoc solutions and regulations when it is needed, but that they are also very useful as a defence against the accusations of exclusiveness and ineffectiveness.

- **De Facto Refugees**

Internally Displaced Persons are not the only group of refugees not officially under international refugee protection. Some remained outside the system because the UNHCR from the beginning had a narrow mandate or because of the international political interests, but some however, were simply overlooked. In one of the reports, the High Commissioner addressed the refugees living in camps as “forgotten people”<sup>171</sup>, although there are several categories of displaced persons that deserved this attribute even more, since they were not even considered to be categorized as refugees. The definition of “de facto refugee” is not easily traceable. The glossary of the UN does not explain this term, even though it is using it occasionally. The official website of the European Union however, states that a de facto refugee is a: “Person not recognized as a refugee (within the meaning of Art. 1A of the Geneva Refugee Convention and Protocol) and who is unable or, for reasons recognized as valid, unwilling to return to their country of origin or country of nationality

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<sup>169</sup> Ogata et al., *The Evolution of UNHCR*, 420.

<sup>170</sup> Ibid.,

<sup>171</sup> *Report A/2648*, 1955, para. 269.

or, if they have no nationality, to the country of their habitual residence.”<sup>172</sup> This term, like the good offices system, can be seen as symbolic of the UN failures in an attempt to create a universal definition with the 1951 Convention. De facto refugees are the ones that most often do not fit into the refugee protection definition because they are fleeing the persecution which cannot be connected to the reasons of race, religion, nationality, membership of a particular social group or political opinion, as is demanded by the article 1 of the 1951 Convention. Although the reasons for the persecution are clearly stated, none of the international instruments of the refugee protection defined the term “persecution” itself.<sup>173</sup> As a result, many groups of people are denied in their asylum application.

Until 1970, the UNHCR refugee definition was completely formed with the 1951 Convention and the 1967 Protocol. However, already in 1970, the full spectrum of the flaws of this kind of categorization of refugees was visible. Austin T. Fragomen Jr., a member of the District of Columbia Bar and an assistant counsel for the House Judiciary Committee working with Immigration and Nationality laws at that time, had strong opinions about the created international refugee regime.<sup>174</sup> Unfortunately, almost all of the problems he addressed are still valid today. Although he later on criticized the work of the United States Committee for Refugees, he praised their definition of a refugee as much more inclusive and realistic in comparison to the UNHCR Statute definition. As a result of that, he claimed that in 1970 there were approximately 3.5 million refugees recognized by the UNHCR and approximately 17.3 million according to the US Committee for Refugees, only because the US Committee recognized as a refugee everyone that has lost “a minimally decent life”, regardless of whether the person crossed the border while fleeing or not.<sup>175</sup> He also wrote about the problem of IDPs, their exclusion and the denied help for “economic”, namely refugees forced to flee because of economic instead of political reasons, and people fleeing their country because of natural disasters and civil wars.<sup>176</sup> His conclusion was very clear: “First, the refugee is at the will of a definition and its administration. Second, each definition is functional in nature and is created in light of certain predetermined objectives.” With this, he

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<sup>172</sup> “De Facto Refugee,” European Union Website, accessed July 5, 2020, [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_search/de-facto-refugee\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/de-facto-refugee_en)

<sup>173</sup> Atle Grahl-Madsen, “Identifying the World's Refugees,” *The Annals of the American Academy of Political and Social Science* 467 (1983): 11-23, accessed July 22, 2020, <https://www.jstor.org/stable/1044925>, 15.

<sup>174</sup> Fragomen, *The Refugee: A Problem of Definition*, 45.

<sup>175</sup> Ibid., 56.

<sup>176</sup> Ibid., 57-59.



highlighted how important the definition of a refugee is and how much a protection of displaced persons depend on it. He also implied that the review of the major definitions is necessary and that above all, the definition should be very wide for providing food and material assistance, but also that it should include persons that fled their homes because of the natural disasters or military operations.<sup>177</sup>

The 1951 definition is based on the connection between the citizen and the state, with its roots in the first definitions from the 1920s based on nationality and government protection. When this connection is broken, as in the case of refugees, the manifestation is persecution.<sup>178</sup> That is exactly why the persecution criterion is a major problem behind all the issues with the refugee definition. It represents the idea of government oppressing the citizen, but not the situation when the government cannot protect or provide basic needs to its citizens or protect them from violence and natural disasters.<sup>179</sup> Government incapability to protect its citizens from civil wars, genocides or any other kind of violence should be sufficient for refugee status, as it is when the government is an oppressor. The same problem applies when rejecting refugee status for the victims of natural disasters because they are not considered political events. Even though these disasters are often made even worse with the government actions when for example, the famine can be caused by the unfair and corrupt distribution of help or because of the hoarding of grain or when natural disaster emerges as the result of the state negligence.<sup>180</sup> There are examples when the Government would go far beyond the 1951 Convention in helping refugees. The B refugees, for example, is the category of refugees in Sweden that do not fit in the 1951 Convention but are recognized by the 1980 Alien act as de facto refugees.<sup>181</sup> On the other hand, however, governments often respond with exclusion of displaced people under various pretexts. For example, there are cases where the governments imposed non-eligibility criteria for large groups of people only on the ground of certain ethnic or some other background.<sup>182</sup> Therefore, the system left so much space for

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<sup>177</sup> Fragomen, *The Refugee: A Problem of Definition*, 64-65.

<sup>178</sup> Andrew E. Shacknove, "Who Is a Refugee?" *Ethics*, 95(2), (1958): 274-284, accessed July 22, 2020, <https://www.jstor.org/stable/2380340>, 275.

<sup>179</sup> Ibid., 277-278.

<sup>180</sup> Ibid., 279-280.

<sup>181</sup> Grahl-Madsen, *Identifying the World's Refugees*, 18.

<sup>182</sup> Ibid., 21.

government interpretation of criteria, that a displaced person considered as a refugee under the mandate of the UNHCR in Norway might not be seen as such in Italy, and vice-versa.<sup>183</sup>

In the aforementioned interview from 1993, High Commissioner Sadako Ogata was also asked if she believed that the refugee definition was still valid, her answer was: “it’s a very important basis for current efforts because it contains the (core) principles, in particular the principle of protection”, adding how significant the concept of non-refoulement is. She further stated that the OAU Convention has enriched the definition and when asked if redefining the term “refugees” is required to deal with the volume of people, she answered: “We don’t have to redefine anything, we just have to deal flexibly with new situations.”<sup>184</sup> Exactly that kind of flexibility is behind these problems regarding the definition that many are debating because it leaves many people depending on the goodwill of the UNHCR. Many General Assembly resolutions widened the power of the UNHCR, so today this organisation takes care of some groups of IDPs, too, for example, but it depends on the decision of the High Commissioner whether and to what extent the UNHCR would help.<sup>185</sup> Flexible and loose rules are providing help for one group of people while at the same time ignoring the others in the same situations, leading us back to the first definitions of the refugee and the question of how far did the international refugee protection develop over one hundred years? The argument could be that widening the mandate with resolutions and a good offices system is better than not helping at all; that it is better to spread the system to some than to none, and that it is a step forward in comparison to the beginnings. However, as long as the international protection regime is not redefined and acknowledged as insufficient, as long as the help is based on the goodwill and the good offices system, and as long as the basic instruments used are the ones that were many times proven unsuitable for the contemporary situation, the refugee protection that goes beyond the Convention and does help de facto refugees will be on the level of charity, not an obligation towards an international protection system.

For the past 70 years, the flaws of the 1951 Convention were shown many times. That can also be said for the very foundations, for the definition of the refugee. Besides the groups of people that were mentioned in the 1951 Convention as the ones that are intentionally excluded from the right to refugee status, time has shown that there are others that were simply not even considered. This

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<sup>183</sup> Grahl-Madsen, *Identifying the World's Refugees*, 17.

<sup>184</sup> Ogata et al., *The Evolution of UNHCR*, 420-421.

<sup>185</sup> Grahl-Madsen, *Identifying the World's Refugees*, 20.

category consists of roughly half of all displaced persons, namely women. In the period when the 1951 Convention was created, there was a little attention to fact that women can be refugees, too.<sup>186</sup> The most basic analysis of the 1951 Convention and the 1967 Protocol leads to the conclusion that it was dedicated to men in the first place. For my research, I used the 2010 edition of these two instruments. The pronoun ‘he’ is used 38 times in comparison to the pronoun ‘she’, which is used only one time: in the introduction which was written in 2010. In addition, these pronouns were most often used to refer to the nouns ‘person’ and ‘refugee’, which are gender-neutral. But the conclusion that the definition and the whole 1951 Convention was made for men is not something based only on these kind of trivial examples. It is recognized by the UNHCR itself. The UNHCR *Protection Training Manual for European Border and Entry Officials* is a training manual published in 2011. It is created by the UNHCR for the European Union entry and border officials and UNHCR staff and partners, with the purpose of education on the rights of refugees and asylum seekers.<sup>187</sup> Session 3 of the Manual is named *Who is a refugee?* and in it the neglect of women in the creation of the refugee definition is confirmed. It is stated that the 1951 Convention has been created according to the male experiences, and because of that, many sufferings characteristic for women, such as rape or domestic violence, are often not recognized as persecution.<sup>188</sup> According to this Manual, consideration of gender in the context of persecution started developing in the mid-1980s.<sup>189</sup> However, the improvement is slow and questionable.<sup>190</sup> Women have problems proving that they qualify for refugee status because sexual violence, female genital mutilation, dowry burnings, acid attacks, female infanticide or forced prostitution are not recognized as persecution under the 1951 definition.<sup>191</sup> Secondly, the problem of unrecognized refugees that are fleeing their homes due to economic reasons is directly affecting female refugees. Women are much more vulnerable in the job market and education. They are often forced to work exploitive jobs and to tolerate abuse in relationships because they are economically dependent.<sup>192</sup> There are many other barriers for women in seeking international refugee protection, and one of the reasons for gender inequality of the 1951 Convention is that at the time of its creation, there were no special

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<sup>186</sup> Schrover and Moloney, *Gender, Migration and Categorisation*, 258.

<sup>187</sup> UNHCR, *Protection Training Manual, Introduction*, 1.

<sup>188</sup> UNHCR, *Protection Training Manual, Session 3*, 8.

<sup>189</sup> Ibid.

<sup>190</sup> Nahla Valji, “Women and the 1951 Refugee Convention: Fifty Years of Seeking Visibility,” *Refuge: Canada's Journal on Refugees* 19(5), (2001): pp. 25-35, accessed April 1, 2020, <https://doi.org/10.25071/1920-7336.21227>, 26.

<sup>191</sup> Ibid., 26.

<sup>192</sup> Ibid., 27.

international efforts in protecting women's rights.<sup>193</sup> The UNHCR statement from 1985 that states can consider women under the 'particular social group' of the article 1 of the Convention, was the first admittance that protecting women refugees was not good enough, but there is still much work left regarding that matter. Today gender-specific persecution is recognized in only a couple of states.<sup>194</sup> It took many years to realize that women's persecution is different from the one prescribed by the 1951 Convention.<sup>195</sup> Nonetheless, the 1951 Convention remains unchanged and gender equality in international refugee protection is still the matter of only guidelines, recommendations and goodwill of the governments.

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<sup>193</sup> Valji, *Women and the 1951 Refugee Convention*, 27.

<sup>194</sup> Ibid., 32.

<sup>195</sup> Ibid., 33.

### 3. Standardization of International Refugee Protection

The United Nations represents itself as “the world’s only truly universal global organization” because it addresses issues that are supranational.<sup>196</sup> The reason why the term used is global and not international is probably based in the idea of a globally unified system of values that transcends nations, states and regions. As one of the UN organizations, the UNHCR follows this narrative and also represents itself as a global organization.<sup>197</sup> Interestingly, that kind of perception exists already since the 1950s. In his statement from 1957, the High Commissioner described his mandate as global, long before the 1967 Protocol lifted its geographical and time limitations.<sup>198</sup> In this global work, the tendency for the creation of the unified and universal system is often highlighted. Therefore, the idea behind the UNHCR can be defined as the idea of a unified, global regime that establishes a system in which a refugee is treated in the same way in every place in the world. The instruments that the UNHCR is using for that purpose, from the very beginning of its establishment, are the international and intergovernmental agreements. The main ones are of course the 1951 Convention and the 1967 Protocol, but there are many others that the UNHCR has promoted, often even participating in its making, that protect many aspects of refugee life. With these documents, the UNHCR created and/or promoted standards, with the idea to become globally accepted, on the proper way to assist refugees.

In the previous chapters, I have described how the precondition of these rights is for the person to be officially recognized as a refugee. From that point onwards, the UN system is prescribing many rules and standards that the states are supposed to respect in fostering refugee rights. Today, more than ever, the UNHCR, with 149 signing member states of the 1951 Convention and/or the 1967 Protocol, can be considered a global organization. However, the unified regime with the same treatment of every refugee in the world is the questionable part of the initial idea. The fact that questions are present not only in the theory of the international refugee protection that the UNHCR

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<sup>196</sup> “Global Issues Overview,” United Nations Website, accessed September 1, 2020, <https://www.un.org/en/sections/issues-depth/global-issues-overview/>.

<sup>197</sup> “About Us,” UNHCR Website

<sup>198</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/3585/Rev.1)* (United Nations General Assembly Official Records: Twelfth Session, 1958), ANNEX I REPORT OF THE UNREF EXECUTIVE COMMITTEE 10 (Fourth session - Geneva, 29 January to 4 February 1957), accessed August 30, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c710/report-united-nations-high-commissioner-refugees.html>, para 110.

is propagating but also in the way this organisation is implementing the standards of its own theory. Because, the international refugee protection is not only on paper, consisted of conventions and agreements, but also the enforcement of these instruments. Therefore, it is important to consider how strictly the UNHCR respected its own rules and whether or not they were in contact with the everyday problems faced by refugees? But also, in what way was the standardization affected by the changing and expanding of the UNHCR and the whole system of international refugee protection?

### 3.1. Standards in Theory

- **Idea**

Globalism and universalism can be seen as the foundation of ideas behind the UNHCR, which is completely understandable considering that this organisation is part of the UN system. Although many organizations were dealing with refugee problems before 1951, from which the UNHCR inherited many ideas and standards in refugee treatment, the appearance of this organisation since its creation represents something brand new and more important than any previous organization. With the 1951 Convention the UN introduced the new definition of the term refugee and the new instrument for treating them, and with its article 37 announced that it is replacing all previous conventions and agreements.<sup>199</sup> Unlike previous organizations that were dealing mostly with relief and resettlement, the UNHCR was putting the focus on a more substantial issue; the international legal protection of the rights of refugees. Although the UNHCR had a much smaller initial budget than the previous organization – only 300,000 dollars while the IRO before it had an annual income of 150 million dollars<sup>200</sup> – it had ambitious goals from the beginning. The idea was that the UNHCR should be a capital world organisation that is dealing with refugee problems and setting global standards for the protection of refugees.

The UNHCR considers the international protection of refugees as its basic task.<sup>201</sup> And according to the standards of the UNHCR, people are entitled to international refugee protection from the

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<sup>199</sup> UNHCR, *Convention and Protocol*, 31-32.

<sup>200</sup> Loescher, *The UNHCR and World Politics*, 51.

<sup>201</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees, Supplement No.11 (A/5511/Rev.1)*, (United Nations General Assembly Official Records: Eighteenth Session, 1964), accessed May 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c3f4/report-united-nations-high-commissioner-refugees.html>, para. 10.

moment they become such and until they cease to be refugees. Like the refugee status determination, international refugee protection is based on the citizen-state connection. The idea is that every person should have government protection, meaning that the precondition for the refugee status is its absence. But the ultimate goal of the protection is for “a refugee to cease to be a refugee.”<sup>202</sup> Ways for achieving that is through the so-called durable solutions - voluntary repatriation, resettlement or local integration, from which a refugee should be able to freely choose.<sup>203</sup> The categorization of durable solutions in the *10 Points Plan in Action* that the UNHCR created in 2010 shows that the solutions remained the same as in 1951.<sup>204</sup> The main need of refugees, as perceived by the UNHCR that stands behind these solutions, is the need for a permanent settlement together with self-reliance.<sup>205</sup> An additional way, according to the 1951 Convention, for the termination of refugee status is that the circumstances that caused it in the first place, cease to exist.<sup>206</sup>

In the annual report for 1963, the international protection is defined as “safeguarding the rights of refugees” with the goal of improving their legal position and its equalization with the legal position of nationals as much as possible.<sup>207</sup> As a way of providing legal protection to refugees, the High Commissioner saw helping them to overcome the disabilities that emerged because of the absence of national protection, and protecting their rights and interests with the implementation of refugee instruments.<sup>208</sup> Consistently with the idea of globalism, in providing international refugee protection, the UNHCR is leaning mainly on international and intergovernmental conventions and agreements. The High Commissioner was often naming these instruments as tools to set the “standard for the uniform treatment of refugees in various countries.”<sup>209</sup> Together with the 1951 Convention and the 1967 Protocol, many other instruments were in some ways dealing with refugee problems and the UNHCR was promoting them throughout the whole period of the 1950s

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<sup>202</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No. 11 (A/4104/Rev.1)*, (United Nations General Assembly Official Records: Fourteenth-Session, 1960), accessed May 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c930/report-united-nations-high-commissioner-refugees.html>, para. 21.

<sup>203</sup> *Report A/5511/Rev.1*, 1964, para. 69.

<sup>204</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10 Points Plan in Action*, 187.

<sup>205</sup> “Solutions,” UNHCR Website, accessed March 5, 2020, <https://www.unhcr.org/solutions.html>.

<sup>206</sup> UNHCR, *Convention and Protocol*, 15.

<sup>207</sup> *Report A/5211/Rev.1*, 1963, para 15

<sup>208</sup> *Report A/4104/Rev.1*, 1960, Appendix I REPORT ON THE FIRST SESSION OF THE EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME (Geneva, 26-30 January 1959), para. 12.

<sup>209</sup> *Report A/4104/Rev.1*, 1960, para 15.

and 1960s. Among them are *Declaration on the Right of Asylum*, *Agreement Relating to the Refugee Seamen*, *Universal Copyright Convention*, *Convention on the Declaration of the Death of Missing Persons*, *Convention Relating to the Status of Stateless Persons*, etc. The High Commissioner was following up on them throughout his reports and he was encouraging states to sign them. The longer was the list of states acceding the 1951 Convention and other instruments that the UNHCR was promoting, the more global and universal the international refugee protection system was becoming.

The 46 articles of the 1951 Convention are grouped into seven chapters: General Provisions, Juridical Status, Gainful employment, Welfare, Administrative Measures, Executory and Transitory Provisions and Final Clauses. According to them, the rights of refugees are aligned with the rights of nationals of other foreigners in the same circumstances. The highest level of rights that refugees can expect from one country according to the 1951 Convention, the level that equates refugees to nationals, are prescribed for freedom of religion and religious education of their children, artistic rights and industrial property, rationing system, elementary education, public relief and assistance, labour legislation and social security, access to courts, and for fiscal charges. The “not less favorable rights as the foreigners have in the same circumstances” are predicted for refugees regarding the property, employment and self-employment, liberal professions, housing and public education, non-political and non-profit associations and regarding the trade unions.

Other standards that were set with the 1951 Convention are regarding the definition of a refugee, the obligation of the refugee to follow the law and regulations of their country of residence and the obligation of countries for non-discriminatory treatment of all refugees. Some of the more specific rules are that the refugees have a right to choose their place of residence and a right to move within its territory, like foreigners in the same circumstances.<sup>210</sup> If a refugee does not possess a valid travel document, the state party is supposed to issue identity papers and documents for traveling, unless it goes against national security or public order.<sup>211</sup> Regarding refugees that are unlawfully in their country of refuge, the state is not supposed to punish them if they are coming directly from the country of persecution, if they can prove the danger they are facing and if they register to the authorities.<sup>212</sup> Expulsion of a refugee is allowed on the grounds of national security

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<sup>210</sup> UNHCR, *Convention and Protocol*, 27.

<sup>211</sup> Ibid., 28.

<sup>212</sup> Ibid., 29.



and public order but with the right of refugees to defend themselves.<sup>213</sup> One of the most important articles is article 33 that proclaims “non-refoulement”. The states are not allowed to return refugees to a country where their life is in danger. Prescribed further on, with the 1951 Convention, is that the state party is supposed to enable the naturalization, with the smallest charges as possible.<sup>214</sup> It is also proclaimed that if disputes between parties to the 1951 Convention, relating to its interpretation or application cannot be settled in some other way, they will be referred to the International Court of Justice.<sup>215</sup> The 1967 Protocol, as an addendum to the 1951 Convention, came as a consequence of the need for official changes in the rules and regulations of the work of the UNHCR. Namely, this Protocol erased the time and geographical limits of the refugee definition. It has eleven articles that are reiterating some parts of the 1951 Convention, but article 1 is the one that changed the regulations officially, widening the UNHCR mandate globally.

Besides these official ideas of the UNHCR regarding international refugee protection, like globalism, universalism and what are the standards that the states should follow, the annual reports also show the ideas, both of the High Commissioner and the members of the Executive Committee, regarding the proper protection. In annual reports, the High Commissioner would often express the ideas and goals of the UNHCR and his role in this organization. He would refer to the durable solutions, the importance of the camp eradication and establishing self-sufficiency for refugees, fostering of refugee rights, international solidarity, the importance of accepting the 1951 Convention principles, the responsibilities of his position, etc. According to these statements, the High Commissioner saw the role of the UNHCR as promoting international cooperation of governments, organizations and voluntary agencies to protect refugees.<sup>216</sup> He was representing the fact that the UNHCR was working in so many different countries as a proof of the “awareness of the universal character of the refugee problem” and the spirit of international cooperation.<sup>217</sup> Regarding this matter, the High Commissioner was often addressing the global acceptance of standards in refugee status determination and their minimum treatment, by worldwide acceptance

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<sup>213</sup> UNHCR, *Convention and Protocol*, 29.

<sup>214</sup> *Ibid.*, 30.

<sup>215</sup> *Ibid.*, 33.

<sup>216</sup> UNHCR, *Addendum to the Report of the United Nations High Commissioner for Refugees Supplement No.11A (A/5511/Rev.1/Add.1)* (United Nations General Assembly Official Records: Eighteenth Session, 1964), <https://www.unhcr.org/excom/unhcrannual/3ae68c678/addendum-report-united-nations-high-commissioner-refugees.html>, para 101.

<sup>217</sup> *Report A/5511/Rev.1*, 1964, para 12.

of the 1951 Convention.<sup>218</sup> The 1951 definition was increasingly accepted by governments for purposes such as granting of asylum, benefits under the national legislation and help in the form of resettlement or material assistance.<sup>219</sup>

The High Commissioner was often pointing out that the task of the UNHCR is the international protection, promotion of permanent solutions and aid in individual emergencies.<sup>220</sup> However, the mandate of the UNHCR proved to be too narrow for accomplishing these tasks on a global level. Consequently, the good offices system was introduced, which gave the High Commissioner the right to act outside of his mandate when necessary. When talking about this system, in one of the reports, the High Commissioner expressed that it is the consequence of the wish of the General Assembly that the UNHCR, “in accordance with the universal character of its assignments”, should adjust its activities to new circumstances.<sup>221</sup>

The statements of the High Commissioner and the member states at the ExCom meetings, reported in the annual reports, often revealed more specific ideas regarding refugee protection. For example, that it is important to avoid putting refugees in a better position than the nationals, but also to find a balance and not to leave refugees without adequate help.<sup>222</sup> Living in camps in the 1950s was often characterized as inhumane by the High Commissioner, but some member states felt that the improvement of the conditions in the camps would encourage a bigger refugee influx.<sup>223</sup> There were also disagreements among member states about the proper relation between legal protection and material relief that should be provided. Some states, as the Holy See for example, wanted for

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<sup>218</sup> *Report A/5511/Rev.1*, 1964, para 12.

<sup>219</sup> *Ibid.*, para. 17.

<sup>220</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/4771/Rev.1)* (United Nations General Assembly Official Records: Sixteenth Session, 1962), accessed May 1, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c410/report-united-nations-high-commissioner-refugees.html>, para. 9.

<sup>221</sup> *Ibid.*, para 13.

<sup>222</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/4378/Rev.1)* (United Nations General Assembly Official Records: Fifty-second Session, 1961), accessed April 20, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c414/report-united-nations-high-commissioner-refugees.html>, para. 25.

<sup>223</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees and Addendum (A/2126 and Addendum)* (United Nations General Assembly Official Records: Seventh Session, 1953), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c664/report-united-nations-high-commissioner-refugees-addendum-1952.html>, para. 6.

the UNHCR to be more involved in the non-European refugee assistance during the 1950s and 1960s.<sup>224</sup>

Regarding the idea of how the UNHCR was supposed to act, it was to have the role of a catalyst.<sup>225</sup> In practice, when a new problem would occur, the High Commissioner would investigate the problem to determine the right solution, work out the plan of action together with the governments of the country of asylum and other UN agencies. This was following the fact that the mandate was not providing to the UNHCR any operational rights. Therefore, the task of the UNHCR was to provide coordination of all participants, to follow developments, to advise when necessary. For those reasons, the High Commissioner was organizing missions to the concerned areas.<sup>226</sup> However, as the High Commissioner pointed out himself, “the contribution which the UNHCR could make would depend upon the interest shown by the international community”.<sup>227</sup> This implicates that the role of the catalyst meant that the work of the UNHCR was conditioned with the fact that it had something to work with. It was completely dependent on others because it was not operational and it was established as an organisation that initially did not have any disposable funds.

- **Terminology**

In a statement from the annual report for 1957, the High Commissioner stated: “In accordance with the provisions of its Statute, the activities of the Office have been based on the principle that its work should be of an entirely non-political character, but humanitarian and social, and its duty is to provide international protection and promote permanent solutions for refugees to help them to resume a normal life”.<sup>228</sup> This statement is a good example of the terminology used by the

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<sup>224</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/5211/Rev.1)*, APPENDIX Report on the seventh session of the Executive Committee of the High Commissioner’s Programme (Geneva, 14-22 May 1962), (United Nations General Assembly Official Records: Seventeenth Session, 1963), accessed June 1, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c400/report-united-nations-high-commissioner-refugees.html>, para 68.

<sup>225</sup> Ibid., APPENDIX Report on the seventh session of the Executive Committee of the High Commissioner’s Programme (Geneva, 14-22 May 1962), para. 135.

<sup>226</sup> *Report (A/5211/Rev.1)*, 1963, para 82-83.

<sup>227</sup> Ibid., APPENDIX Report on the Seventh Session of the Executive Committee of the High Commissioner’s Programme (Geneva, 14-22 May 1962), para. 64.

<sup>228</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/3585/Rev.1)* (United Nations General Assembly Official Records: Twelfth Session, 1958), accessed August 10, 2020,

UNHCR. Non-political, social, normal life – those are the terms and expressions that have followed this organisation since its establishment and an example of unclarified aspects of the UNHCR policy. While the term humanitarian is fitting considering that this organisation sees its purpose in fostering human rights, the term non-political is a very questionable statement considering the way this organisation was created and functions. The terms social and normal life are unspecified and have a whole spectrum of different meanings. The terms international protection, permanent solutions and refugees are common terms that have received specific meaning in the vocabulary of the UNHCR. Therefore, this statement is a good example of how terminology used by the UNHCR often either contains terms that seem significant but are very vague in meaning, have a meaning which is contradictory with the UNHCR actions or are common terms that gained special definition and connotations by being the part of the UNHCR wording.

Just like companies, organizations create their own language. This so-called organization-speak becomes a tool for creating their own recognizable standards and goals of action.<sup>229</sup> Organizations use terms that are part of the common language and give them a specific connotation. These words might have many different meanings, but the organizations attach specific meaning that serves their purpose.<sup>230</sup> They create phrases that become something similar to the catchword of their ideas, goals and achievements. For the United Nations today, for example, those would be sustainable development goals, inclusive globalization, environmental sustainability, inclusive and sustainable industrial development, resilience, women empowerment, etc.<sup>231</sup> While it would seem that all these terms are part of the everyday knowledge and that they are easily explainable, the organizations take common words and give them specific value.<sup>232</sup> In connection with the UNHCR, maybe the best example is the term refugee. While many would describe refugees as persons that were forced to flee their homes, according to the UNHCR standards, that explanation is not complete.

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<https://www.unhcr.org/excom/unhcrannual/3ae68c710/report-united-nations-high-commissioner-refugees.html>, para. 2.

<sup>229</sup> J. Humbley, Gerhard Budin, and Christer Laurén, *Languages for Special Purposes: An International Handbook* (Berlin: De Gruyter Mouton, 2018), 279.

<sup>230</sup> Ibid., 282.

<sup>231</sup> “UNIDO in Brief,” UNIDO Website, accessed May 15, 2020, <https://www.unido.org/who-we-are/unido-brief>.

<sup>232</sup> Humbley, Budin and Laurén, *Languages for Special Purposes*, 283.

While some terms are specifically defined, there are terms used by the UNHCR that are not closely explained. Examples of this include well-founded fear or persecution, as already explained in chapter 1, or social, normal, etc. One of these phrases is especially interesting because it is not used anymore. Today, it might even be considered politically incorrect; the term assimilation. Assimilation was a common term used by the UNHCR for the whole period of my research timeframe, in the 1950s and 1960s. It can be found in the UNHCR Statute and the Convention 1951<sup>233</sup>, but also in the annual reports. In one footnote of the research paper about the integration rights of the refugees, published by the UNHCR in 2006, it is explained that the term assimilation was, at that time, used with the meaning of the integration into the receiving country “and not as forced assimilation or coercion”. It is added that the international community never intended for refugees to melt in the community of the recipient country, abandoning their culture.<sup>234</sup> In that case, it remains unclear why the High Commissioner in the annual reports did use the expressions such as “assimilation and integration”<sup>235</sup> or “assimilation and naturalization”.<sup>236</sup> What's more, why would the High Commissioner write about the importance of naturalization as the final step of assimilation?<sup>237</sup> Or, to that matter, had a clause in the Statute mentioning promotion of refugee assimilation, especially by enabling naturalization.<sup>238</sup> Even if the assimilation was used in the sense of integration, it is not clearly explained how successful integration can be measured. Is it receiving citizenship, learning language and changing the way of living, gaining employment, or is it something more? Sometimes this term was used in the context of the integration into society, and sometimes simply as a term meaning equalization. Reporting in 1957 regarding the Universal Copyright Convention claims that the refugees with a residence in a state party to this Convention

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<sup>233</sup> UNHCR, *Convention and Protocol*, 30.

<sup>234</sup> UNHCR, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations* (Geneva: UNHCR, Division of International Protection Services, 2006), accessed September 24, 2020, <https://www.refworld.org/docid/44bb9b684.html>, 9.

<sup>235</sup> UNHCR, *Addendum to the Report of the United Nations High Commissioner for Refugees Supplement No.11A (A/4378/Rev.1/Add.1)*, (United Nations General Assembly Official Records: Fifteenth Session, 1961), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c408/addendum-report-united-nations-high-commissioner-refugees.html>, para. 71.

<sup>236</sup> UNHCR, *Convention and Protocol*, 30.

<sup>237</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/5811/Rev.1)* (United Nations General Assembly Official Records: Nineteenth Session, 1964), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c704/report-united-nations-high-commissioner-refugees.html>, para. 50.

<sup>238</sup> UNHCR, *Statute*, 6.

“shall, for the purposes of the Convention, be assimilated to the nationals of that State.”<sup>239</sup> In any case, it remained unclear, what is intended by the term assimilation and what would be the proper replacement today.

There are other terms that the UNHCR was bravely using while establishing an international refugee protection regime, which are very questionable. As mentioned before, already in 1959 the UNHCR considered that its mandate was of global nature even though at that time it still had the very restrictive time and geographical limits.<sup>240</sup> The universalism, globalism and non-political are all disputable terms. In addition to that, the UNHCR is representing itself as the organisation that is dealing with the individual needs of refugees based on their personal needs and not on their nationality. For this characteristic the definition is strictly tied, but the programs for refugees in the 1950s and the 1960s were, as I will argue in the next chapter, very often based on national origin.

The terminology used by the UNHCR can be seen as yet more organization-speak, a part of the already established system, but it is important not to neglect the importance the UNHCR was placing on terminology and definitions. That is also the reason why during its work, the UNHCR encountered many obstacles because of the firm attachment to wording. The refugee definition is the example of the widest scale, but there were also examples in everyday activities that were limiting the work of the UNHCR. Difficult cases were, according to the UNHCR, people older than 65 years and people with persistent health problems. However, there were people in the group from 60 to 65 years that were not in the difficult category, but also not in a condition for the solutions that younger and healthier persons were receiving. This kind of categorization was increasing a major group of people in the gap between two categories, without any kind of solution.

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<sup>239</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/3123/Rev.1)* (United Nations General Assembly Official Records: Eleventh Session, 1957), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c7c0/report-united-nations-high-commissioner-refugees.html>, para. 178.

<sup>240</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/3828/Rev.1)* (United Nations General Assembly Official Records: Thirteenth Session, 1959), ANNEX II REPORT ON THE SEVENTH SESSION OF THE UNREF EXECUTIVE COMMITTEE 1 (Geneva, 13,17 January 1958), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c800/report-united-nations-high-commissioner-refugees.html>, para. 31.

As a result, in the report for 1956, it was explained that the High Commissioner has decided to extend the definition of difficult cases to age group from 60 to 65 for these reasons.<sup>241</sup>

The other important aspect of the terminology of international organizations is not only in their slogans and promotion of the main ideas but also in the way they are addressing the world. For example, the World Bank most often uses terms that represent stability, like loan, development, economic, financial, investment, interest, program, project, assistance, etc.<sup>242</sup> Since, upon establishment, the UNHCR represented itself as the new step in the creation of a global international refugee regime, I find their wording very important for the future development of the international refugee protection and the way the rest of the world was perceiving it. Starting from the initial documents, such as the UNHCR Statute, the 1951 Convention and the 1967 Protocol, and later on, in writing of the annual reports, the language used was not empowering and demanding of help, but rather quite neutral and even humble. Even in the cases when the governments were not respecting the 1951 Convention principles, the High Commissioner was not very judgmental. On the other hand, he was praising every action in refugee protection as something that is not expected and normal.

The terminology used in reports also says a lot about the UNHCR system in general. While the High Commissioner was hoping, recommending and encouraging member states to participate in programmes and funds, the members of the Executive Committee demanded, asked and authorized the High Commissioner, etc. In the report for 1961, the High Commissioner was explaining that out of the 100 member states of the UN, only 33 states announced contributions to the UNHCR for the year 1962. Therefore, he “hoped that governments would be willing to consider increasing their contributions; it would also be desirable for a larger number of countries to support the international effort of assistance to refugees.”<sup>243</sup> Here, using the terms hoped, willing, consider and desirable in one sentence regarding this type of issue, could hardly have made any kind of loud statement, let alone swift action or reaction. In the report of 1962, the High Commissioner even stated that it is his “earnest prayer” that members of the UN will contribute.<sup>244</sup>

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<sup>241</sup> *Report A/3123/Rev.1*, 1957, para. 114.

<sup>242</sup> Franco Moretti and Dominique Pestre, “Bankspeak: The Language of World Bank Reports, 1946-2012,” *Literary Lab*, Pamphlet 9 (2015), accessed September 1, 2020, <https://litlab.stanford.edu/LiteraryLabPamphlet9.pdf>, 1.

<sup>243</sup> *Report A/5211/Rev.1*, 1963, APPENDIX Report on the Seventh Session of the Executive Committee of the High Commissioner’s Programme (Geneva, 14-22 May 1962), para. 60.

<sup>244</sup> *Report A/2126 and Addendum*, 1953, para. 151.

Another issue was that often the help provided by the member states was highly praised, even though it was deeply discriminating. In the report for 1955, it is explained that the Netherlands will accept 250 families from the European camps under the condition that one member is a skilled or semi-skilled worker in the building trade. The High Commissioner commented on this act, saying that the selection criteria were “exceptionally liberal” and that “even” families with sick members can be admitted.<sup>245</sup> Declarations like this were made in front of all the major member states of the international refugee protection community. The messages sent with these expressions were very clear and imposed the level of expectations for other states. It is noteworthy that the discrimination on the level of professions in providing help to refugees is “the exceptionally liberal thing”, that treating refugees as labour migrants and not as people in need that on average spent several years of their lives living in camps and had no opportunity to gain any working skills, is acceptable. Also noteworthy is that the acceptance of sick refugees is something rather unusual. These kinds of statements and praises are used throughout the 1950s and 1960s reports.

### **3.2. Standards in Practice**

- **Addressed Issues**

The previous two chapters were dedicated to the standards of refugee protection which the UNHCR envisioned. These standards changed the notion of refugees, not only by the creation of the special UN agency for their protection but also by establishing the protection of their rights on firm grounds. The 1951 Convention enabled the possibility for refugees to lean on the international legal instrument accepted by 149 states worldwide. In many countries it provided the rights to refugees not to be expelled before determining if they are in danger, not to be expelled if they entered the country illegally, to use state courts and law, to have freedom of religion, to work, to move freely, etc. However, even if we suppose that the goal is achieved and that every state is using the 1951 Convention strictly and refugees are treated in the same way in every one of the 149 countries, it remains questionable how comprehensive this Convention is? How many issues that the refugees were facing on an everyday basis did the 1951 Convention actually address?

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<sup>245</sup> *Report A/2902 and Add.1*, 1956, para. 155.



During the 1950s and 1960s, the UNHCR was the main provider of information about refugee matters worldwide.<sup>246</sup> With signing the 1951 Convention, the states agreed to cooperate with the UNHCR, but also to provide it with information and data about the status of refugees in their country and the implementation of the 1951 Convention and other laws and regulations relating to refugees.<sup>247</sup> Therefore, the annual reports are a good source for refugee problems and policies, not only regarding the work of the UNHCR but also regarding the national refugee policies. As a source, it provides a good picture of how different refugee problems and solutions were, and probably still are, worldwide.

Many different factors were affecting the everyday lives of refugees. Most of them are in connection with the country of asylum, concerning the national refugee legislations, situation of the state economy and the number of refugees that the respective state has admitted. In addition to that, not every state has the same group of preferred nationalities or occupations in immigration quotas, nor the same number of voluntary organizations helping refugees or camp conditions. Since the 1951 Convention is trying to provide a regime in which a person has the same chances of obtaining refugee status, and with it, minimum rights prescribed, in every country, through the annual reports, the High Commissioner was following the development of the situation in many countries regarding regulations prescribed by the 1951 Convention. How many states started to issue travel documents for refugees, which countries allowed and to what extent employment rights for refugees, how many states started using the UNHCR eligibility criteria in determining refugee status, how many countries loosen up their naturalization criteria or increased immigration quota, etc. These reports showed how unstandardized the treatment of refugees worldwide was. Depending on the place of residence, refugees may or may not have rights to travel to other countries, could or could not work with their diplomas or in any other sphere, had a possibility of naturalization in the near future or never, etc.

The report for 1954 shows, for example, that in the United Kingdom it was decided that after four years refugees can receive permission to work without the wage-earning employment restrictions that were in force for aliens.<sup>248</sup> In Sweden, however, it was decided in 1953 that refugees do not

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<sup>246</sup> Loescher, *The UNHCR and World Politics*, 5.

<sup>247</sup> UNHCR, *Statute*, 7.

<sup>248</sup> *Report A/2648*, 1955, para. 62.

need work permits at all.<sup>249</sup> In addition to that, the refugees in Sweden had the same salaries, social security and unemployment benefits as nationals.<sup>250</sup> In Turkey on the other hand, refugees had selective access to employment and they were not allowed to work in many industries.<sup>251</sup> The report for 1953 shows that the Yugoslav government was allowing refugees, after initial screening, to live in Yugoslavia without any special papers.<sup>252</sup> Argentinian law from 1954 declared that refugees can be naturalized after two years at their request, or after five years automatically.<sup>253</sup> Conversely, in Italy and Greece, the unemployment rate was so high, that in dealing with refugees the governments preferred emigration, leaving chances for naturalization very low.<sup>254</sup> The financial situations in the states cannot be the only factor to blame for these discrepancies, because a study of the UNHCR showed that even in countries where improvement happens in the field of economic development, unemployment rate or housing situation, it does not necessarily mean improvement for everyone, including refugees.<sup>255</sup>

Different treatments in different states are very interestingly pictured in these reports, by reporting about the status of refugees of the same origin, who were fleeing their homes because of the same issues, but depending on the country of asylum, received a different kind of help and rights. Examples of this are Hungarian refugees in Yugoslavia and Austria in the 1950s or Rwandan refugees in Congo, Tanganyika, Burundi and Uganda in the 1960s. What these two examples also show is that, although the standardization of international refugee protection in every country is a questionable issue, the international refugee protection system has many advantages. Once a group of refugees in need is detected by the international community, they are no longer dependent only on the good faith of the country they are currently in. They become a concern of the international community. Even if the Hungarian refugees in Yugoslavia and Austria may not have had the same rights in these two countries, because of the international involvement they had similar chances of resettlement. But unlike the resettlement, where the procedure seemed standardized, the local

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<sup>249</sup> *Report A/2648*, 1955, para. 63.

<sup>250</sup> *Report A/3123/Rev.1*, 1957, para. 162.

<sup>251</sup> *Report A/2648*, 1955, para. 69.

<sup>252</sup> *Report A/2394*, 1954, para. 211.

<sup>253</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/2902 and Add.1)* (United Nations General Assembly Official Records: Tenth Session, 1956), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c6c0/report-united-nations-high-commissioner-refugees.html>, para. 79.

<sup>254</sup> *Report A/2648*, 1955, para. 212.

<sup>255</sup> *Ibid.*, para. 215.

integration and the rights of refugees in the country of asylum were showing many problems in the creation of a global refugee protection regime.

These reports, among others, also testify refugee issues and problems that are not covered by the 1951 Convention, meaning they were not part of the standardization procedure. Some of these issues are reported by the High Commissioner as being a bad example that needs to be changed. But for some, it remained unclear if it is something that the UNHCR disapproves, or is it just the part of observing and reporting. The discrepancies between the principles of the 1951 Convention and the issues that refugees were facing, demonstrate that there were problems not addressed by the international refugee instruments and that was left to the goodwill of the governments and to the encouragement and appeals from the High Commissioner. Therefore, the very reports of the High Commissioner showed all mistakes and omissions of the UNHCR standards. For example, the determination procedure is not prescribed by the 1951 Convention. In the report for 1955 it was written that Austria does not have this kind of procedure and that the eligibility is decided by different officials ad hoc, although Austrian government signed the Convention in 1954 and was one of the states that participated at the United Nations Conference of Plenipotentiaries where the 1951 Convention was adopted.<sup>256</sup> Article 3 of the Convention prohibits discrimination based on race, religion and country of origin. However, it does not prevent discrimination based on professions. In Belgium, not every university diploma obtained by foreign students was legally valid. Refugees could study in Belgium, but they could obtain only academic diploma which served as a confirmation of studies only, it was not providing them with the right to practice their professions.<sup>257</sup> On the other hand, according to the report for 1954, refugee miners in Belgium received benefits equivalent to nationals in receiving loans for housing.<sup>258</sup> Meaning that while some people could not even use their diplomas and knowledge, others that were practicing professions more preferred by the state, received the right to work and even some kind of benefits.

Another issue that was very often addressed by the High Commissioner, and tried to be solved by several programmes during these two decades, was the problem of accommodation for refugees. This part of the refugee's everyday life is highly connected with the economic situation of the receiving country or with the number of refugees accepted. In the annual reports, the High

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<sup>256</sup> *Report A/2902 and Add.1*, 1956, para. 55.

<sup>257</sup> *Ibid.*, para. 73.

<sup>258</sup> *Report A/2648*, 1955, para. 61.

Commissioner was often addressing the problem of inhumane conditions in refugee camps.<sup>259</sup> While at the same time, as a contrast, Yugoslavia was accommodating refugees in hotels which were empty out of season<sup>260</sup> and the German Federal government provided finances for building of approximately 7,000 apartments for the UNHCR refugees in the 1950s.<sup>261</sup> The standards in these kinds of issues are difficult to impose, considering differences in the financial ability of states and contributions they have received. However, there were other disturbing situations that the High Commissioner reported. That, for example, there were some camps in Greece, Italy, Trieste, Austria and FDR in the 1950s in which there was a policy of liberty movement restriction.<sup>262</sup> Or, that in many camps there were no opportunities for any vocational training, leaving many young refugees to reach adult age without acquiring any skills.<sup>263</sup>

Resettlement is also vaguely regulated with the 1951 Convention. For example, several countries allowed refugees who were resettling to bring with them their relatives that were in the category of the so-called difficult cases.<sup>264</sup> In this way, resettlement of the sick and elderly was represented as something exceptional and not as something that is supposed to be usual and normal. Secondly, resettlement for refugees was often restricted by immigration quotas, professions, age and national origin. Chile preferred refugees of German or Latin origin in the 1950s.<sup>265</sup> In Argentina, the condition for acceptance of refugees was that they must have private sponsors or special skills. In 1952, the Argentinean government agreed to the admission of 500,000 refugees from Italy under these conditions.<sup>266</sup> It is reported that most immigration schemes in 1955 required particular skills. However, very often there was no training for the adaptation of existing skills to the needed ones for countries of immigration.<sup>267</sup> The whole idea of admitting refugees based on their skills creates the picture of treating refugees as regular labour migrants, and not like people escaping danger and

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<sup>259</sup> UNHCR, *Refugees and Stateless Persons and Problems of Assistance to Refugees: Report of the United Nations High Commissioner for Refugees (A/2011)*, (United Nations General Assembly Official Records: Sixth Session Supplement No. 19, 1952), accessed March 1, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c3d8/refugees-stateless-persons-problems-assistance-refugees-report-united-nations.html>, para. 17.

<sup>260</sup> *Report A/3585/Rev. I*, 1958, para. 35.

<sup>261</sup> *Report A/2394*, 1954, para. 190.

<sup>262</sup> *Report A/2648*, 1955, para. 88.

<sup>263</sup> *Ibid.*, para. 248.

<sup>264</sup> *Ibid.*, para. 123.

<sup>265</sup> *Ibid.*, para. 183.

<sup>266</sup> *Ibid.*, para. 179.

<sup>267</sup> *Ibid.*, para. 256.

living in camps for an average of seven or eight years,<sup>268</sup> with all the consequences in vocational and mental deterioration that it brings. In the report for 1955 several examples of this practice can be found. Argentina was restricting refugee acceptance to families coming to join their relatives already in the country, to especially skilled people, to privately sponsored people, and the ones that already possess contracts of work. They were also settling them away from the large population centers, especially in agriculture.<sup>269</sup> Report from the same year states that when giving visas, New Zealand government preferred skilled workers, building tradesmen and farm labourers, preferably single or unmarried men, and refugees that have sponsors in New Zealand.<sup>270</sup> Colombia was selecting “prospective” refugees according to national needs and preferred technicians and skilled workers.<sup>271</sup> The report for 1957 describes Canada as being one of the major countries of resettlement for refugees, but also states that unlike the ones with the special skills with no number limitations, the ones in the 50 to 60 age group, as well as for widows with dependent children, there were indeed number limitations.<sup>272</sup> Sweden has in 1955 decided to accept 600 refugees under the UNHCR mandate from Austria. The requirement was that these families can become self-supporting. The UNHCR characterized this as “extremely liberal criteria”.<sup>273</sup> In 1960, Norway declared that they will accept twenty difficult cases, with tubercular and mental cases excluded, but that they should preferably come from camps in Austria.<sup>274</sup> The countries were sending selection missions, like for example Australia in Trieste in the 1950s.<sup>275</sup> Another example was selection teams from Netherlands visiting Austria, Greece and Italy.<sup>276</sup> All these rules left chances for refugees wanting to resettle very limited. If they could not meet immigration criteria or if they are not in the difficult case category, the resettlement possibilities were lowered. Austrian Interior Minister Helmer addressed the ExCom in 1958, saying that the countries of resettlement should accept Hungarian refugees from Austria “on the basis of numbers and not according to political, professional or health considerations”, because with that kind of reasoning, the old and sick are left in Austria without a chance to resettle.<sup>277</sup> In one of the reports, the High Commissioner also

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<sup>268</sup> *Report A/2648*, 1955, para. 92.

<sup>269</sup> *Report A/2902 and Add.1*, 1956, para. 169.

<sup>270</sup> *Ibid.*, para. 168.

<sup>271</sup> *Ibid.*, para. 172.

<sup>272</sup> *Report A/3123/Rev.1*, 1957, para. 151.

<sup>273</sup> *Ibid.*, para. 162.

<sup>274</sup> *Report A/4104/Rev.1*, 1960, Annex II, para. 46.

<sup>275</sup> *Report A/2648*, 1955, para. 191.

<sup>276</sup> *Report A/3123/Rev.1*, 1957, para 158.

<sup>277</sup> *Report A/3585/Rev.1*, 1958, para. 66.

highlighted the difficulty of this issue, stressing that it is necessary for the countries to lower their admission criteria and to allow the admission of refugee families that include members that do not fulfill immigration requirements.<sup>278</sup> Regardless, none of these issues were regulated with the 1951 Convention.

Another big problem that was not officially addressed by the UNHCR is what happens with refugees after a permanent solution is found. Several times the UNHCR in the 1950s and 1960s annual reports explained that they do not have any data about the resettled refugees. Regarding voluntary repatriation, there was a problem in determining a proper solution for every individual when great masses are involved. Finally, regarding naturalization, there was a great problem for refugees losing international protection after becoming naturalized. After receiving a new nationality, both refugees and the state are susceptible to losing out. In the report for 1958, it is written, for example, that the representative of Greece urged the UNHCR to continue to help and support 165 refugees of Greek origin from China which were accepted by Greece and which received Greek passports.<sup>279</sup> Naturalization did not necessarily represent a permanent solution for refugees. Persons that were losing their refugee status after becoming naturalized often did not have any other option but to remain in refugee camps. In certain cases, the High Commissioner was making available good offices for them, even though they were not under the mandate.<sup>280</sup> But all these were ad hoc solutions, a good offices system. It was not a standard and not everyone could expect assistance in such situations.

The UNHCR continued efforts of previous organizations and continued to promote issuing passports to refugees. However, although refugees were able to obtain travel documents, many countries were still requesting visas. The report for 1955 states that, even though visas were abolished in most of Europe for nationals, refugees still needed them for most of the countries.<sup>281</sup> For many of these issues, progress was reported in 1950s and 1960s and many improved over time. In 1961, for example, Switzerland decided that all refugee doctors, dentists, pharmacists, veterinarians, admitted to Switzerland for a permanent residence before 1960, could start practicing in Switzerland on equal basis as nationals. A year before Swiss government made

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<sup>278</sup> *Report A/3123/Rev.1*, 1957, para. 148.

<sup>279</sup> *Report A/4104/Rev.1*, 1960, Appendix II REPORT ON THE FIRST SPECIAL SESSION OF THE EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME<sup>16</sup> (Geneva, 15-19 June 1959). para. 82.

<sup>280</sup> *Report A/4378/Rev.1*, 1961, para. 29.

<sup>281</sup> *Report A/2902 and Add.1*, 1956, para. 88.

similar decision, but only for Hungarian refugees.<sup>282</sup> With the law from the mid-1950s, Belgium government lifted the restriction regarding legal validity of university degrees obtained by refugees, but only for students that were studying medicine, pharmacy or dentistry.<sup>283</sup> In 1955, member states of the Council of Europe abolished travel visas for refugees.<sup>284</sup> However, this progress was due to efforts of the UNHCR and its appeals, as well as the promotion of the many different inter-governmental agreements and resolutions of the General Assembly. Regulations of these issues remained outside any official rules, even though the 1951 Convention improved and to some extent recognized problems affecting refugee lives. Furthermore, even though the reports show that some delegations and the High Commissioners themselves were aware of these limitations and failures of the 1951 Convention, the only issue that was regulated with the sole addendum to the 1951 Convention created so far, the 1967 Protocol, was the time and geographical limitations, i.e. the reach of these regulations and not their substance.

- **Proper Assistance**

Often debated, is what the proper and most useful way of helping refugees is – providing material assistance or legal protection? This kind of debate is not only characteristic of the present day, it was a matter of discussion in the process of the creation of the UNHCR, too. However, the US interests decided on this matter. The US wanted a temporary refugee agency without the relief role and funding for material assistance.<sup>285</sup> Therefore, the UNHCR was created as an organisation very limited in its scope of work, restricted from providing material assistance to legal protection only. In addition to that, the Statute of the UNHCR proscribes that this organisation is not authorized for operational activities and that it should operate as a catalyst relying mainly on voluntary agencies.<sup>286</sup> The functions of the High Commissioner were confined bringing the problem to the attention, to assistance to governments when it is requested and to drawing up programmes which would then be realized by local authorities or organizations.<sup>287</sup>

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<sup>282</sup> *Report A/5211/Rev.1*, 1963, para. 26.

<sup>283</sup> *Report A/3123/Rev.1*, 1957, para. 213.

<sup>284</sup> *Ibid.*, para. 234.

<sup>285</sup> Loescher, *The UNHCR and World Politics*, 43.

<sup>286</sup> *Report A/3123/Rev.1*, 1957, para. 26.

<sup>287</sup> *Report A/5811/Rev.1*, 1964, para. 112.

In providing help, the UNHCR was cooperating with the League of Red Cross, US organizations for helping refugees, voluntary agencies, local governments and other UN agencies such as the United Nations Development Programme (UNDP), the World Food Programme (WFP), the Food and Agriculture Organisation (FAO), the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the World Health Organisation (WHO) and the United Nations Children's Fund (UNICEF).<sup>288</sup>

Part of the struggle of the High Commissioner for a wider mandate and bigger autonomy, which started already in the 1950s, was insisting on the right of providing relief. The High Commissioner believed that without material assistance, the UNHCR would not be making significant change and impact.<sup>289</sup> In these seven decades of existence however, the UNHCR changed its course, from trying to give any kind of material help, to mainly providing material help for refugees. Although the UNHCR Statute says differently, the UNHCR's Core Relief Items Catalogue from 2012 explains what exactly they provide, from tents and sleeping mats to buckets, cooking utensils and mosquito nets, and states that "the provision of material assistance to refugees, IDPs and persons of concern is fundamental to UNHCR's mandate".<sup>290</sup> Gil Loescher, professor of political science at the US University of Notre Dame,<sup>291</sup> who worked closely with the UNHCR during the 1990s,<sup>292</sup> believed that because of the material assistance, the UNHCR became recognizable for providing largescale relief programmes and not protection. Additionally, the success of the UNHCR programmes are being judged only by timing and amount of aid delivery, while the human rights protection often stays neglected.<sup>293</sup> Therefore, according to Loescher, by the end of the 20<sup>th</sup> century, the UNHCR went from an organisation being concerned mainly with the protection of refugees, to organisation focused on humanitarian action dealing mainly with assistance, such as food, shelter and medicine.<sup>294</sup> The legal protection of refugees is neglected because protection is

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<sup>288</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/7211)*, (United Nations General Assembly Official Records: Twenty-third Session, 1969), accessed September 5, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c6b4/report-united-nations-high-commissioner-refugees.html>, para. 5.

<sup>289</sup> Loescher, *The UNHCR and World Politics*, 61.

<sup>290</sup> UNHCR, *Core Relief Item Catalogue*, 2012, accessed September 1, 2020, <https://cms.emergency.unhcr.org/documents/11982/45957/Core+Relief+Items+Catalogue/f323c300-83e8-4238-960b-8701fccca5e0, 1>.

<sup>291</sup> "Sole Survivor" Notre Dame Magazine, University of Notre Dame, 2018, accessed October 15, 2020, <https://magazine.nd.edu/stories/sole-survivor/>.

<sup>292</sup> Loescher, *The UNHCR and World Politics*, vii

<sup>293</sup> Ibid., 363-364.

<sup>294</sup> Ibid.



less measurable and does not attract many donors as material assistance does. Therefore, Loescher's opinion was that the UNHCR became more dedicated and successful in providing material assistance to refugees than in protecting their human rights.<sup>295</sup>

In the 1950s and the 1960s, the UNHCR operated in several different ways. Through long term projects with major goals and emergency assistance, by raising awareness of refugees with missions from the High Commissioner and by fundraising initiatives, such as publishing Long Play records or postal stamps. However, the approach of the UNHCR to different refugee groups was not the same in every situation. That is why the issue of the proper way of helping refugees, relief or protection, is also a matter of standardization of international refugee protection. This is because annual reports show that UNHCR had different standards of proper assistance in Europe and the rest of the world, and that the vision of the solution to refugee problems was not equal worldwide. Since the UNHCR was created as an organisation designed to solve the problem of WWII refugees, the main long-term projects were dealing with refugees in Austria, the Federal Republic of Germany, Greece, Italy, Trieste and European refugees in China. However, although the UNHCR was trying to become a truly global organization, assisting refugees outside of Europe, there was a clear division between the refugees under the mandate and the de facto refugees that are assisted under the good offices. What's more, the difference in aid between these two categories was very clear. A good offices system was an attempt to spread international refugee protection, but it also was an excuse for different approaches and standards. Firstly, refugees that were receiving help under the good offices were still not officially under the mandate, and secondly, up until 1963, the funds for the new refugees were not part of the UNHCR permanent programmes. Until then, funds for the new refugees were a sideline. In 1963 for the first time, they were included in the frame of the annual programme.<sup>296</sup> Everything before that was divided into programmes for Europeans and the rest, which had many consequences. Firstly, the amount of funds raised. Although in resolution from 1957 the General Assembly did not recognize Chinese refugees in Hong Kong as refugees under the mandate of the UNHCR, it did give the right to the High Commissioner to lend his good offices to collect contributions to help them. However, there had to be consequences of making a distinction between refugees under the mandate and refugees helped by the good offices while raising funds, since the response for helping Chinese refugees

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<sup>295</sup> Loescher, *The UNHCR and World Politics*, 364.

<sup>296</sup> *Report A/5811/Rev.1*, 1964, para. 191.

was, in the report for 1959 described by the High Commissioner as “disappointing”.<sup>297</sup> In general, the amount of money allocated to good offices cases was much lower than for European cases, and secondly, refugees outside of Europe were receiving a different kind of help. An ad hoc, temporary help in the shape of material assistance.

The High Commissioner’s opinion was that the main problem of African refugees was of material assistance. Therefore, the UNHCR was mainly preventing starvation in Africa, not protecting refugee rights. The target of the UNHCR’s material assistance programme was raised by 22 percent for the year 1969 “to meet the increased needs of material assistance, particularly, for the new refugees in Africa.”<sup>298</sup> In the 1960s, the UNHCR had a small unit in Africa and reacted in an ad hoc way, with little time to consider protection problems. The report of the legal adviser to the UNHCR, after returning from an inspection trip to Africa in 1964, says that the UNHCR was dedicating little time to problems of protection and that material assistance programmes usually did not result in the integration of refugees in their host countries.<sup>299</sup> African governments were not particularly interested in legal protection and the African political situation was so complicated, that the UNHCR did not want to be in the middle of it. The newly established African states preferred material assistance instead of protection for refugees, so the material aid became one of the means to attract governments to accept the UNHCR norms. The goal of the material assistance provided was establishing self-sufficiency, by providing land, tools and seeds.<sup>300</sup> There was a difference in projects even after 1967, after temporal and geographical limitations were officially lifted. In Europe and Latin America, it was mainly the provision of housing, vocational training, rehabilitation, and the placing of the handicapped in suitable institutions. In Africa and Asia to a large extent, the emphasis was upon establishment in agriculture.<sup>301</sup> The discrepancies in standards for European and other refugees were for many obvious; many member states were addressing this issue at meetings of the Executive Committee, and the failure of the approach of help for African refugees was pictured in the report from the mission of the Deputy High

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<sup>297</sup> *Report A/4104/Rev.1*, 1960, para. 97-98.

<sup>298</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.12 (A/7612)*, (United Nations General Assembly Official Records: Twenty-fourth Session, 1970), accessed September 5, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c7f0/report-united-nations-high-commissioner-refugees.html>, para. 6.

<sup>299</sup> Loescher, *The UNHCR and World Politics*, 119.

<sup>300</sup> *Ibid.*, 120.

<sup>301</sup> *Report A/7211*, 1969, para. 86.

Commissioner to Rwandan refugees from 1964, in which he explained that refugees were complaining about not being able to get out of a subsistence economy, of planting and collecting crops for survival only. It was noted that they needed more, besides relief, such as schools, dispensaries, community developments, planting some crops that would bring income, like tea, coffee or bananas, so that they had something to sell; that there were even refugees that could not leave their huts because they did not have clothes to wear.<sup>302</sup>

The distinction among refugees created by the good offices system, justified the distinction in help received that was provided. At around the same time the UNHCR was dealing with the Hungarian and Algerian crisis. Both groups did not fulfill standards to be considered officially under the mandate. However, the Hungarians were accepted as refugees under the mandate, while Algerians remained under the good offices. The differences in needs of these two groups were significant, but not addressed accordingly. In 1957 the UNHCR has drawn up a programme for permanent solutions in Austria worth 3.5 million dollars for 8,550 Hungarian refugees that did not want to resettle outside the country. This programme included housing, credit facilities, aid to university students and intellectuals, establishment in agriculture, etc.<sup>303</sup> At the same time, there were around 165,000 Algerian refugees in Tunisia and Morocco. The High Commissioner was reporting from his mission to Morocco about how it was necessary to provide supplies and funds. As the ‘outstanding needs’ of refugees, he saw olive or other edible oil, sugar, milk, soap, blankets and clothing, and considered that 2.4 million dollars would be necessary to cover the cost from March 1959 until the end of the year. The supplies were not provided in the amount that was necessary, so the consumption of expensive items such as olive oil and sugar had to be reduced.<sup>304</sup>

Not only that it took several years for the good offices refugees to become part of regular programmes, but in the year it happened for the first time, in 1963, 5.4 million dollars were allocated for “old” refugees, in comparison with 700,000 for the “new” refugees.<sup>305</sup> Even though the number of “new refugees” was increasing, Europeans still had the advantage. The reason

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<sup>302</sup> UNHCR, *Addendum to the Report of the United Nations High Commissioner for Refugees Supplement No.11A (A/5511/Rev.1/Add.1)* (United Nations General Assembly Official Records: Eighteenth Session, 1964), II. Statement by Prince Sadruddin Aga Khan, Deputy High Commissioner, accessed May 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c678/addendum-report-united-nations-high-commissioner-refugees.html>.

<sup>303</sup> *Report A/4104/Rev.1*, 1960, para 87.

<sup>304</sup> *Ibid.*, para. 90-93.

<sup>305</sup> *Report A/5211/Rev.1*, 1963, para. 123.

behind these huge differences is probably that by the year 1963, millions of dollars were already invested in European refugees, but the permanent solutions for all of them were still not secured. The final resolution of this problem meant the justification for the purpose of the UNHCR and the aims of its creation.

Besides the unstandardized allocation of funds and perception of the problem solved in Europe and outside of Europe, another issue was that the projects were often based on national origin, and not on individual cases. For example, there was a separate permanent solution just for Hungarian refugees, and that was not included in the camp clearance programme.<sup>306</sup> Alternatively, there was a special programme under the UNREF for providing housing especially to approximately 85 Armenian refugee families in Greece.<sup>307</sup> This represents a discrepancy between idea and practice because it is not an individual approach. Similarly, to the lack of criticism towards states for selecting refugees for immigration according to their nationality, this type of programme management was going directly against the individual approach in refugee protection. It was the continuation of the categorization of refugees according to their national origin, where a refugee is not a universal term, but depends on ethnicity in receiving help. This kind of categorization continued and for every project made, the national origin of the refugees was the base in reporting about it.

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<sup>306</sup> UNHCR, *Addendum to the Report of the United Nations High Commissioner for Refugees Supplement No.11A (A/3828/Rev.1/Add.1)* (United Nations General Assembly Official Records: Thirteenth Session, 1959), accessed September 10, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c3f0/addendum-report-united-nations-high-commissioner-refugees.html>, para. 17.

<sup>307</sup> *Ibid.*, para. 33.

#### 4. Limitations of the UNHCR System

Financial dependency on member states is characteristic for the whole UN system, not only for the UNHCR. One part of the funding of the United Nations are assessed contributions, a regular source of income based on a legal obligation of member and participating states to contribute. The second part is voluntary contributions which represent more than a half of the UN budget and are used for special programmes and offices, such as UNHCR. For voluntary contributions, there are no legal obligations of countries to donate.<sup>308</sup> However, if a member state does not pay its assessed contributions for two years, it loses its right to vote in the General Assembly. The amount of assessed contributions is counted according to the gross national income and foreign debt. Currently, the US is the biggest contributor, by giving 22 percent of the entire UN budget.<sup>309</sup>

According to paragraph 20 of the UNHCR Statute, only administrative expenditures are covered by the budget of the UN and all activities of the UNHCR are financed by voluntary contributions.<sup>310</sup> In addition to that, paragraph 16 indicates that the UNHCR requires the permission of the respective government for the appointment of the UNHCR representative in that country.<sup>311</sup> Therefore, not only that the UNHCR cannot demand from states to accept and fully respect its principles, but it also depends on the financial support of donors and the permissions of host governments to act at all. This can be considered paradoxical since the UNHCR completely depends on states, but at the same time has the role of providing protection of refugees from state persecution. That is why it is questionable if the UNHCR can challenge the policies of governments or is this organisation just an “instrument of states”<sup>312</sup>

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<sup>308</sup> Marjorie Ann Browne, “United Nations System Funding: Congressional Issues,” *Journal of Current Issues in Globalization* 5, no. 1 (2012): pp. 95-147, accessed September 1, 2020, <https://uaccess.univie.ac.at/login?url=https://www-proquest-com.uaccess.univie.ac.at/docview/1731528105?accountid=14682>, 97.

<sup>309</sup> Auswärtiges Amt, “Background Information: Contributions to the United Nations Budget,” German Federal Foreign Office, accessed September 1, 2020, <https://www.auswaertiges-amt.de/en/aussenpolitik/internationale-organisationen/vereintenationen/-/281336>.

<sup>310</sup> UNHCR, *Statute*, 14.

<sup>311</sup> *Ibid*, 13.

<sup>312</sup> Gil Loescher, “The UNHCR and World Politics: State Interests vs. Institutional Autonomy,” *The International Migration Review* 35, no. 1 (2001): pp. 33-56, accessed May 27, 2020, [https://www.jstor.org/stable/2676050?read-now=1&seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/2676050?read-now=1&seq=1#page_scan_tab_contents), 34.

The idea of the UNHCR as being a completely humanitarian organisation dedicated exclusively to protecting refugees was limited in two areas – in independence and authority, i.e. in politics and impact. In what amount is their service political, how much power do major funders have and what kind of influence and enforcement power does the UN system actually have? The circumstances in which the UNHCR and the 1951 Convention were created, the way it is functioning and the way it was dealing with problems in the 1950s and 1960s, imply that also politics, and not only humanitarianism, have a major role in the functioning of this organization. However, that does not mean that the UNHCR has no impact on states in refugee protection. Although enforceability is a questionable issue regarding the UNHCR, its influence is of immense proportions and significance.

#### 4.1. Politics

- **“Entirely Non-Political”**

According to chapter one of the Statute of the UNHCR, the work of the High Commissioner “shall be entirely nonpolitical”<sup>313</sup>. It is a daring and often debated statement, considering the system of action and decision making by this organization. The UNHCR is created by states, main decisions are made by member states of the Executive Committee and it is an organisation completely dependent on the funding of member states and cooperation of the affected countries. Not only the work and development of the UNHCR, but the very founding of the UNHCR was heavily influenced by the political situation of that time, namely the Cold War. Interests of the states in the Cold War on the one hand enabled the existence of this organization, but at the same time restricted its scope. Since refugees were seen as leverage, as a political and ideological asset that was discrediting communist regime, the interest of the West was in enabling people to flee communist countries.<sup>314</sup> Because of this type of reasoning, the US did not want to leave such an important issue to the UN. While other countries of the West worked on the establishment of the UNHCR, the US worked on its containment and on the creation of its own organisation for dealing with refugees - the International Committee of European Migration (ICEM) and the US Escapee Program. They also helped in the creation of the UN refugee agencies for the Middle East

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<sup>313</sup> UNHCR, *Statute*, 8.

<sup>314</sup> Loescher, *The UNHCR and World Politics*, 7.

(UNRWA) and Korean Peninsula (UNKRA), which operated in the areas where US interests were high. These actions by the US affected the UNHCR, especially regarding the funding, since the US government provided much bigger funds for UNKRA and UNRWA, in comparison to the UNHCR.<sup>315</sup>

Lack of support was one of the reasons why the UNHCR struggled for autonomy and the achievement of its goals, and for the first five years of its existence remained a small organisation limited to providing legal protection for the refugees that remained after IRO. Another example of how state interests can empower but also constrain one international organization.<sup>316</sup> The system of the UNHCR that was created also reflects political interests. The High Commissioner is chosen by the UN Secretary-General, after consultations with the governments, and approved by the General Assembly. The choice is made in secret, there is no vacancy announcements nor description of requirements, and the post was very often given to a person of national origin from one of the most important donor states, such as Switzerland or Japan. Additionally, the post of the Deputy High Commissioner is always in the hands of the US.<sup>317</sup> While the issue regarding the mandate of the High Commissioner was decided, although there were countries that wanted this organisation to be powerful and global, the will of the US to be limited to international protection with a small budget was definite. The political interest created an international refugee protection regime, in which the protection is unevenly distributed and many refugees worldwide overlooked. The UNHCR, as already mentioned, had far fewer possibilities and funding than those organizations created strictly for Korean and Middle Eastern refugees. At the same time, no special international organisation was formed for around 14 million Hindu and Muslim refugees in India and Pakistan.<sup>318</sup>

When it comes to the work of the UNHCR in the discussion about political aspects of its function, it is important to make clear what does political, i.e. nonpolitical, actually mean. David Forsythe, a professor of Political Science at the University of Nebraska, wrote an article named *UNHCR's Mandate: The Politics of Being Non-Political*, published by the UNHCR in 2001. With this article, Forsythe is defending the UNHCR against accusations that it is a political organization, and his

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<sup>315</sup> Loescher, *The UNHCR and World Politics*, 7.

<sup>316</sup> Ibid., 8.

<sup>317</sup> Ibid., 377-378.

<sup>318</sup> Ibid., 57.

defence is based on the characterization of the non-political. According to him, it is absurd to believe that the UNHCR does not have to do anything with politics because its whole system and action is based on the cooperation with states and trying to change their national refugee policies, although that kind of politics, negotiation and persuasion, is to create humanitarian policy.<sup>319</sup> That aside, the main point of his argument is that the UNHCR essentially is not a political organization, because it is not meddling in the internal politics of states nor is it implying who should govern. It does not interfere in policies that don't have to do anything with refugees nor in military actions for a policy change.<sup>320</sup> Be that as it may, this way of interpreting the political and non-political is not the only way. In my understanding, the nonpolitical not only implies that there will be no organizational influencing on internal matters of governments, but also that international politics will not interfere and influence the UNHCR decisions. The reality is, however, that the political situation during the 1950s and 1960s influenced this organisation to often bend its own rules and to make a distinction between groups of refugees based on their nationality and geopolitical position.

Maybe the most important indicator of the impact of politics on the UNHCR is the accusations the refugee status carries with it. A refugee's country of origin is, by definition of a refugee according to the 1951 Convention, a persecutor of its own citizens. This means that officially, the UNHCR cannot recognize someone as a refugee without accusing the country of origin for wrong treatment of its citizens. Therefore, migrants from developing countries have greater chances to receive asylum in comparison to people coming from Western countries, because when a person receives refugee status, an asylum, it means that his or her country of origin is "the failing state". Those kinds of accusations tend to be avoided because Western countries are the biggest donors of the UN.<sup>321</sup> This issue is not characteristic only for the present time. Already in the 1950s, it represented itself as a major obstacle in protecting refugees, while at the same time it was protecting the political interests of major donors. This proved to be enough of an excuse to bend the rules regarding who will receive help. A good example is a difference in approach between Hungarian and Chinese refugees in the 1950s. These two crises were both considered officially outside of the mandate of the UNHCR. But even though the Chinese revolution started in 1949 and the Soviet

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<sup>319</sup> David Forsythe, "UNHCR's Mandate: The Politics of Being Non-Political," *UNHCR: New Issues in Refugee Research* 33 (2001), accessed August 30, 2020. <https://www.refworld.org/docid/4ff57eb32.html>, 1.

<sup>320</sup> *Ibid.*, 2.

<sup>321</sup> Schrover and Moloney, *Gender, Migration and Categorisation*, 259.



invasion of Hungary in 1956, which was important because of the condition of the 1951 Convention that refugee status should be related to events that happened before 1951, Hungarians received an advantage for political reasons. As already explained, in the annual reports the High Commissioner would often point out that his mandate is global. However, it would often not seem like a statement or confirmation, but as an argument to receive permission to act outside the initial task. That was the case, for example, in 1957 when the High Commissioner was asking for permission to help Chinese refugees in Hong Kong.<sup>322</sup> The report for 1956 also showed the politics behind decisions of the UNHCR, but also the power of the Executive Committee. Resolutions adopted during the session of the Executive Committee in 1957 picture how the eligibility criteria were used in an unstandardized way. Resolution number 4 explained that “the fate of the Hungarian refugees constitutes a challenge to the conscience of humanity” and that it causes difficulties to countries of first asylum, mainly Austria and Yugoslavia. Therefore, the conclusion was that it should be the responsibility of the whole world. Already the next resolution, however, resolution number 5, states that the Executive Committee is not able to reach a clear decision regarding the eligibility of Chinese refugees in Hong Kong for assistance and that there are no uncommitted funds from the programme available for assistance to them. But it does confirm that they should be part of the international concern and that the General Assembly should deal with this question.<sup>323</sup>

Therefore, although both groups of refugees had the same issues regarding the eligibility according to the 1951 definition of a refugee, the European issue was immediately accepted as a problem that should be addressed by the UNHCR, while the Asian issue was left for later. The reason behind it was the political situation. While the Hungarian refugees were people harmed and persecuted by the Soviet regime, and helping them was part of the ideology behind the creation of the UNHCR, the situation regarding Chinese refugees was much different. The United Kingdom did not want to worsen its relations with China by labeling people that were fleeing to Hong Kong because of the Chinese Revolution from 1949 as refugees, because that would represent accusations towards the Chinese government. Eventually, as already explained in previous chapters, the solution was found in introducing the system of good offices. With it, the High Commissioner received the authorization to assist refugees who were not formally part of his mandate, to assist refugees

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<sup>322</sup> *Report A/3585/Rev.1*, 1958, para. 110.

<sup>323</sup> *Ibid.*, Appendix II Resolutions Adopted During the Fourth Session the UNREF Executive Committee

without a determination that the government of origin was persecuting its population, and to provide material assistance, and not legal assistance only.<sup>324</sup>

Situations that were causing political tensions continued to exist and the good offices system remained, allowing the UNHCR to assist, without the danger of resentment from the responsible governments. With this system, the UNHCR lost its strength as protector of refugee rights in the sense that its help stopped automatically meaning that the refugees they were helping were oppressed by their governments. This was also the case in the Algerian Civil War. The UNHCR was indecisive regarding assistance to Algerian refugees in Tunisia and Morocco, because helping them would mean accusing France, a powerful Western country and donor, of being a persecutor of its own citizens. But the good offices were the way to help without placing guilt on any individual nation. State interests were a constantly and consistently problematic for the UNHCR. In order to help Algerian refugees, victims of the second biggest refugee crisis after WWII, the High Commissioner had to fight to go beyond his mandate, but also against the state interests of France, who did not want to internationalize the crisis. This obstacle overcame the High Commissioner through diplomacy and made possible the breach of the UNHCR rules in its functions and growth, and its actions outside of Europe.<sup>325</sup>

Additionally, another type of dilemma that was created because of political reasons was the way to help the refugees. During the Hungarian crisis, there was a great debate if the repatriation to Hungary, a country of the Soviet bloc, is correct, even though the repatriation was one of the regular durable solutions.<sup>326</sup> With decolonization and emergence of new states, the East-West struggle for influence expanded outside Europe during the 1960s and 1970s and the UNHCR widened its actions. The number of refugees as a consequence of decolonization was large enough, that European refugees fell into the second plan<sup>327</sup> and at some point, the UNHCR started addressing them as “old refugees”. The US saw instabilities caused by decolonization as a possible threat of a spread of Soviet influence. As demonstrated many times before, providing aid is a valuable strategy in fighting for influence. In addition to that, newly formed Asian and African

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<sup>324</sup> Barnett and Finnemore, *Rules for the World*, 88.

<sup>325</sup> Loescher, *The UNHCR and World Politics*, 9.

<sup>326</sup> Ibid., 8.

<sup>327</sup> Ibid., 9-10.

states were becoming members of the United Nations, enabling the UN to pass resolutions for authorizing the UNHCR to act outside of Europe.<sup>328</sup>

Among all states in the UNHCR system, the United States was always one of the most important participants. At first, it was important to make them start donating to the UNHCR, and later it remained important to keep them content so that their significant funds would continue. In the annual reports, the influence of the US is greatly noticeable. Not only by the percentage of its donations but also by the number of refugees it accepted, the number of programmes it was taking part in and the statements and opinions which are very often highlighted. The US was marked by the UNHCR in 1955 as “the most important country of resettlement for refugees within the mandate of my Office.”<sup>329</sup> Additionally, annual reports show that, in comparison to other representatives and in accordance with the US being the biggest donor, the special attention was dedicated to requests, comments and appraisals of the US representative to the Executive Committee.

- **Funding**

Funding is in many ways a political issue when observing the work of the UNHCR and one of its limitations. Like many other international organizations, the UNHCR is almost completely dependent on governmental contributions. In addition to that, several states are standing out drastically in the share of the funding and the states are often only channeling their money through the UNHCR for the purposes that suit their interests. The ExCom is reaching the agreement on the financial target for every year.<sup>330</sup> As already explained, the Statute of the UNHCR proclaims that the High Commissioner’s responsibility is to manage and distribute received funds among private and public agencies. The Statute also proclaims that the High Commissioner should not appeal for funds without approval of the General Assembly.<sup>331</sup> Later on, the High Commissioner, in his struggle for bigger autonomy, managed to receive the authorization from the General Assembly in 1952 to appeal for funds to help those neediest under the UNHCR mandate.<sup>332</sup> In 1957, the ExCom

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<sup>328</sup> Loescher, *The UNHCR and World Politics*, 10.

<sup>329</sup> *Report A/2648*, 1955, para. 173.

<sup>330</sup> *Report A/5211/Rev.I*, 1963, APPENDIX Report on the Seventh Session of the Executive Committee of the High Commissioner’s Programme (Geneva, 14-22 May 1962), para. 62.

<sup>331</sup> UNHCR, *Statute*, 12.

<sup>332</sup> *Report A/2394*, 1954, para. 11-12.

established for the first time an emergency reserve of 50,000 dollars for the UNHCR to use it in unforeseen circumstances, while waiting for the possibility to consult with the member states.<sup>333</sup>

However, no matter how much increased the capability of the High Commissioner in dealing with finances was, it remained completely dependent on how much states will donate. Already, in the beginning, their work was highly limited by this fact, with the absence of US funding being the biggest obstacle to the UNHCR for serious development. According to the US idea of the UNHCR being a small and protection-only agency for refugees, for the first couple of years, the US did not want to support the UNHCR, although it was cooperating with the US Escapee Program and ICEM. When the UNHCR was unsuccessfully trying to raise 3 million dollars in the period from 1952 to 1955, the US allocated 45 million dollars to the USEP and ICEM. This was affecting the contributions to the UNHCR of all other donors and by March 1954, only 1 million dollars was collected, with only 11 out of 60 UN members contributing.<sup>334</sup> During the same period, and while not making a single payment to the UNHCR, the US gave over 150 million dollars to UNRWA and 75 million to UNKRA.<sup>335</sup> Eleanor Roosevelt, the US delegate to the General Assembly, stated the US opinion that the UN agency is not supposed to be a relief agency that provides material assistance, but a small organisation based mainly on ad hoc solutions.<sup>336</sup> However, with time, the UNHCR proved its capability and importance, and in 1954 the US started contributing.<sup>337</sup> Interestingly, the first UNHCR Nansen Medal Award, an award for work on behalf of refugees, was awarded to Eleanor Roosevelt for the year 1954.<sup>338</sup>

The UNHCR funds were made mostly out of governmental contributions, non-governmental contributions, UNHCR initiatives like LP “All Stars” production and postal stamps, fundraising campaigns, etc. Additionally, the UNHCR was heavily relying on extra donations from private contributors and on the support from countries of residence where their projects were carried out. From 1955 to the end of 1964, the UNHCR projects, totaling over 41 million dollars, were created. They attracted supporting contributions of approximately 52.7 million dollars, or 56.1 percent of

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<sup>333</sup> *Report A/3585/Rev.1*, 1958, para. 37.

<sup>334</sup> Loescher, *The UNHCR and World Politics*, 64.

<sup>335</sup> *Ibid.*

<sup>336</sup> *Ibid.*, 44.

<sup>337</sup> *Ibid.*, 64.

<sup>338</sup> *Report A/3123/Rev.1*, 1957, para. 292.

the total 94.1 million dollars.<sup>339</sup> Since the United Nations Refugee Fund programme, i.e. UNREF programme, started in 1955, by the end of 1962 state contributions were 51.7 million and the UNHCR commitments were 38.1 million.<sup>340</sup> However, although there were many different sources of income, a significant problem represented the difference between allocation and realization, and also the timing when the money became dispositional. For example, in 1955 for the UNREF programme, from approximately 4 million dollars they received an estimate of 2.6 million dollars, leaving around 36.8 percent shortfall. A big part of that amount was not paid until the beginning of 1956, making project implementations much more complicated.<sup>341</sup> This delay in the payment was causing many approved projects to be postponed for several months.<sup>342</sup> Also, the refugee solutions had to be created in accordance with expectations, not in accordance with reality and real needs. The representative of France expressed at one ExCom meeting, that 700,000 dollars in the 1959 programme for non-settled refugees living outside camps is not enough and that “the amount recommended for the programme had been established in relation to funds which the High Commissioner could reasonably expect to receive and not in relation to needs”<sup>343</sup> The High Commissioner was also condemning the lack of funding for refugees, but also indicating financial benefits that refugees can bring to a country: “There is, in my opinion, something very radically wrong in a situation in which so much money from foreign sources has been expended in Austria to revive the economic capacity of the country, while so little attention has been paid to the needs of the refugees who represent one of the most valuable potential economic assets of the country.”<sup>344</sup>

Today funding of the UNHCR is divided into several categories - tightly earmarked, earmarked, softly earmarked, unearmarked and funding gap. For the yearly report written at the end of 2019, 44 percent out of the budget worth 8.6 billion dollars was a funding gap, and out of the 56 percent donated, only 9 percent was unremarked. The countries are not obliged to give unearmarked funds, so for example out of 1,7 billion dollars given by the US, none of it was unearmarked. The US is

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<sup>339</sup> *Report A/5811/Rev.1*, 1964, para. 68.

<sup>340</sup> *Report A/5511/Rev.1*, 1964, para. 34.

<sup>341</sup> UNHCR, *United Nations Addenda to the Report of the United Nations High Commissioner for Refugees*, (A/3123/Rev.1/Add.1 and Add.2), (United Nations General Assembly Official Records: Eleventh Session, Supplement No.11, 1957), accessed September 1, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c330/united-nations-addenda-report-united-nations-high-commissioner-refugees.html>, para. 48.

<sup>342</sup> *Report A/3123/Rev.1*, 1957, para. 12.

<sup>343</sup> *Report A/3828/Rev.1/Add.1*, 1959, REPORT ON THE NINTH (SPECIAL) SESSION OF THE UNREF EXECUTIVE COMMITTEE (Geneva, 25-26 September 1958), para. 15.

<sup>344</sup> *Report A/2126 and Addendum*, 1953, para. 59.

the greatest funder today, followed by the EU with 472 million, Germany with 390 million, and then the rest with each less than 200 million in 2019.<sup>345</sup>

The political limitation that the funding represents is not only the amount received but also the influence of donors and the allocation of their contributions. In one interview in 1993, High Commissioner Ogata said that the voluntary contributions comprise 95 percent of available funds to the UNHCR. On the question on whether the UNHCR, consequently, reflects foreign policy priorities of major donor countries, she answered that there is always a general programme which is a predictable part of the budget and special programmes are for emergencies. Funds for general programmes are not earmarked but funds for special programmes are tightly connected to the interests of the donors. To highlight this connection, she gave examples of operations in Yugoslavia that were funded by the EU and in Cambodia by Japan, but also of the fact that the US would not fund Iran. The High Commissioner Ogata commented: “If you ask me if foreign policy is reflected in funding priorities, then yes. Some projects are better funded than others. But politicization is not as much the issue because there is a framework of humanitarian assistance.”<sup>346</sup> With states earmarking their donations, very little freedom for the UNHCR for action and prioritizing what is most urgent is left. The one that is funding the most is making the rules not just with votes in the ExCom, but also by dedicating its money. It is a political as much as a financial matter. In some cases, the earmarking was for specific types of projects. For example, the terms for the Ford Foundation grant from the 1950s was that it is for promoting integration but also for resettlement and supposed to be concentrated on younger generations of refugees.<sup>347</sup> All projects conducted under this grant were supposed to be a part of a long term and not a temporary solution.<sup>348</sup> Therefore, the funds were mainly allocated for housing schemes, vocational trainings, etc.<sup>349</sup> However, earmarking of the contributed funds was not characteristic only for the type of programme but also for special categories of refugees, i.e. special countries that will receive help. For example, the US in 1957 donated 194,000 dollars, but earmarked for the problems of

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<sup>345</sup> UNHCR, *Funding Update*, 2019, accessed November 1, 2020.

<https://reporting.unhcr.org/sites/default/files/Global%20Funding%20Overview%2031%20December%202019.pdf>

<sup>346</sup> Ogata et al., *The Evolution of UNHCR*, 422.

<sup>347</sup> *Report A/2394*, 1954, para. 319.

<sup>348</sup> *Report A/2648*, 1955, para. 220.

<sup>349</sup> *Ibid.*, para. 224.

handicapped refugees and difficult cases in Austria.<sup>350</sup> Or in 1961, Belgium contributed 200,000 dollars to the UNHCR, with a specific allocation of certain amounts for Algeria, Morocco, Tunisia, Cambodia, etc.<sup>351</sup>

Many see this system as a big obstacle for the UNHCR to stay politically neutral. Not just that it depends on states for funds, but it also does not decide what it will do with the contributions. Forsythe has a defending argument for this issue, too. He does not see this as a neutrality problem but as an impartiality problem. According to him, as a consequence of earmarking, the UNHCR may distribute more help to one group of refugees than to the other, which is affecting impartiality, not neutrality.<sup>352</sup> But even if it is observed in that way, the fact remains that funding is a limitation of the UNHCR work of a political kind. The realization of projects depends completely on the time and amount of the contributions received, and with such great amount of funds being earmarked, there is no space left for the UNHCR to act as an organisation that is protecting refugees on the level above states and governments.

## 4.2. Impact of the UNHCR

- **Influence**

The UNHCR was created as an organisation that is supposed to have significant influence over states regarding refugee matters. Its purpose is to supervise the application of the 1951 Convention and to help and give advice to governments in building capacity for its proper implementation.<sup>353</sup> However, the UNHCR was not very powerful right from the beginning. It was lacking funds and had very restricted rights, and the struggle for empowerment and creating a wider system of action and membership lasted throughout both 1950s and 1960s. By 1967, only 51 states signed the 1951

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<sup>350</sup> *Report A/3123/Rev.1* 1957, ANNEX II REPORT OF THE UNREF EXECUTIVE COMMITTEE14 (Third session - Geneva, 28 May to 1 June 1956), para. 9.

<sup>351</sup> *Report A/4771/Rev.1/Add.1* 1962, para. 19.

<sup>352</sup> Forsythe, *The Politics of Being Non-Political*, 3.

<sup>353</sup> *Report A/5811/Rev.1* 1964, para. 28.

Convention<sup>354</sup> out of 123 UN member states at that time.<sup>355</sup> However, there is a difference between being in authority and being an authority.<sup>356</sup> Regardless of struggles for finances and autonomy, the UNHCR already in 1950s gained significant influence and an authority in refugee matters. Definitions set in the UNHCR Statute, the 1951 Convention and the 1967 Protocol became part of the state legislations in many countries.<sup>357</sup> Already in 1953, the French government decided to recognize the refugee status of all persons coming within the UNHCR mandate. Furthermore, it was also decided that the French authorities will cooperate with the representative of the UNHCR in Paris on the subject of expulsions of refugees.<sup>358</sup> The report for 1956 says that the Belgium government had decided that refugees in Belgium will be recorded as “United Nations refugees”<sup>359</sup> Starting from 1960, United States government based admission of the refugees on the UNHCR mandate, the same as the Federal Republic of Germany and Italy under national laws from the 1950s.<sup>360</sup> As with today, already in the 1950s and the 1960s, the UNHCR representatives were often members of the eligibility committee in many states. Some of the examples are Italy and Belgium.<sup>361</sup>

Besides the eligibility criteria and refugee status, the UNHCR’s expertise has been requested in many different issues. Members of the UNHCR Branch Offices were, for example, often part of repatriation missions organized by governments, in order to follow up on the repatriated refugees.<sup>362</sup> The UNHCR was participating in the Tripartite Repatriation Commission after the Algerian Civil War, that was conducting repatriation of Algerians from Morocco and Tunisia. It was the first UN organisation to establish an official relationship with Algeria, enabling future cooperation between Algeria and other UN organs.<sup>363</sup> The repatriation missions in Morocco and

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<sup>354</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees Supplement No.11 (A/6711)* (United Nations General Assembly Official Records: Twenty-second Session, 1968), accessed September 1, 2020, <https://www.unhcr.org/excom/unhcrannual/3ae68c700/report-united-nations-high-commissioner-refugees.html> para. 41.

<sup>355</sup> “Growth in United Nations Membership, 1945-Present,” United Nations Website, accessed October 10, 2020, <https://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html>.

<sup>356</sup> Barnett and Finnemore, *Rules for the World*, 74.

<sup>357</sup> Grahl-Madsen, *Identifying the World's Refugees*, 14.

<sup>358</sup> *Report A/2126 and Addendum*, 1953, ADDENDUM (DATED 22 SEPTEMBER 1952) TO THE REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ANNEX, para. 33.

<sup>359</sup> *Report A/3123/Rev.1*, 1957, para. 185.

<sup>360</sup> Fragomen, *The Refugee: A Problem of Definition*, 51.

<sup>361</sup> *Report A/2126 and Addendum*, 1953, ANNEX, para. 20; *Report A/2126 and Addendum*, para. 84.

<sup>362</sup> *Report A/3585/Rev.1*, 1958, para. 106.

<sup>363</sup> *Report A/5511/Rev.1*, 1964, para. 87.



Tunisia were organized in 1962, both started in May and ended in July. From Morocco 61,400 and from Tunisia 120,000 people repatriated to Algeria.<sup>364</sup>

The reports from the 1950s and the 1960s show the improvement in national legislations regarding refugees in many different aspects during these two decades. In 1957 it was agreed between France and Benelux states, that refugees can travel to these countries without a visa for staying up to no more than three months. Even if the UNHCR had no part in it, the condition was that refugees have a valid travel document issued according to the 1951 Convention.<sup>365</sup> In 1955, the UNHCR approached the Council of Europe regarding the abolition of visas for refugees. The result was a resolution according to which members of the Council that signed the 1951 Convention should abolish visa requirements for holders of these documents and that if visas are still required, their issuance should be fast and free or with low fees.<sup>366</sup> In 1954, it is reported that, at the request of the UNHCR, Belgian authorities agreed to approve permanent residence permits to refugees who entered Belgium before the UNHCR was established, and who have been resident in Belgium for five years and have had good conduct.<sup>367</sup> The UNHCR also made an agreement with the government of the Federal Republic of Germany regarding compensation to refugees who had been victims of national socialist persecution because of their nationality. It was decided that such refugees should receive the same compensation as refugees persecuted for racial or political reasons. The federal Government placed additional 45 million German marks at the disposal of the UNHCR for assistance to refugees who did not have legal claim for indemnification under the German Federal Indemnification Law.<sup>368</sup> The UNHCR was additionally assisting refugee applicants for indemnification by establishing whether they were refugees on the date specified in the German Federal Indemnification Law.<sup>369</sup> The indemnification section of the UNHCR was created in Geneva and in 1961 General Assembly allocated 206,000 dollars as administration money from the UN budget for this section, so that the whole sum of 45 million German marks will go to refugees.<sup>370</sup>

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<sup>364</sup> *Report A/5511/Rev.1*, 1964, para. 85.

<sup>365</sup> *Report A/3585/Rev.1*, 1958, para. 96.

<sup>366</sup> *Report A/3123/Rev.1*, 1957, para. 234.

<sup>367</sup> *Report A/2394*, 1954, para. 77.

<sup>368</sup> *Report A/4378/Rev.1/Add.1*, 1961, para. 16.

<sup>369</sup> *Report A/4771/Rev.1*, 1962, ANNEX II International protection, para. 14.

<sup>370</sup> *Report A/4771/Rev. 1*, para. 25.

There are numerous similar examples, regarding major or smaller issues. They were the result either of the success of the UNHCR in promoting international refugee protection or of the self-initiatives of governments. In both cases, the UNHCR had great authority by directly causing improvements or by the fact that it was the UNHCR principles of refugee status and rights that were used as parameters. The UNHCR also participated as a member or an observer in many different agreements and committees concerning refugees created worldwide.<sup>371</sup> Additionally, across seven decades of its existence, the UNHCR received two Nobel Peace Prizes, being the first UN agency to receive that award. The first one was received in 1954. It represented an appeal to governments to give more financial support to refugees and the motivation behind it was “for its efforts to heal the wounds of war by providing help and protection to refugees all over the world.”<sup>372</sup> The second Nobel Peace Prize the UNHCR received in 1981 was for the effort invested in repatriation of refugees in Asia, Africa and Latin America in the 1970s.<sup>373</sup>

- **Enforceability**

The influence does not necessarily carry with it the power to enforce the rules. Therefore, although the UNHCR was from the start influential in the creation of the idea of who are refugees and what is the proper way to help them, many aspects of that idea were not respected by the states. The UNHCR was unable to do anything to change it. Unlike any other UN human rights treaty, there is no international authority for interpretation of refugee laws, meaning that it is the responsibility of the national legislation only.<sup>374</sup> The annual reports often witnessed a disregard of the 1951 Convention principles. Even though the Federal Republic of Germany was the participant in the Conference of Plenipotentiaries that drafted and signed the 1951 Convention<sup>375</sup>, the report for 1956 shows that Federal Republic of Germany “continued” to expel refugees that came to their territory illegally or served a sentence<sup>376</sup>, even though it is against article 31 of the 1951 Convention. The drafting member was also Austria, which not only lacked an established procedure for determination of refugee status, but also, according to the report for 1955, equated refugees of

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<sup>371</sup> *Report A/5811/Rev.1*, 1964, para. 60-61.

<sup>372</sup> “The Nobel Peace Prize 1954,” NobelPrize.org, accessed October 1, 2020, <https://www.nobelprize.org/prizes/peace/1954/refugees/facts/>.

<sup>373</sup> *Ibid.*

<sup>374</sup> Hathaway, *Food Deprivation*, 330.

<sup>375</sup> UNHCR, *Convention and Protocol*, 6.

<sup>376</sup> *Report A/3123/Rev.1*, 1957, para. 204.

German ethnic origin with Austrian nationals in employment, while foreign refugees required a work permit. That directly contravened article number 3 of the 1951 Convention, according to which states must not discriminate based on race or national origin.<sup>377</sup> Although refugees were able to obtain travel documents and the system of providing them documents started with Nansen in the 1920s, these passports were losing value because many countries were requesting visas. The report for 1955 states that even though visas had been abolished in most of Europe for nationals, refugees still needed them for most of the countries.<sup>378</sup>

Therefore, in the connection between influence and enforceability, the UNHCR had in these two decades influence as an authority, not as the organisation that was in authority. Not only that, but states could disobey the principles of the UNHCR, as the 1951 Convention itself allowed states to accept some parts of it and to ignore others. According to article 42 of the 1951 Convention, states can make reservations to some articles while signing the Convention. Some of the articles which are not susceptible to this right are articles regarding the definition of a refugee, non-discrimination as to “race, religion or country of origin”, religious rights, access to courts of law, non-refoulement. Further on, they are dealing with the obligation of member states to inform the Secretary-General about the adopted national legislation regarding the implementation of the 1951 Convention; that this Convention is replacing all the previous ones regarding refugees, that the settlement of disputes between parties to the Convention can be referred to the International Court of Justice, that the cessation of the effect of the Convention will be enforced one year after the denunciation, that any contracting state may request a revision of the 1951 Convention at any time. Therefore, most of the articles that are exempt from the possibility of accepting under reservation are not directly concerning the rights of refugees. A state, while signing the 1951 Convention, for example, makes an obligation to accept the rules as to when this Convention will come into force after signing it, or how long the denunciation process must last, but makes no obligation to give some of the essential needs to refugees, such as the right to work.

The UNHCR was placing a particular importance on the refugees’ right to work.<sup>379</sup> Article 17 of the 1951 Convention provides that refugees will have most favorable treatment as regards their right to engage in wage-earning employment, and they will not be affected by restrictive measures

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<sup>377</sup> *Report A/2902 and Add.1*, 1956, para. 70.

<sup>378</sup> *Ibid.*, para. 88.

<sup>379</sup> *Ibid.*, para. 66.

applied to aliens.<sup>380</sup> However, states had the possibility to make reservations regarding this article and many of them used it. Most of the governments which signed the 1951 Convention by mid 1950s made reservations, “some of them substantial.”<sup>381</sup> In the report for 1954, Austria was called out as a country that at the time of signature, made several important reservations to the provisions of the 1951 Convention. With time, significant numbers of these reservations were withdrawn and it was represented as a success. The High Commissioner stated that he was “glad to be able to report” this, even though the reservations Austria kept were for paragraphs 1 and 2 of the article 17, which were dealing with the right of wage-earning employment.<sup>382</sup>

In the annual reports, the High Commissioner would often report about the reservations made and withdrawn. Some states would make reservations for one or two, some states for a significant number of articles. With every reservation made, an image of international refugee protection as a globally standardized system was weakened. A system where everything was dependent on the national legislations was created, in which the most important international refugee protection instrument could be almost completely accepted as a recommendation only, not as a rule. In addition to that, there was a lack of significant consequences when the principles are disregarded. The enforceability of the UNHCR remained based on appeals, encouragements and only sometimes on public shaming and condemnation.

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<sup>380</sup> UNHCR, *Convention and Protocol*, 22.

<sup>381</sup> *Report A/2902 and Add.1*, 1956, para. 39.

<sup>382</sup> *Report A/2648*, 1955, para. 9.

## **Conclusion**

What kind of notion of international refugee protection has the UNHCR created? Which principles and standards of refugee protection were established? Were they correspondent with everyday troubles of refugees and applied equally to all of them worldwide? How is the systematic functioning of the UNHCR affecting international refugee protection? These were the questions with which I started researching for my Master thesis. Indeed, analysis of the annual reports of the High Commissioner gave me a lot of answers. However, even though the reports are not a dry material, but have following explanations as if it is the material adjusted to broad masses, I needed a period of preparation to be able to analyze them. I first had to dedicate significant amount of time to research the UNHCR system of work and decision making, before I could begin to understand the information I encountered in these reports. Interpretation of the statements, both of the High Commissioner and the members of the Executive Committee, was another hardship. The language used is on a highly diplomatic level, that does not plainly reveal thoughts and feelings nor criticism and condemnation. But these reports are a rich and valuable source. They reveal not only numbers, important names and data, but they also help the researcher to learn a lot about the UN system and about political and historical circumstances in which it was operating. The reports contain information on practical issues, such as how the UNHCR functioned, how the funds were raised, and how the decisions were made. But also a more substantial matter, such as how the refugee issues were used in politics and what kind of position and impact did the UN have in the wider international community.

The UNHCR started as a small organisation with a limited mandate and many aspects of previous efforts inherited, both positive and negative. International refugee protection existed before the United Nations was established. Prior to the UNHCR, the international community already started recognizing refugees as a specific category of people in need and initiating international solidarity for the solution of their problems. The UNHCR is the organisation that inherited these first attempts, redefined and created a notion of international refugee protection that still exists today. It is an immensely important organisation for the salvation of refugee problems that is trying to make refugee issues more visible and to motivate international solidarity in order to solve them. It globalized the notion of international refugee protection and in the past seven decades created a widely accepted definition of refugees and a dominant picture of standards on how proper

assistance to them should be. However, in the beginning, the system established and main principles introduced had a limited scope and an ending in sight. The idea of refugee problems was that it is something solvable. With time, however, it proved to be the opposite case and those mass refugee movements became a part of a new reality. The UNHCR saw itself as an organisation worthy of the task and made strong efforts to become a permanent and most dominant organisation dealing with refugee issues on a global scale. The problem is, however, that this whole process developed on the initial base of a small-sized and narrow-scoped agency. From the beginning the UNHCR was not intended to be permanent, nor as powerful. Therefore, it was somehow at the same time upgrading the notion of refugee protection and its own system of functioning. During the whole period of the 1950s and 1960s the struggle of the UNHCR to have a stand in international refugee protection was present, while at the same time it was constantly reinventing the meaning of international refugee protection, starting from the definition of who constitutes a refugee.

Today, the UNHCR is in many ways a different organisation in comparison to 70 years ago. It expanded target groups and changed initial proportions and principles of proper assistance to refugees, but the foundations remained the same as in 1951. Therefore, a reiteration of these foundations by the UNHCR in 2001, when the member states reaffirmed their commitment to the 1951 Convention, might be considered somewhat paradoxical. Awareness of the limitations present in the 1951 Convention existed already during its creation. That is reflected in the Final act of the 1951 Convention, where the hope was expressed that it “will have value as an example exceeding its contractual scope”, that all nations will follow it but that they will implement it in a far more comprehensive way than it actually is.<sup>383</sup> Together with this awareness, many efforts of the UNHCR to act beyond its Statute during the 1950s and 1960s give the impression that the UNHCR was at the same time protecting its foundations and principles and competing against them.

In the same way that one might question is being a human a sufficient qualification for having human rights<sup>384</sup>, it can also be questioned whether being forced to leave home is a sufficient qualification for receiving refugee protection? According to the UNHCR, it is not. The UNHCR attached to the refugee status geographical and time limitations, specific causes of suffering; the

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<sup>383</sup> UNHCR, *Convention and Protocol*, 11-12.

<sup>384</sup> Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace & Co, 1951), 298.

fact if the person did or did not cross the border. Being forced to flee their homes is not a satisfactory precondition for receiving international refugee protection, persons fleeing also need to flee the state. There are too many conditions which with time showed that the definition of a refugee and reality proved to be in such discrepancy, that a way around the rules was constantly needed. Therefore, soon after its establishment, the major part of the UNHCR's work became based on ad hoc solutions, such as a good offices system and the resolutions of the General Assembly. The problem is that with this kind of approach, the structure and principles are fading and different standards for different groups of people are enabled. Ignoring huge groups of people in need becomes possible and providing disproportionate amount and forms of help to refugees becomes normal.

The political pressure under which the UNHCR was functioning and created, shaped the notion of international refugee protection in many ways. The UNHCR is an organisation that is completely dependent on governmental contributions, decisions and cooperation, but at the same has the task to defend refugees from governments. It is the organisation that was created with the idea of being non-political, but at the same time has to create a global system in cooperation with governments and to promote proper policies that governments should introduce and respect. No matter what kind of standards in providing help and protection to refugees were established, they were constantly adjusted to the current political situation. The General Assembly, the High Commissioner and the Executive Committee often hesitated to provide help to refugees because of the political consequences such assistance carries with it. The whole existence of the UNHCR depends on states and their contributions, which largely affects the decisions and actions of the High Commissioner. Therefore, international refugee protection is protecting those refugees that do not have government protection. But it is at the same time based on refugee protection by states and international solidarity, and not on the creation of the universal system that is above states. This is because, in the end, a refugee completely depends on the national legislation, willingness to adhere to the 1951 Convention principles and economic and geopolitical circumstances of the country he or she ends up in.

Unfortunately, the enforceability of the UNHCR is based on public condemnation and the conscience of the signing member states. The way the notion of international refugee protection is created gives a precondition to governments to disrespect the principles of the 1951 Convention

or to go around them when they see fit. The possibility of making reservations for important aspects of refugee solutions is making principles too vague and loose. What's more, major refugee movements in the 20<sup>th</sup> and the 21<sup>st</sup> century show that when large scale assistance is necessary, the UNHCR system fails to oblige governments on international solidarity. Additionally, it allows them to find an excuse to avoid and misinterpret the rules they have already committed themselves to. On the other hand, even though enforceability is a huge issue of the UNHCR, its influence as an authority in refugee matters, information and expertise are undisputable. The problem is, however, that with spreading its influence and power, the UNHCR also made acceptable and standardized all the flaws of the international refugee protection it created.

The UNHCR officially has a humanitarian cause and invests great efforts in contributing to the solving of the problems of refugees. However, for helping refugees the UNHCR is using and protecting a 70 years old pattern that is also harming them. The ideas and methods of the UNHCR from the beginning are excluding too many people from receiving assistance and often fail to provide proper help. The notion of international refugee protection that the UNHCR has defined in the 1950s and 1960s that continues to this day, covers all the main areas in providing protection – who are refugees, what is the proper way of helping them and what is the obligation of the international community towards them? Not only that there is a set of conditions a person forced to flee needs to fulfill to become a refugee under international standards, but also a clear differentiation between people that do or do not fit in these conditions is designated. Accordingly, there is an obvious distinction in amount and quality of help provided to different groups of refugees. For some that help is a short-term solution, such as food or shelter, and for the others it is a permanent solution that frees a person from refugee status.

The fact that so many people depend on international refugee protection, but that there are no consequences for states that are not contributing to it is very problematic. The international obligation in refugee protection is unspecified, the notion created is that it is necessary but not mandatory for states to participate. Additionally, there is no way for the UNHCR to enforce its principles and rules, and punish a state for disregarding them. The notion of the international refugee protection created by the UNHCR is that it is a matter of simple goodwill if a state will help or not, to what amount it will contribute and will it appropriately follow the principles.



The UNHCR is an organisation of great importance. It is keeping the problems of refugees highly visible and it managed to gather 149 states worldwide in creating solutions with joint forces. Projects and programmes of this organisation are often of enormous proportions regarding the funds invested and the number of people assisted and it provides opportunities for many refugees to return home or to resettle. It recognizes refugees as people in need and provides basic standards for helping them. For these reasons, it is very important that an organization of this type exists, especially because it is the part of the UN system, meaning that it has the idea of solving refugee problems and creating solutions on a global level. However, the international refugee protection is not limited only to projects and funding. It is also responsible for the creation of the awareness and the idea of what are refugee issues and what do refugees need. More importantly, it designates who is responsible for them and for solving their problems. Therefore, no matter how big are the projects the UNHCR is conducting, in many ways from its beginning this organisation narrowed the meaning of the notion of international refugee protection. With definitions and terminology that were created, with ignoring many aspects of every day troubles the refugees are facing and with inconsistent standardization in providing help to refugees worldwide.

The whole international refugee protection regime moved forward and evolved in the past 70 years, but its base, the 1951 Convention and the 1967 Protocol, remained behind. Many new agreements, speeches, resolutions and interpretations were introduced, but the foundations did not change. Furthermore, with the base remaining the same, the old connotations and meaning of the international refugee protection endure, while at the same time maintain an excuse for excluding people from getting international protection. No matter how much the UNHCR system of work today may be innovative and open-minded, the basic instruments are the ones that have, since the beginning, divided refugees into those that are and those that are not deserving of international refugee protection following criteria that are not in contact with everyday practices. Even though the 1951 Convention contains the recommendation to governments to supersede it, and that the UNHCR today is recommending states to adhere to other more inclusive instruments, the fact is that such narrow concepts in providing refugee protection exist. With them being reaffirmed in the 21<sup>st</sup> century, they once again officially enabled for states to provide for refugees minimum rights and help, and still be respectable members of the international community that appear to be following the international refugee protection standards.

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## **Abstract**

This thesis explores the impact of the United Nations High Commissioner for Refugees with regard to the creation and development of the globally accepted notion of international refugee protection. The research is focused on the first two decades of the organization's existence, from 1950 to 1970; the period when the main ideas and instruments of the refugee protection system were created and which still remain valid today. As a leader in international refugee protection, the UNHCR is setting the main standards and guidelines in solving refugee issues. Consequentially, the efficiency of this organisation is often the subject of scholarly debate. This thesis is taking a wider approach to the issue. It is not only researching how efficient the UNHCR is in helping refugees, but what kind of notion of international refugee protection it has created. The focus of the research is not on the actions of the UNHCR, i.e. its projects and programmes, but on its ideas and system of work. The thesis' analysis draws attention to discrepancies between the created notion of who actually are refugees and what are the right ways to help them on the one hand, and the often overlooked categories of people forced to flee their homes and the neglected issues which the refugees face regularly on the other. For that reason, the research is of an introspective character, based on the self-representation of the UNHCR shown in the annual reports and official UN documents and conventions. This thesis concludes that the UNHCR narrowed the notion of proper international refugee protection not only through its actions but also with its system of decision making, terminology used, selective and partial recognition of refugee issues and with unequal and unstandardized usage of its principles on a worldwide scale.

## **Zusammenfassung**

Die vorliegende Arbeit untersucht die Auswirkungen des Hohen Flüchtlingskommissar der Vereinten Nationen (engl. UNHCR), auf die Schaffung und Entwicklung des weltweit anerkannten Begriffs des internationalen Flüchtlingsschutzes. Die vorliegende Arbeit konzentriert sich auf die ersten zwei Jahrzehnte des Bestehens der Organisation, von 1950 bis 1970, da dies der Zeitraum ist in dem die wichtigsten Ideen und Instrumente des bis heute gültigen Schutzsystems für Geflüchtete geschaffen wurden. Als Vorreiter im internationalen Schutz von Geflüchteten setzt der UNHCR die wichtigsten Standards und Richtlinien zur Regelung von Fragen zu Schutzsuchenden. Folglich ist die Wirksamkeit dieser Organisation oft Gegenstand wissenschaftlicher Debatten. Diese Arbeit verfolgt einen breiteren Ansatz in dem nicht nur die Wirksamkeit des UNHCR bei der Hilfe für Geflüchtete untersucht wird, sondern auch der Begriff des internationalen Flüchtlingsschutzes, den es geschaffen und geformt hat. Der Fokus der Forschung liegt nicht auf den Aktionen des UNHCR, d.h. seinen Projekten und Programmen, sondern auf seinen Ideen und seinem Arbeitssystem. Die Analyse zeigt Diskrepanzen zwischen dem vom UNHCR geschaffenen Flüchtlingsbegriff (wer ist ein Geflüchtete\*r; was sind die korrekten Hilfsmaßnahmen), und den oft übersehenen Kategorien von Menschen, die gezwungen sind, aus ihrer Heimat zu fliehen, sowie vernachlässigten Problemen, mit denen Geflüchtete regelmäßig konfrontiert sind. Aus diesem Grund hat die Untersuchung einen nach innen gerichteten Charakter, basierend auf der Selbstdarstellung des UNHCR in seinen Jahresberichten und in offiziellen UN-Dokumenten und Konventionen. Die Schlussfolgerung dieser Arbeit ist, dass der UNHCR den Begriff des internationalen Flüchtlingsschutzes nicht nur durch seine Handlungen eingrenzt, sondern auch durch seine Entscheidungsprozesse, die verwendete Terminologie, die selektive und partielle Anerkennung von Problemen Geflüchteter und die ungleiche und nicht standardisierte Anwendung seiner Prinzipien weltweit.