How effective has the UNHCR been in fulfilling its mandate to protect refugees?

James Chiusiwa
James Chiusiwa is a former student of the Graduate Studies in Development Administration program of the National Centre for Development Studies, The Australian National University. This paper was submitted at the close of the professional short course/optional Masters Degree module, Complex Emergencies: humanitarian aid evaluation, which was held by the National Centre for Development Studies.

Abbreviations

UN United Nations
UNHCR United Nations High Commissioner for Refugees
Since the Second World War, armed conflicts, both between and within states, have caused the displacement of people in many countries, most of whom have crossed national borders in fear of their safety. These conflicts have created large numbers of refugees in many parts of the world. In 1995, for example, 14.5 million refugees had crossed international borders and been granted asylum in another country (UNHCR 1995:19). The 1951 United Nations Convention Relating to the Status of Refugees defined a refugee as ‘any person who, owing to a 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’ (United Nations 1954:1–2). Since refugees cannot look to their own governments or countries for protection, the international community, through the United Nations, established the United Nations High Commissioner for Refugees (UNHCR) in 1951 with the aim of providing international protection for refugees.

This paper aims to assess the effectiveness of the UNHCR in fulfilling its mandate to protect refugees, focusing on the performance of the UNHCR in dealing with such issues as granting asylum, the rights of refugees and voluntary repatriation. The assessment is general, although relevant case material will be drawn from events in Africa, Europe and the United States during the period from the 1970s to the 1990s. The findings are that the effectiveness of the UNHCR in fulfilling its mandate has been varied. While there have been cases where the UNHCR has been very effective in ensuring the protection of refugees, there also have been cases where effective protection has not been achieved.

**Mandate**

The mandate of the the UNHCR is spelt out in its Statute

The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities (UNHCR 1993:162).

In undertaking its mandate the UNHCR uses a number of international instruments additional to its Statute for the effective protection of refugees. These include the United Nations 1951 Convention Relating to the Status of Refugees, supplemented by the 1967 Protocol, and the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Organisation of African Unity in 1969 (Netherlands Development Cooperation 1994:248). These Conventions contain a range of fundamental principles and
obligations crucial for the protection of refugees that are supposed to be observed by countries that have ratified them. The UNHCR fulfils its mandate by ensuring and promoting the adoption of these international standards for the treatment of refugees by states.

The core principle of international protection in the Conventions is that of *non-refoulement*, which prohibits the expulsion or forcible return of refugees to a country where they may have reason to fear persecution or other threats to their lives, liberty or security (UNHCR 1993:171). The UNHCR aims to ensure that refugees who have fled their country are granted asylum and a legal status which takes account of their particular situation and needs. Furthermore, the UNHCR attempts to ensure that applications for asylum are examined fairly and, while their requests are being examined, asylum seekers are protected from forcible return to their country.

**Assessment of the UNHCR’s success in ensuring refugee access to asylum**

During the Cold War period, most countries, especially in the West, were relatively open and receptive to refugees from the communist bloc countries. Such refugees had political significance during that period, because they were seen by western countries to have voted with their feet—they had chosen liberty by fleeing from oppressive communist states (Jean 1997:46). As a result, the United States admitted thousands of Cubans, Soviet Jews and other eastern bloc citizens as refugees, while western European countries also accepted thousands of asylum seekers from the eastern bloc as refugees (UNHCR 1993:36). Thus it was not difficult for refugees to be granted asylum during this period. As long as granting refugee status was strongly based on superpower ideology, the work of the UNHCR was easier, because in most cases the UNHCR did not have to negotiate on behalf of the refugees. The politics of the Cold War ensured that there was relative international protection for refugees.

The UNHCR also has been successful in providing protection to African refugees by ensuring that they are granted asylum. This has been the case because most African countries have been receptive to the influx of refugees from neighbouring countries. In contrast to the west, the receptivity of African countries to refugees has not resulted from Cold War politics and ideology. Refugees have been readily accepted and granted asylum partly because a tradition of hospitality remains remarkably strong in most African countries and communities (Loescher 1993:8). The cultural, economic and ethnic linkages between people of neighbouring countries, especially those living in the border areas have also played a significant role. Thus countries have felt an obligation to provide asylum to their ‘brothers’ and ‘sisters’ fleeing armed conflict in neighbouring countries. Another factor is that the boundaries of most African countries are ‘artificial’ and therefore easy for refugees to cross. The fact that most refugees do cross borders *en masse* leaves the recipient country little choice but to accept them. Malawi, Zimbabwe, Zambia and Swaziland, for example, granted asylum to a large number of Mozambican refugees from
1986 when there was armed conflict in that country. Malawi alone provided asylum to over 1 million Mozambicans and, in some districts, the population of refugees outnumbered that of Malawians (UNHCR 1993:100). Kenya also has provided asylum to a significant number of refugees from Sudan, Ethiopia and Somalia. In all these cases, although the presence of the UNHCR was important in ensuring that continued protection was provided to the refugees, the crucial fact is that the governments of these countries were willing to grant asylum to the refugees.

However, there have been cases in Africa where the UNHCR has had to negotiate with governments for refugee asylum. This has been the case where the influx of refugees has exerted pressure on the resources of the host country to such an extent that the government has become reluctant to accept more refugees. In 1993, Kenya was already hosting a large number of refugees from Somalia, Ethiopia, and Sudan, and Somalian refugees were continuing to enter the country. The Government of Kenya felt that the large number of refugees was having a negative effect on its economy and hence did not want to receive any more Somali refugees. In this case, the UNHCR negotiated with the government to prevent it from sending the refugees back to Somalia where they feared persecution, and was thus effective in ensuring their protection.

There have, however, been numerous cases where the UNHCR has not been successful in fulfilling its mandate. Examples can be found in western countries following the Cold War. The end of the Cold War removed the ideological basis of a western refugee policy heavily geared towards offering asylum to people fleeing from communist regimes (UNHCR 1993:36). Such asylum seekers are no longer considered desirable and this has increasingly resulted in most asylum seekers being turned away in western countries with no attempt to determine the validity of their claim. For example, since 1981 and 1994 respectively, Haitian and Cuban boat people have been systematically turned away at sea by the US Coast Guard, without any assessment of their claims to asylum (Loescher 1993:103; Jean 1997:46). Other examples include the treatment of Czechs, Poles, Albanians and Vietnamese boat people in western European countries (UNHCR 1995:203; Loescher 1993:138; Jean 1997:46). Sending asylum seekers back to their countries without proper examination of their claims denies eligible refugees asylum and is thus a flagrant violation of the 1951 Convention. Appeals and representations by the UNHCR for these asylum seekers to be given the right to asylum have been to no avail (Loescher 1993:103). This not only illustrates the ineffectiveness of the UNHCR in protecting refugees, but also demonstrates that governments have the power, whatever their legal obligations, to turn a blind eye to violations of the rights of refugees.

The UNHCR has observed that the pressures on the institution of asylum in Europe and North America have resulted in a narrower interpretation of the definition of a refugee, more stringent determination procedures and attempts to limit access to asylum channels (UNHCR 1993:35). The result has been lower levels of refugee protection and refused entry of asylum seekers into these countries. In 1995, for example, the European Union
justice and interior ministers decided that only people persecuted by a state could be defined as refugees (Jean 1997:54). This new definition denies international protection to victims of extremist movements and to nationals of states which have virtually disintegrated. Such people do qualify as refugees under the 1951 Convention. For example, Algerians who felt threatened by the GIA (a splinter group of the Front Islamique du Salut) would not be granted asylum under this new definition because they are not threatened by the state but by an extremist movement. Likewise, Somalis and Liberians, who fled their countries when there was armed conflict between the ‘war lords’ in their countries, would not be granted asylum because the state had disintegrated (Jean 1997:55). Despite this, the UNHCR has not intervened on behalf of the refugees by halting such changes to the definition of a refugee. This is a sign of failure. The ability of the UNHCR to act in such cases has been limited because, although the UNHCR is empowered by the United Nations General Assembly with a binding authority to elicit government adherence to the international covenants for the protection of refugees, there are no formal enforcement provisions (Pitterman 1985:45). The UNHCR can only remind a country of its obligations, but the final decision on whether refugees are granted asylum is made by the country concerned.

The UNHCR’s success in ensuring refugee safety

In the country of asylum, refugees encounter threats to their security and well being that are specific to their status as refugees, hence the UNHCR is responsible for offering them protection (UNHCR 1995:59). While the provision of physical protection or security is the responsibility of the host government, the UNHCR is supposed to play a facilitating role. Refugee camps are sometimes attacked by armed forces of the country of origin on the grounds that they are providing shelter to armed combatants, or refugees may be harassed by combatants among their own numbers. In order to avoid this, the UNHCR, working with the host government, is supposed to ensure that camps are strictly civilian in character and humanitarian in purpose (UNHCR 1993:48). The UNHCR has, however, failed to fulfil this responsibility as the case of Rwandan refugees in Zaire illustrates. Here, the UNHCR failed to maintain the ‘exclusively humanitarian and civilian character’ of refugee camps by failing to isolate combatants from civilians. Subsequently, there was blatant manipulation and abuse of refugees by (Hutu) militiamen (Barber 1997:11). Goodwin-Gill (1996:8) observed that ‘the presence of military elements for the UNHCR, seems simply to have had a bearing on logistical and administrative arrangements. So far as it had undesirable consequences, it was someone else’s responsibility and nothing else was done’. This, however, should not have been the position taken by the UNHCR. Rather, it should have attempted to address the situation, for example by pressuring the international community to assist in removing the militiamen from the camps. The fact that nothing was done was a sign of failure to protect the refugees, both on the part of the
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UNHCR, and on the part of the international community. Even US President, Bill Clinton, acknowledged the failure of the international community in allowing the refugee camps to become safe havens for killers (Africa News Online 1998).

The UNHCR is also supposed to seek permanent solutions for the problem of refugees (UNHCR 1993:162). This problem is considered solved when refugees are either permanently accepted and integrated in the country of first asylum, are resettled in a third country, or are voluntarily repatriated to their country of origin (Koehn 1994:97). However, the first two solutions are not favoured by most countries due to the strain refugees are believed to exert on a country’s resources. The preferred solution, therefore, is voluntary repatriation. The issue of protection is pertinent here, since by ensuring that repatriation is voluntary, the UNHCR is assured that the refugees feel that the problems which made them flee no longer exist and they can avail themselves of the protection of their government. The UNHCR has assisted many refugees to return to their countries. In 1992, about 2.4 million refugees were assisted in returning home, including 1.5 million Afghans. In 1993, plans to assist 1.3 million refugees to return to Mozambique began to be implemented (UNHCR 1993:103). It should, however, be pointed out that voluntary repatriation has mostly been possible and successful where political tensions or armed conflicts in the country of origin have eased or halted completely.

While there have been cases where refugees have voluntarily repatriated to their countries, in general, refugees are increasingly being pressured to return home and the repatriation programs are not always conducted in line with the professed principles of the international community (Jean 1997:50). The recent repatriation of Rwandan refugees from Zaire, for example, was coerced, with refugees being sent back despite fears about their safety upon return. The UNHCR should have tried to prevent this as it was against the principles of the 1951 Convention. However, because most western countries—the major contributors to the UNHCR’s budget—wanted the refugees to return to Rwanda so that they could stop funding the refugee operation, the UNHCR acquiesced. With such control and influence by the major powers over the UNHCR, it may be difficult for the UNHCR to be effective in facilitating voluntary repatriation.

Another important point is that it appears that the issue of the rights of refugees to protection lies solely in the hands of UNHCR officials—the refugees themselves are not greatly involved. UNHCR protection officers, who undertake protection responsibilities on the ground, appear to be in limited contact with the refugees as, in most cases, refugees are not informed about their rights and obligations in the host country (Walters 1988). This denies the refugees important information for decisions on issues like repatriation, which may be crucial for their protection, as the case of Burundi refugees in Tanzania illustrates. Seeing the influx of Burundi refugees into western Tanzania in 1972–73, the UNHCR did not register all the refugees, although all of them were receiving international assistance (Walters 1988:190). The UNHCR did not give priority to registration, because of the generosity of the Tanzanian government towards the refugees. However, in 1987, as a way
of controlling smuggling, the Government of Tanzania rounded up and repatriated illegal Burundi immigrants from the border areas to Burundi. Included in the round-up were refugees who did not have documents (identification cards). This caused suffering amongst the refugees, as they lost their property. While the UNHCR was certainly at fault for not having registered the refugees and thus failing to protect them from repatriation, its greater fault was in failing to inform them of their rights. If the refugees had been so informed, they would have been aware of the need for identity cards in order to be recognised as refugees, and would thus have ensured that the UNHCR registered them.

Conclusion

The effectiveness of the UNHCR in fulfilling its mandate of protecting refugees depends on the cooperation of the countries it is working with (the host countries) and the influence or interests of the major powers. This is so not only because the UNHCR does not have enforcement powers, but also because although countries ratified the 1951 Convention and are, in principle, supposed to adhere to it. This will not necessarily be the case in practice, because countries make decisions based on their sovereign interests. Thus where countries have been cooperative, as the cases of the Cold War period and of African countries have shown, the UNHCR has been effective in fulfilling its mandate by ensuring that asylum was granted to refugees. But where countries have been uncooperative, as the case of Haitian and Cuban refugees in the United States has shown, the UNHCR has not been effective. Additionally, the UNHCR has not been effective in informing refugees about their rights. This, however, is an area where improvements can be made easily as it depends solely on the UNHCR’s protection officers. The UNHCR has been effective in facilitating voluntary repatriation in cases where conflicts in the country of origin have ceased, but where this has not happened, the UNHCR has not been effective and the influence of major powers has, at times, necessitated forced repatriation. Overall, therefore, it can be concluded that the effectiveness of the UNHCR in fulfilling its mandate of protecting refugees has been varied.

References


