

## **The Role of UNHCR in the International Protection of Refugees**

In the brief time allocated to me today I want to address the question of UNHCR's role in the international protection of refugees from two distinct but closely inter-related angles:

1. The legal framework within which UNHCR works;
2. The practical means by which we operationalize the tasks assigned to us within that framework

Without the legal framework we would be without authority to advocate and act on behalf of refugees but without the ability to translate our mandate into practical field oriented activities we would run the risk of irrelevant isolation – talking with no concrete means of acting.

The legal framework from which we derive our Mandate is comprised of an accumulation of instruments starting with:

The Statute of the Office of the High Commissioner – adopted in 1950 as an annex to GA Resolution 428 which brought UNHCR into being on 14 December 1950; and followed by the Convention of 1951 itself; and its 1967 Protocol.

In addition to the texts of these specific instruments UNHCR's mandate has been refined, reaffirmed and expanded upon countless times in the past half century through a series of General Assembly Resolutions and Executive Committee Conclusions – when I refer here to ExCom Conclusions I am talking about the output of the annual meeting of the Executive Committee of the High Commissioner's Programme – a gathering of States, amongst them both signatories and non-signatories to the 1951 Convention.

Obviously neither GA Resolutions nor ExCom Conclusions can be cited as hard law but they do constitute authoritative non-binding guidance on the nature and extent of UNHCR's Mandate.

So much for the listing of sources but what about their actual content. Not surprisingly all of the key instruments setting out UNHCR's mandate have as their core objective the international protection of refugees.

There has been an expansion of UNHCR's role over the years to encompass additional responsibilities towards stateless persons and internally displaced persons but in my comments here today I am going to limit myself more narrowly to the role of UNHCR in the protection of refugees. Not because these additional aspects of our mandate are any less important or deserving but simply in the interests of time and in acknowledgment of the fact that we will close our discussions today with a discussion on the protection of IDPs.

The GA Resolution to which the Statute of the Office of the United Nations High Commissioner for Refugees is annexed provides a succinct list of the issues on which

Governments are expected to co-operate with the High Commissioner in the performance of his functions, namely:

- Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps to implement them [ In the Americas we are very close to region-wide ratification of the two principle refugee instruments, with some few exceptions in the Caribbean];
- Entering into special agreements with the High Commissioner for the execution of measures to improve the situation of refugees and reduce the number requiring protection;
- Admitting refugees to their territories – not excluding the most destitute;
- Assisting the HC in his efforts to promote voluntary repatriation;
- Promoting the assimilation of refugees, especially by facilitating their naturalization [ We have some notable examples of this in the Americas, e.g. Mexico’s generous integration of Guatemalan refugees];
- Providing refugees with travel and other documents to facilitate their resettlement;
- Permitting refugees to transfer their assets – especially those necessary for their resettlement [Very often in resettlement situations there are no such assets to transfer and resettlement represents a new beginning for refugees reliant on the help of HCR and the State welcoming them to get re-established];
- Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them.

The Statute is very specific in its assignment of direct responsibilities to UNHCR – reiterating the list of tasks found in the GA Resolution, providing a definition of the term refugee, and mentioning amongst other things:

- The obligation of the High Commissioner to work with States [ and NGOs – the words used by the Statute back in 1950 were ‘private organisations’ ], inter-governmental organizations and specialized agencies, to find solutions to the plight of refugees;
- The non-political character of the High Commissioner’s work, stressing that it be humanitarian and social [This is not to deny that UNHCR works within a political context but merely to ensure that the work of the organization as it relates to refugees should be apolitical ];

It is clear from the content of the Statute that States intended entrust UNHCR with a degree of autonomy and a responsibility to be a strong advocate on behalf of refugees. It is equally clear however that in all its actions UNHCR is expected to work in partnership with States. Without the strong commitment of States the international framework for refugee protection comes to nothing.

The Convention itself speaks more of the rights and obligations of refugees and the manner in which States should treat them, than it does about UNHCR.

With one very important exception - Article 35 of the Convention which creates a duty of supervision in the application of the Convention – the so called Supervisory Role of UNHCR.

Article 35 specifies in very clear terms the nature of Co-Operation of the National Authorities with the United Nations stating:

Art 35 (1) The Contracting States undertake to co-operate with the Office of UNHCR [.....] in the exercise of its functions, and shall in particular facilitate its **duty of supervising the application of the provisions of this Convention.**

Art 35(2) In order to enable the Office of the High Commissioner [.....] to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested, concerning:

- (a) the condition of refugees;
- (b) the implementation of this Convention;
- (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

This Article is crucial to the role and functioning of UNHCR and the manner in which the organization discharges its responsibilities for the international protection of refugees. The supervisory role bestowed on HCR by virtue of Art 35 is central to the working relationship that exists between States and UNHCR. It involves an element of acting as a watchdog but it is not about looking over the shoulders of States and criticizing them but rather about finding the best ways and means to fulfill all of the actions of the Statute and uphold both the letter and the spirit of the Convention.

My colleague Juan Carlos Murillo who will speak later in this session will address the question of utilizing the HR framework and specific HR instruments as a means of ensuring the international protection of refugees, so I will not jump ahead to that topic – suffice to mention at this point that the range of HR instruments does form part of the ample legal toolkit that UNCHR can call upon in the completion of its responsibilities.

Moving on though from the bare bones of the legal framework to look more closely at the second element of this presentation:

The practical means by which we operationalize the tasks assigned to us within the legal framework that constitutes our Mandate.

I want to draw your attention to the wide range of activities in which UNHCR is involved in pursuit of the international protection of refugees.

- We undertake refugee status determination under our Mandate – this is an activity that generally arises in one of two circumstances:

In States that are non-signatories to the 1951 Convention, or; In States that are signatory but for whatever reason have not established a national system to determine status and have turned to UNCHR for assistance with this task.

In both cases the exercise of status determination under our Mandate is not a stand alone activity undertaken in isolation from the State. Having made a determination on an individual's status, UNHCR still looks to the State to give meaning to that decision – to provide the means by which a formal legal determination can be transformed into the real life enjoyment of rights.

- We are actively engaged in voluntary repatriation activities, whether it is on an individual or a group basis. Our actions with respect to repatriation are undertaken simultaneously in hosting states – helping refugees prepare for the journey home, and in the countries of origin – helping the State to welcome home their citizens and ensure their sustainable reintegration ;
- We are actively involved in resettlement activities. This too involves actions in a number of different locations. Helping States to identify those refugees with the most pressing needs for resettlement, working in countries of first asylum to prepare refugees for their journey and working within resettlement states to help ensure the effective integration of those refugees arriving under resettlement arrangements.

In addition to these practical hands-on activities there is a wide range of actions undertaken by UNHCR in the realm of technical advice and guidance. This could include

- Providing legal advice on the drafting and adoption of refugee related legislation
- Providing technical advice on the establishment and operation of status determination procedures; This is a role and in and of itself involves a wide range of possible actions ranging from the initial provision of advice, through to more practical measures like training staff, providing country of origin information to assist with the determination of cases, participating in national eligibility committees in an advisory or participatory function, providing support staff through HCR deployment schemes to strengthen the functioning of national asylum systems.

I have attempted with my comments here today to give a brief overview of the range and scope of UNHCR's actions in the realm of the international protection of refugees. In doing so I have brought us back to basics, but I hope I have not made it too basic.

Thank you very much for your attention

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