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UNHCR and Accountability: The Non-Reviewability of UNHCR Decisions

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UNHCR and Accountability: The Non-Reviewability of UNHCR Decisions

Summary

This paper analyses the role and the conduct of the Office of the United Nations High Commissioner for Refugees after 50 years on the international arena. UNHCR was established to help political migrants in Europe. Currently the organisation assists more than 20 million people worldwide. However, it is believed that this large institution is unable to deal with complex refugee crises, to protect migrants and to secure human rights. The cause for this is lack of certain mechanisms, especially as far as accountability is concerned.

1. Introduction

The Office of the United Nations High Commissioner for Refugees (UNHCR) celebrated its 50th birthday in 2001 with much fanfare. Special events were organised. Hardbound publications were issued. Commemorating the occasion, the Secretary General, Kofi Annan, a former UNHCR staff member himself, endorsed 'half a century of international humanitarian action on behalf of refugees' as a tribute to 'the dedication and commitment of all those who have worked to protect and assist them' (UNHCR 2000: 1).

Notwithstanding the fact some people treated the event as a celebration, others were far less enthusiastic. To them, the United Nations (UN) or more specifically, the UNHCR is in need of dire reform. Unlikely as it is, non-government organisations (NGOs) and members of the U.S. Congress joined forces in calling for an overhaul of the UN system (Eshoo 1997: 19). Not only does the UN need to radically restructure its existing system, they contended, its principal organs including the UNHCR urgently need to institute reforms, be more open and accountable (Gilbert 1998).

This paper will first briefly trace the historical origin of the UN and the Office of the UNHCR in particular, so as to place the institution in the wider social and political context from which conclusions can be drawn. It is believed that only then can any meaningful criticisms of the Office's failures be made in good faith.

Second, the UNHCR's evolving mandate and expanded activities over the past decade will be discussed and analysed. It will be argued that in trying to do everything everywhere for everyone, the UNHCR has, in many instances, failed to do what it was legally mandated under international law: to protect the displaced and the persecuted.

Similar to other observers, it will be proposed that in order to regain credibility and relevance in the business of protecting refugees, the UNHCR ought to scale down many of its operational activities and redirect its human resources and expertise to the promotion of refugee laws and protection of refugees.

Admittedly, it is acknowledged that further fundamental changes must be made before the UNHCR could truly regard itself as a humanitarian agency able to exercise its human rights mandate fairly and with humility. As it presently stands, the system lacks a distinctive sense of accountability, be it internal, administrative, judicial, or otherwise. The paper's detailed discussion will concentrate on the existing review mechanisms within the UN system with a view to expose shortcomings and the institutional inability to effect reforms. Suggestions will be explored and recommendations put forward. Overall, it will be made clear that an appeal mechanism, a process in which a rights-based approach is included, is much needed and must be installed to review decisions that fundamentally affect the daily lives of thousands of individuals seeking international protection.

The aim of this paper, in conclusion, is therefore not to be critical of the UNHCR unwarrantly. Rather, it is suggested that if seriously considered and implemented, reforms can be carried out to restore the public's faith in both the integrity and legally-mandated function of the Office of the UNHCR.

2. The United Nations

U.S. President Franklin Roosevelt first coined the name 'United Nations' in the 'Declaration by United Nations' of 1st January 1942 during the Second World War (WWII). On 24th October 1945, the UN came into existence when its Charter had been ratified and

signed by the original 51 Member States including the 5 current permanent members of the Security Council: China, France, the Soviet Union (as it then was), the U.K. and the USA[*]. Given the first purpose of the UN is 'to maintain international peace and security'[†], it has been noted that the UN, first and foremost, must be judged on what it can do in the field of peace and security and not in the field of economic and social development, a secondary function (Goulding 1999: 58).

The UN has some elements of a world government within its organs and in its practice. It has a 'legislative' organ, albeit a very weak one, in the form of the General Assembly, which although only empowered to adopt recommendations, 'can build up a body of law through the consistent adoption of resolutions on a particular subject' (White 1997: 3). Its more powerful 'executive' organ, the Security Council, consisting of 15 member states, can adopt binding decisions, impose sanctions and take military action in the name of international peace and security under Chapter VII of the UN Charter.

The International Court of Justice (ICJ) or the World Court located at The Hague is the UN 'judicial' organ having the power to adjudicate disputes between states as well as giving advisory opinions. Its jurisdiction is however limited: it can only be invoked on the basis of consent by states and only if so requested. As a result, it has been argued that this particular weakness undermines the role of world government, which the UN is often asked to fulfil (White 1997: 4). Nevertheless, ICJ decisions are widely recognised as important statements of existing international law and though not binding precedents, they are often cited to support fundamental principles and norms of international legal developments (Joyner 1997: 436).

In addition, three other 'principal' organs exist namely: the Economic and Social Council (ECOSOC), the Trusteeship Council, and the Secretariat headed by the Secretary General[‡]. With the exception of the mostly slighted Trusteeship Council, which was created to administer and supervise non self-governing territories for which the UN was given responsibility after WWII§, the Secretariat and ECOSOC remain highly relevant and visible in the 'UN family' structure. All administrative legal functions affecting the entire UN Organisation are performed substantially by the Secretariat as well as negotiations and settlements concerning security matters, most notably and recently in relation to the never ending saga of biological warfare inspections being undertaken in Iraq (Shawcross 2000).

Composed of 54 members elected by the General Assembly, ECOSOC is perhaps the most active of all UN organs as it focuses concern on international economic, social, cultural, educational and health matters. Most of the well-known UN agencies: UNHCR, UNDP, UNICEF, and WFP come under this administrative umbrella. As ECOSOC only has the power to recommend (and report) to the General Assembly however, its significance therefore rests in its administrative links to the agencies. In this regard, it has been suggested that ECOSOC holds attendant administrative and supervisory legal responsibilities (Joyner 1997: 449).[**]

Over the years, as with all national public service institutions numerous other subsidiary bodies have been created within the six principal organs of the UN. This provided an easy target for critics. Senator Jesse Helms, Chairman of the powerful U.S. Senate Foreign

[*] See 'History of the UN' <http://www.un.org/aboutun/history.htm>

[†] Article 1 of Charter of the United Nations. See <http://www.un.org/aboutun/charter/>

[‡] The principal organs are so designated in the Charter, Article 7.1.

[§] Charter of the United Nations, Chapters XII and XIII.

[**] See Charter of the United Nations, Chapter X.

Relations Committee once famously declared: 'As it currently operates, the United Nations does not deserve continued American support. Its bureaucracy is proliferating, its costs are spiralling, and its mission is constantly expanding beyond its mandate. […] The time has come for the US to deliver an ultimatum: either the United Nations reforms, quickly and dramatically, or the US will end its participation' (Helms 1997: 17).

While there is no dispute that the UN and its agencies urgently need reorganisation and better management, former Under-Secretary General, Brian Urquhart, noted that a 'clear understanding of the actual size of the system's staffing is essential in any review of needed reforms' (Childers 1994: 26). Noting that the total number of professional-level posts was 'some 18,000' with the total staffing in the whole UN system world-wide of over 50 thousand the former Under-Secretary General argued there is little realistic justification for describing the UN as a 'vast, sprawling bureaucracy'. Comparing the civil service in the US state of Wyoming (population 545,000), which numbers approximately the same as that of the UN serving the interests of 6 billion people in over 190 countries, it was pointed out that UN reforms should focus on the many 'curious' characteristics not conforming with the definition of a system, the inter-secretariat relations, the lack of an integrated UN system, and a mechanism for independent monitoring of the UN system with its human rights mandates. As early as 1992, the idea of a UN Ombudsman Office had already been circulated (Childers 1992). To suggest and implement reforms, whether at the UN level or within the UNHCR is, therefore, no easy task.

3. Office of the UNHCR

3.1 Historical Origin

The International Refugee Organisation (IRO), the UNHCR's predecessor, was established outside the UN system in 1947 to take up where the UN Relief and Rehabilitation Agency (UNRRA) left off. Its function was to resettle over one million refugees who had remained in Europe after the end of WWII (Marrus 1985: 344). As the IRO dissolved and completed its mandate in 1951, an international framework for assisting refugees was being developed. The Office of the UNHCR was formally established on 1st January 1951[††] having its Statute adopted and passed by the General Assembly two weeks before that. Its authority and mandate was temporary (three years), its budget was small ($300,000), and the applicability of the definition of a refugee as provided for under the 1951 Refugee Convention which was adopted six months later, was limited to 'events occurring in Europe (or elsewhere) before 1st January 1951'[‡‡]. Though it is doubtful whether State parties to the 1951 Refugee Convention seriously thought that refugee problems would be resolved so quickly, it would be safe to assume that no one then thought that the UNHCR would develop into the highly visible and generously funded organisation that exists today.

Fifty two years later, with its mandate being extended every five years since 1951, the UNHCR is officially responsible for some 20.5 million refugees and other 'persons of concern'[§§]. Arguably, it is one of the world's principal humanitarian agencies, with 274 offices in 120 countries and twice, it has been awarded the Nobel Peace Prize (UNHCR 2000: 12). Employing approximately 5,000 people worldwide, its budget for 2001 was close to

[††] By Resolution 319 (IV) of the UN General Assembly.

[‡‡] Article 1 (B), 1951 Convention Relating to the Status of Refugees. United Nations *Treaty Series,* Vol. 189: 137.

[§§] See UNHCR statistics <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>

US$1 billion[***]. As succinctly observed by Goodwin-Gill, it is 'probably some sort of record for an organisation originally set up with a three-year mandate' (Goodwin-Gill 2001: 130).

3.2 Protection Mandate: Definition and World Politics

One hundred and thirty eight states[†††] now subscribe to the ideal of international protection as represented by the 1951 Convention and the subsequent 1967 Protocol Relating to the Status of Refugees which did away with the geographical and time limitation imposed by the 1951 Convention. A refugee, as stipulated under the Convention, is someone who has a well-founded fear of persecution for reasons of 'race, ethnicity, nationality, political opinion, or membership of a social group'[‡‡‡]. If recognised, the Convention provided that he or she is entitled to international protection.

Like many constitutional terms adopted in international conventions however, 'protection' was not defined. UNHCR's Mission Statement merely states that it is mandated by the United Nations 'to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems[§§§]. Similarly, its Statute refers to the UNHCR assuming 'the function of providing international protection'[****]. Its work, as the Statute specifies, 'shall be of an entirely non political character; […] humanitarian and social and shall relate, as a rule, to groups and categories of refugees'[††††].

Ideal and intentional perhaps, in reality, UNHCR's work has never been free of political influence (Loescher 1994: 139). Despite the institutional attempt to avoid politicisation[‡‡‡‡] the bulk of its refugee protection work up to 1990 was greatly influenced by Cold War factors and thereafter, inextricably linked to the West's formulation of the protection question (Loescher 2001: 4).

As a result, for a time, 'international protection' equalled resettlement in the West. Starting with the uprising in Hungary which by the end of 1956 saw some 200,000 Hungarians fleeing communism, the UNHCR undertook its first major protection task despite opposition from the Soviet Union (Gallagher 1989: 582). For the capitalist West, refugees fleeing communism were heroes. More so, they represented everything in which communism had failed and capitalism prevailed. In this world of international politics and bipolar rivalry, recognising persecution was easy, as was granting asylum. In many ways, Cold War politics made life easy for the UNHCR. It was valuable to the West as an able agency to handle mass resettlement. At the same time, in the weary eyes of the oppressed and the displaced, it was seen as the benevolent saviour who literally saved them from persecution and danger, and in addition, brought them to a new homeland. Its agenda was thus not questioned, its activities rarely scrutinised. It culminated in the awarding of the Nobel Peace Prize in 1981 to the Office for its massive assistance given to over half a million Indochinese fleeing communism (Robinson 1998: 59).

[***] See UNHCR 'Basic Facts' <http://www.unhcr.ch/cgi-bin/texis/vtx/basics>

[†††] See 'The 1951 Convention Relating to the Status of Refugees' at <http://www.unhcr.ch/cgi-bin/texis/vtx/protect>

[‡‡‡] Article 1, 1951 Convention Relating to the Status of Refugees.

[§§§] UNHCR 'Mission Statement', <http://www.unhcr.ch/cgi-bin/texis/vtx/basics>

[****] UNHCR Statute, paragraph 1.

[††††] UNHCR Statute, paragraph 2.

[‡‡‡‡] Despite the institutional attempt to avoid politicization by having the High Commissioner for Refugees elected by and reporting to the General Assembly rather than being nominated by the Secretary General.

3.3 Protection Mandate: 1990s and Beyond

All that, however, changed with the collapse of the Berlin Wall in 1989. Refugee movements now assume a new and much lesser degree of political importance to the West. No longer heroes, they are now viewed as posing threats to international security (Loescher 2001: 13). With the appointment of a new High Commissioner, Jean-Pierre Hocke, a new strategy was devised. It required the UNHCR to deal with not only the 'root causes' in countries of origin, but more fundamentally, to identify repatriation as 'the only realistic alternative to indefinite subsistence on charity' (Hocke 1989: 37). As Hocke himself admitted, 'humanitarian action inevitably becomes a permanent struggle […] [as] UNHCR's presence is […] determined not in a vacuum but in a political context' (Hocke 1988: 326-7). Over 120,000 Vietnamese boat people were eventually returned to authoritarian Vietnam - many by force - despite grave concerns about the flawed refugee status determination process set up and supervised by UNHCR (Baker 1996: 8). During the height of the 1990s Balkan conflict, 'war-affected populations' comprised a substantial proportion of UNHCR's beneficiary population despite its mandate being confined to, first and foremost, refugee protection and not broadly-based to be an operational agency driven by emergencies.

This led to what many critics refer to as the UNHCR's dismal failure to meet its primary responsibility in the 1990s and beyond: that of refugee protection. In the case of UNHCR relief work in the Former Yugoslavia, Goodwin-Gill, a former UNHCR protection officer, described it as the UNHCR's primary directive being 'unnecessarily compromised by newly fashionable "humanitarian action"', which if considered carefully, could never be 'a substitute for asylum'. The notion of 'pre-emptive assistance as a tool for preventive protection', Goodwin-Gill argued, 'was ever and always based on false premises' (Goodwin-Gill 1999: 226-7).

A strong argument was thus put forward. It must have been clear to everyone at the time that the politics of the situation were beyond the influence of any party, particularly one whose relief work wholly depended upon the armed forces of the perpetrators. Yet, it still went in and in the end, achieved little in stopping the ethnic cleansing which triggered the exodus. Not only was its mandate manipulated (Frelick 1992: 449), some commentators now begin to question the ethical and legal justification for undertaking such 'humanitarian' programmes in situations where serious human rights violations are either ignored or, worse, agreed to, by UN agencies in order to carry out their work. The instance of UN humanitarian assistance programmes in Afghanistan under the Taliban rule was a case in point (Verdirame 2001: 733).

Consequently and inevitably, the new humanitarian emergencies diminish the UNHCR's core role in affording protection to the persecuted. Further, as a result of focussing its work on aid delivery, the scope and effectiveness of its Office were compromised as refugee crises became more intractable. This was clear in the case of Rwanda and the Great Lakes where UNHCR's continued servicing refugee camps contributed at least partly to the heightened risks faced by the inhabitants as the camps were used not only for recruitment and training, but also as bases for cross-border raids and military attacks (Goodwin-Gill 1999: 229).

Coupled with UNHCR's new global strategy of preventive protection by focussing on repatriation as the pre-eminent solution – a new UNHCR Handbook was published entitled 'Voluntary Repatriation: International Protection' (UNHCR 1996) – the 1990s witnessed a dramatic decline in both the concept of refugee protection and international human rights

standards. This decline was, as Loescher observed, often to the detriment of the UNHCR's constituents themselves: the refugees (Loescher 2001: 17).

NGOs noting that protection had been considerably weakened by diminished standards and breakdown through administrative changes at UNHCR Headquarters in Geneva began to voice their concern. Some accused UNHCR of being 'far too timid in its response to obvious contraventions of the Refugee Convention' (Matas 1989: 263). Others accused the UNHCR of ignoring human rights violations in both countries of origin and countries of asylum in its zealous push for repatriation (Amnesty International 1997).[§§§§]

Similarly, its beneficiaries – asylum seekers in camps and refugees stranded in limbo – had real and pressing grievances. Their right to refugee protection, non-refoulement[*****], and justice was either wilfully ignored by state parties to the 1951 Convention, or more and more frequently, by the UNHCR itself (Alexander 1999: 251). In cases where it concerns the conduct and decisions of the government of the day, at the very least, such practices are subjected to both administrative and judicial review under domestic laws. Concerning acts performed and decisions made on behalf of the UNHCR however, many refugees and their advocates have found out, quite regrettably, that there is little they could do to address the perceived injustices. The UNHCR, as an institution, does not provide for an appeal mechanism, whether internal or external, and far too often, it is ready to waive its white and blue flag of 'diplomatic immunity' (Baker 1996: 4).

4. Accountability

4.1 Notions of Accountability

The assumption behind accountability is that justice matters. It matters to rich and poor and to high and low alike; all and sundry must be guaranteed access to an independent system for settlement of disputes quickly and fairly. In western liberal democracies, the law is the mechanism for reducing the level of grievance. It acts as a counter-balance to the all-powerful State. It arms the weak against the strong with the possibility of winning, even against the State itself. It acts to ensure that, at least in theory, justice prevails (Robertson 2000: 2). Some observers believe the idea 'power entails accountability, that is the duty to account' for its exercise is a 'deeply rooted one in the context of contemporary liberal democracies' (Verdirame 2001: 229).

The growth of a civil society and the proliferation of NGOs in the latter part of the 20th century contribute partly to the call for greater accountability. So does the expansion of international organisations such as the UNHCR, in both quantitative and qualitative terms. Initially, the predominant view was the UN had a role to play in ensuring the accountability of states by either monitoring their compliance with international law (sometimes referred to as 'passive accountability') or setting standards for their conduct ('active accountability') (Valticos 1998: 461). As the UN and its subsidiary organs develop the functional capacity to have a direct impact on individuals – in some cases states have relinquished responsibilities and effective control over a territory to the UN (such as East Timor) – repercussions flowing from their action and failures consequently become more significant. Critical analysis was thus more forthcoming resulting in governments, the media, NGOs and the general public looking more closely at issues of accountability and justice.

[§§§§] See also Brook, R. (2001) 'Vietnamese Asylum Seekers in Hong Kong: Rule of Law Rhetoric under the Colonial Regime'.

[*****] Article 33, 1951 Convention Relating to the Status of Refugees.

As with the term 'protection' however, 'accountability' is not easily defined. The Oxford Dictionary defines it as 'liable to be called to answer for responsibilities and conduct; able to be reckoned or explained'. Peter Barberis, an expert on accountability issues, proposes 5 main questions when the notion of accountability is raised:

1. Who is accountable;
2. For what;
3. To whom;
4. Through what mechanisms; and
5. With what kind of accountability outcomes (Barberis 1998: 451)

4.2 Existing Structures

In 1998, perhaps in response to some of the criticisms as outlined above, the High Commissioner, Mrs Sadako Ogata, asked the UNHCR Inspector to undertake a comprehensive review of the Office's Headquarters structure in Geneva. Following discussions among its senior management, the UNHCR concluded that in order to meet the challenges of the new millennium, substantive changes must be made. In its own words, the need for change arose out of both internal and external developments including: the expanding and increasingly complex work of refugee protection; the need to reduce the Office's operational presence in the face of diminishing resources and the need to respond more effectively to increased external scrutiny of UNHCR's policies and programmes.

To increase efficiency and management accountability, the UNHCR recognised that 'the number of work units reporting directly to the Executive Office had to be reduced. It was also decided that the status of the Division of International Protection should be reinforced and its relationship with and oversight of UNHCR's operational activities strengthened' (UNHCR 2000: 32). Following the restructuring, UNHCR Headquarters were organised into four 'pillars', the directors of which would report directly to the High Commissioner. The four principal organs are: the Department of International Protection, the Department of Operations, the Division of Communication and Information, and the Division of Resource Management. These changes came into effect on 1st February 1999 and currently, UNHCR Headquarters operates with some 900 staff, which represent 17% of its worldwide workforce of around 5 thousand (UNHCR 2000: 32).

4.3 Who Is Accountable?

As the present system stands, the UNHCR, as an entity, is accountable for its action and omissions, not the staff involved. This is based upon the jurisdictional immunity bestowed upon the entire UN Organisation and its officials by the 1946 Convention on Privileges and Immunities of the UN[†††††] and the 1947 Convention on Privileges and Immunities of the Specialised Agencies.[‡‡‡‡‡] Though immunity 'does not free the organisation from any obligation' (Schermers 1999: 1008), state practice and ICJ decisions have for the most part endorsed this principle (Wickremasinghe 2000: 724)[§§§§§].

[†††††] (1946) 1UNTS 15.

[‡‡‡‡‡] (1947) 33 UNTS 261.

[§§§§§] In the case of Cumaraswamy (ICJ, 29 April 1999), the ICJ held that the Special Rapporteur on the Independence of Judges and Lawyers to the UN Commission on Human Rights, Mr Cumaraswamy, could not be held liable and subjected to domestic legal proceedings for comments made during the course of his employment

The General Convention provides that UN officials are 'immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity'[******]. Though the UN can waive its immunity, Article V, Section 20 provides that the Secretary General has 'the right and the duty' to waive immunity only in cases where 'in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations'.[††††††] In practice, this concept of diplomatic immunity is rarely critically analysed, let alone waived by the Secretary General who enjoys almost complete power in the exercise of his discretion (Verbiage 2001: 269). At present, immunity is only normally waived when the Secretariat's Office of Internal Oversight Services (OIOS), the UN internal 'watchdog', has gathered evidence of theft of UN property by an official.[‡‡‡‡‡‡] OIOS' current rules however do not specify when such an investigation would result in criminal proceedings brought by national authorities.[§§§§§§]

There are, of course, good reasons for according immunity to the UN and its personnel. As the European Court of Human Rights states 'the attribution of privileges and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments'.[*******] In addition, notwithstanding the privilege of immunity, the fact that UN officials continue to be arrested, attacked and in some cases, killed (again in the case of East Timor), bears testimony to the importance required to be attached to the doctrine.

Nevertheless, it must be acknowledged that absolute immunity does not sit well with the concept of accountability since the imposition of sanctions on the individual responsible for the violation is 'an essential component of an effective mechanism for accountability' (Verdirame 2001: 268). Lately, on rare occasions, domestic courts have been more willing to scrutinise UN officials' entitlement to immunity. In a case involving a UN driver who had exceeded the speed limit, a New York court found that he was not entitled to immunity because 'to recognise the existence of a general and unrestricted immunity from suit or prosecution on the part of the personnel of the UN […] even though the individual's function has no relation to the importance or the success of the Organisation's deliberations, is carrying the principle of immunity completely out of bounds. To establish such a principle would in effect create a large preferred class within our borders who would be immune to punishment on identical facts for which the average American would be subject to punishment. Any such theory does violence to and is repugnant to (a) […] sense of fairness and justice and flouts the very basic principle of the UN itself, which in its preamble to its Charter affirms that it is created to give substance to the principle that the rights of all men and women are equal.' [†††††††]

Similarly, as far as the immunity of state officials is concerned, the U.K. House of Lords has ruled that acts such as torture could no longer be interpreted to fall within the

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with the UN. Consequently, it found that Malaysia was obliged to hold Mr Cumaraswamy harmless for the costs imposed on him by the Malaysian courts.

[******] Article V, Sec. 18.

[††††††] Article VI, Sec. 23.

[‡‡‡‡‡‡] Report of the OIOS on the Investigation into Allegations of Theft of Funds by a Staff Member on the UN Conference on Trade and Development, UN Doc. A/53/811.

[§§§§§§] Report of the Secretary General on the Rules and Procedures to be applied for the investigation functions performed by the Office of Internal Oversight Services, 11 October 2000, UN Doc. A/55/469.

[*******] *Beer and Regan v. Germany* (No. 28934/95), Judgment (Merits), 18 February 1999, at paragraph 53.

[†††††††] *Westchester County on Complaint of Donnelly v. Ramollo*, 67 N.Y.S. 2d 31 at 34.

concept of 'official acts' for which former heads of State have traditionally enjoyed immunity.[‡‡‡‡‡‡]

The future, thus, appears to bode not so well for UN officials found acting contrary to international human rights principles or in serious violations of international norms and practices. For the time being however, as Michael Alexander correctly observed, glaring abuses of the rights of refugees committed by UNHCR officials in their determination of refugee status, or owing to their lack of action, continue to exist unexamined and without recourse (Alexander 1999: 251). Nor will unaccompanied minors living in refugee camps whose lives depend wholly on the UNHCR have any right to judicial review of its officials' decisions, whether concerning their status or physical and psychological well-being (Baker 1996: 4).

In the case of Ngo Van Ha[§§§§§§§], the UNHCR was accused of acting irresponsibly and contrary to its mandate in determining that it was 'in the best interest of the child' to be returned to Vietnam despite the fact that his parents had died, there was no home for him to return to, and that his uncle's family living in the USA was able and more than willing to look after him. Its relentless push for repatriation was said to have clouded its best judgment. In the end, facing intense pressure from Ha's lawyers and the Hong Kong press, the UNHCR Chief of Mission at the time, Jahanshah Assadi, was forced to change his mind, noting that the UNHCR is not 'in the business of blackmailing children to return'[********].

Advocacy and media pressure, it seems then as it is now, appear to be the only effective course of action available to those whose lives may be short-changed by the UNHCR.

4.4 For What?

When applied to international organisations, accountability is a term frequently used to confine the scope to financial questions. Certainly, this is almost always a case of concern to donor countries and USA lawmakers calling for a reduction of U.S. annual contribution to the UN budget (Barlett 1997: 18). Indeed, in the 7th report of the OIOS[††††††††] covering the period from 1 July 2000 to 30 June 2001[‡‡‡‡‡‡‡‡], most of the discussion relating to the UNHCR concentrated on the issues of savings, especially at the UNHCR emergency operation in Kosovo, and shortcomings in the management of emergency operations in the area.

Expanding the term a little wider as it has been, accountability encompasses notions of efficiency, management standard, and transparency in the decision-making process. To this extent, UNHCR endeavoured to 'improve the delivery, accountability and performance of the Office'[§§§§§§§§] by launching Project Delphi in December 1995 aimed to make the Office 'a slimmer, trimmer' organisation, committed to protection, responsive to operational needs and aggressive in the search for solutions. A Steering Committee was appointed which came to be known as the Change Management Group (CMG). Its mandate was broad 'to undertake a

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[‡‡‡‡‡‡] *R v. Bow Street Stipendiary Magistrate, ex parte Pinochet (No. 3)* [1999] 2 All ER 97.

[§§§§§§§]'Vietnam's boat people: 25 years of fears, hopes and dreams',
CNN at: http: //asia.cnn.com/SPECIALS/2000/vietnam/story/boat.people

[********] Hong Kong Eastern Express, 24 February 1994.

[††††††††] Established in 1994, the OIOS is said to provide a comprehensive range of internal oversight services, with particular emphasis on strengthening internal controls and improving management performance.

[‡‡‡‡‡‡‡‡] A/56/381.

[§§§§§§§§] Project Dephi: Plan of Action. Overview. See <http://www.unhcr.ch/>

comprehensive examination of how UNHCR conducted its business. In particular, it was to examine the processes by which UNHCR functioned, to review and coordinate existing and planned change initiatives, to manage the analysis and redesign of identified processes, to quantify the objectives and to plan their implementation. The areas targeted for review included: how policy is formulated and promulgated; human resources issues; programming; finance and funding; logistics; and the need for improved technological infrastructure to support UNHCR s processes.' [*********]

That to the UNHCR was what accountability meant. Without commenting on this style of management newspeak, the CMG Final Report was presented to the High Commissioner on 1 May 1996, its recommendations drawn from the work of three focus groups peculiarly named 'Operations', 'People', and 'Money'. Overall, 4 recommendations were made:

- The approach to any particular operation will be based on a refugee problem, existing or potential;
- Authority will be delegated to the appropriate level, and as close as possible to the point of delivery;
- Accountability of operation managers will be supported by clear policy making and dissemination processes; and
- Recruitment, posting and separation policies will be guided by the needs of the organization and its beneficiaries, and determined by performance.

As predicted, the need to be accountable for its action or omission in relation to protection issues was not mentioned nor identified. Accountability in Delphic terms, is 'a management requirement to be answerable "for something to someone" […] an individual obligation to perform against an agreed objective'.[†††††††††] Evidently, it was not about UNHCR's accountability to its constituents despite the CMG's final remarks. 'CHANGE. The refugees deserve it. The staff want it. The organisation needs it. And together, we are challenged to deliver it.'[‡‡‡‡‡‡‡‡‡]

Noting that Project Delphi was essentially about 'internal' management processes, Goodwin-Gill observed the following 'protection figures no more than two or three times in what is, from a purely management perspective, an otherwise unexceptional analysis of the ways and means to improve policy development, planning and delivery, rectify deficiencies in the use of resource, […] and raise the performance of staff. […] In a report, most of which is fact dedicated to 'Processes – Money and People defined in the Context of Operations', protection is remarkable for its absence or only incidental inclusion' (Goodwin-Gill 1999: 236).

Indeed, it is this 'purely management perspective' that distorts the whole notion of accountability.

[*********] Background: 'Project Delphi', p. 1.

[†††††††††] 'Delphi: The Final Report of the Change Management Group' (UNHCR, Geneva, 1 May 1996), Glossary, at p. 51. It is worthy of note that the status of this document is not entirely clear. It was annexed to 'Project Delphi', UN Doc. EC/46/SC/CRP.38, 28 May 1996, labelled 'For Internal UNHCR Distribution Only' and not available on UNHCR's website.

[‡‡‡‡‡‡‡‡‡] Background: 'Project Delphi', p. 6.

4.5 To Whom?

As a subsidiary organ of the UN, UNHCR reports annually to the General Assembly through ECOSOC. In addition, UNHCR's Executive Committee (EXCOM), which was created by ECOSOC in 1958, oversees the High Commissioner's main tasks and advises his or her functions through its Sub-Committees, mainly on protection issues (Lombard 1993: 70). The 57 EXCOM members[§§§§§§§§§] – all of them governments – meet once a year (every October, in Geneva) and are empowered, at least in theory, to scrutinise all financial and administrative aspects of the agency (UNHCR 2000: 12).

Needless to say, being answerable to the General Assembly and to the 57 EXCOM state members could hardly be considered serious accountability. In fact, it has been pointed out EXCOM and its Standing Committees 'are large and cumbersome bodies' that do not effectively 'shape UNHCR policy'. Moreover, 'Committee members include those who have not signed the international refugee instruments or are themselves the cause of refugee flows' (Loescher 2001: 376). As a result, not only are there too many participants to begin with, but also the issues, especially in respect of protection, become more complex and numerous rendering Committee meetings incapable of providing organisational guidance and, more importantly, proper oversight of UNHCR field work.

In the Delphi Report, the CMG correctly identified UNHCR's external accountability as lying 'both to the people it protects and assists' and its 'state stakeholders, including countries of asylum and donors'.[**********] Given that the internal monitoring mechanism more or less reflects its donors' fiscal concerns only and there exists at present no external agency tasked to scrutinise its daily action, the important question is: how can the Office be made truly accountable?

4.6 Through What Mechanisms?

It must be patently clear to any layman on the street that suggesting UNHCR being accountable to 'the people it protects and assists' amounts to almost saying the UNHCR is accountable to no one. It is a constituency that evidently lacks not only the leverage and the expertise but also the means and the resources. For the most part, if not all, refugees and asylum seekers worldwide would never imagine that they could openly challenge UNHCR policies and programmes affecting their well being, let alone seriously consider action through available channels. This essentially lies in the hands of member states and others.

Under the present circumstances, 'member states of an international organisation have a right to ensure that the organisation complies with its constituent instrument and with general international law' (Verdirame 2001: 232). True as it is, it has been shown that in practice, this could hardly be regarded as an effective mechanism of review of UNHCR decisions.

The withdrawal or withholding of funding, in the practice of some states, has also been used quite conveniently as a means to effect reforms. The most notable example was the U.S. failure to pay contributions to the UN as previously mentioned. As U.S. lawmakers made the payment of arrears dependent on reform of the UN system, in the end, the U.S. did succeed in tying the continued payment to the UN satisfying certain 'reform criteria'.[††††††††††] To some

[§§§§§§§§§] GA Res. 54/143 of 16 February 2000 increased EXCOM membership to 57 states elected by ECOSOC.

[**********] Delphi Report, paragraph 12.

[††††††††††] Sec. 2 (2)(A), United Nations Reform Act of 1999.

supporters of the UN, such demands were 'ill-informed', 'malicious', and 'self-serving'. Noting that the then Secretary General, Boutros-Ghali, carried out more reform than he had been given credit for (apparently he reduced the number of top posts in the Secretariat by 40% in his first three months in office), Marrack Goulding agreed with the Secretary General's cynical view that 'one of the most useful functions the Secretary General performs for the member states is to be an ever-ready scapegoat' (Goulding 1999: 60).

Regardless of motives, this measure could be said to be of an extreme nature, highly controversial, and does not address well the issue of individual grievances against institutions. More welcoming is the growing involvement of national parliaments in matters concerning the responsibility and accountability of these organisations. Evidence shows that at least in the U.K., parliamentary committees are now more willing to examine international institutional conduct. In 2001, the Select Committee on International Development of the House of Commons made the following comments: 'Not only is this the first time that a Committee of this House has considered in such detail the work of these multilateral development agencies, it has also become clear that these bodies are unused to such scrutiny from national parliaments. It has been gratifying to see their willingness to appear before the Committee – in almost every case there were initial concerns about giving evidence since these bodies are not directly accountable to national parliaments.'[‡‡‡‡‡‡‡‡‡‡] Though parliamentary committees in Australia and the USA have also from time to time invited UNHCR to give evidence, the scope of their enquiry often confines to fact-finding assessments only.[§§§§§§§§§§]

In theory, the media and NGOs could also act as 'watch-dogs' of international organisations and indeed, that has so far been the case. Moreover, with national courts increasingly willing to allow international public interest litigation, as the Pinochet case has shown, it remains to be seen if and when this mechanism could be used as a successful means of making the UNHCR more accountable.

As regarding NGO presence in the UN system at present, one could safely assume that their participation and thereby, influence is rather limited. Though NGOs can make written submissions to ECOSOC, Resolution 1996/31 of the Council provides that oral presentations can only be made upon a recommendation of the Committee on Non-Governmental Organisations and with the approval of the Council. Given these bureaucratic constraints, it is not surprising that, despite the High Commissioner's call for greater UNHCR-NGO partnership (commonly known in UNHCR circles as the Partnership in Action)[**********], NGOs have not had a real and meaningful opportunity to monitor and review UNHCR performance. Most importantly, their recommendations made either on the field or at higher levels are rarely seriously heard, let alone implemented.[††††††††††]

Despite the management orientation of the Secretariat's OIOS as briefly discussed earlier, it must be stressed UNHCR's internal mechanisms of oversight should not be completely discounted. Currently, there is a UNHCR unit located within the OIOS that provides auditing services. Most of the oversight aspects, in practice, revolve around issues of

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[‡‡‡‡‡‡‡‡‡‡] International Development Committee (House of Commons), 'First Special Report', 24 January 2001 (HC 82).

[§§§§§§§§§§] See for example, hearings held by the Australian Senate Legal and Constitutional Legislation Committee on the Comprehensive Plan of Action supervised by the UNHCR, *Hansard,* 30 September 1994, at 156.

[**********] See 'Our Partners – Partnership in Action' <www.unhcr.ch>

[††††††††††] See 'The UNHCR at 40 – Refugee Protection at the crossroads' by Lawyers Committee for Human Rights published in 1991. Despite calls to strengthen the Office's protection mandate and for the establishment of a UN Commission and Court on Refugee Protection, the 1990s witnessed a deeper weakening of the Office's mandate and to date, there is still no debate regarding the pros and cons of having such a UN Court.

evaluation, monitoring, inspection, investigation, and co-ordination, as they exist in the contexts of operational funds and programmes[‡‡‡‡‡‡‡‡‡‡]. Similarly, the Inspector General's Office located within the High Commissioner's Executive Office is responsible to carry out inspections which are described as 'an internal oversight and management tool that provide the High Commissioner and the senior managers with a broad view of the functioning of field representation at all levels'.[§§§§§§§§§§] There is thus every reason to believe that such tasks could, in the future, include independent review of UNHCR decisions made in relation to their protection mandate. And if needs be, criticisms and suggestions may be made as was the case with the International Criminal Tribunal for Rwanda which was severely criticised in an early OIOS report.[**********]

To achieve such a high level of internal oversight and institutional consciousness does not obviously come easy. Any matters raised would undoubtedly have to be exceptionally high profile and of an immense public interest nature. As things stand, and given what is at stake, their work is still very much limited. From a rights-based approach, they still do not adequately offer a channel for or remedy to aggrieved persons who have endured injustices as a result of UNHCR deliberation.

The last but most imperative avenue for arbitration lies with the judiciary. In liberal democracies such as ours, it remains the most sacred and useful form of redress for victims against powerful organisations and the State. Notions of fairness and justice all form part of what the judiciary is supposed to stand for and can deliver. It is reinforced by the 1948 Universal Declaration of Human Rights: notably Article 7 (protection against discrimination), Article 8 (the right to an effective legal remedy), Article 9 (the rule against arbitrariness), and Article 10 (the right to a fair and public hearing by an independent tribunal) (Robinson 2001: 2). These principles have become binding rules (or 'norms') of international law with what is termed a 'jus cogens' force - i.e. 'a rule accepted and recognised by the international community of states as a whole from which no derogation is permitted' (Article 53 of the Vienna Convention on the Law of Treaties).

Yet, as it has been shown with regard to diplomatic immunity, the role of the national judiciary in this area is exceedingly marginal. Further, at present, there is no established procedure under the UN Charter or in the Statute of the ICJ for decisions of UN bodies to be judicially reviewed by the Court. On rare occasions, even if given an opportunity to comment on the legality of a particular UN resolution in a non-binding, and therefore non-enforceable, advisory opinion, the ICJ has been unable and unwilling to declare institutional acts as ultra vires. In the Namibia case, the ICJ conclusively stated that it 'does not possess powers of judicial review or appeal in respect of the decisions taken by the United Nations organs… '.[††††††††††††] This inability and unwillingness of the ICJ to develop a power of judicial review can be explained by two reasons. First, the ICJ lacks a clear and authoritative power under its Statute to judicially review decisions taken by UN organs. Second, the judiciary, by its nature

[‡‡‡‡‡‡‡‡‡‡]The OIOS undertook a comprehensive review of the oversight mechanisms in numerous operational agencies in the late 1990s and submitted its Report of the Secretary General to the General Assembly on Enhancing the Internal Oversight Mechanisms in Operational Funds and Programmes to the General Assembly in 2001. UN Doc. A/51/801.

[§§§§§§§§§§] Executive Committee of the High Commissioner's Programme, 'UNHCR's Organisation Oversight and Performance Review Framework', 18 September 2000, UNHCR Doc. EC/50/SC/INF.6, paragraph 7.

[**********] Report of the Office of Internal Oversight Services on Audit and Investigation of the International Criminal Tribunal for Rwanda, UN Doc. A/51/789.

[††††††††††††] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), ICJ Reports, 1971, p. 45.

and function, often takes a conservative approach as it is required to rely on past practice and decisions.

Consequently, without significant judicial development in the future, this particular mechanism of accountability will remain a theoretical rather than a practical limitation upon the activities of the UN. As of now, it remains off limit to victims of human rights abuses whether directly or indirectly as a result of UNHCR actions or omissions.

4.7 With What Kind of Accountability Outcomes?

Admittedly, this is by far a most difficult matter to grapple with. It depends on whose views are taken and upon what standard the 'outcomes' would be judged. For a social scientist, accountability outcomes may be confined to mere transparency in the formulation of policies and efficiency in aid delivery. From an international lawyer's perspective however, he or she may insist that accountability outcomes must include the rights of individual victims to appeal against UNHCR decisions and have them reversed, if not be compensated.

As presented and discussed throughout this paper, clearly there is a real and vital need for the UNHCR to be more accountable to its beneficiaries. Existing internal accountability mechanisms either within the UNHCR or in the UN system have been shown to be lacking both in substance and in form. In practice, they neither offer adequate sanctions nor remedies when fundamental rights of refugees and stateless persons have been directly violated by an act or omission of the UNHCR.

Many scholars and practitioners have thus conceded that the UNHCR is in dire need of reform[‡‡‡‡‡‡‡‡‡‡‡]. To some, the Office is 'protective of its turf. It is extremely sensitive to external criticism and […] largely unaccountable to the populations it is mandated to protect. It also suffers from a lack of internal openness […] [which] impedes learning and innovation in the policy process. […] Some individual staff members are preoccupied with their own career advancement, which leads to conservative, risk-averse behaviour. As a consequence […] the UNHCR does not find institutional change an easy task and is sometimes not as effective as it might be. […] "Pragmatic idealism" is encoded into the culture of the organisation. […] Therefore, the UNHCR sometimes acts as if it is above criticism and normal measures of accountability' (Loescher 2001: 358).

Suppose for a moment that the above criticisms are wholeheartedly taken in and not readily dismissed as often the case is. Suppose also that consequently, the UNHCR sincerely asks both its supporters and critics about the kind of accountability outcomes they want which are theoretically sound and practically manageable. What recommendations could be made given its mandate, the existing bureaucratic UN structure with all that entails, and the funding nightmare it must face year in, year out?

The simple answer is: there are many and all require a clear understanding of what protection means, a serious commitment to embark on the journey with passion and integrity, and when found not up to par, with humility.

First, on the international front, the ICJ's advisory jurisdiction should be expanded so that the Court could hear cases concerning institutional duties and compliance. At the very least, this will allow the Court to offer its judicial and independent opinion on what refugee

‡‡‡‡‡‡‡‡‡‡‡ See Gilbert, 'Rights, Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order', IJRL Vol 10, No 3, 349; 'The UNHCR Note on International Protection You Won't See', IJLR, Vol. 9, No. 2, 266; Helton 'Bureaucracy and the Quality of Mercy', IMR, Vol. 35, Spring 2001, 192; Lejeune, Letter and Suggestions to UNHCR High Commissioner dated 29 October 1998, unpublished.

human rights standards are expected from 'the peoples of the United Nations'. The machinery established by the UN to promote and protect human rights namely, the UN Commission on Human Rights and other UN Committees[§§§§§§§§§§§] could also play an important role in this endeavour if NGOs are assisted and given more opportunities to participate in its deliberation and day-to-day management of activities.

Second, on a national level where domestic courts could be more involved, a reformulation of the immunities and privileges of the UN and its officials is needed in order to curtail the anachronistic claim to absolute immunity. It does not bode well in any sense with being accountable and it undermines the legitimacy and integrity of the UN system as a whole. Governments and parliamentary human rights committees alike should also be more ready to recognise UNHCR shortcomings and willing to scrutinise its officials at public hearings and annual meetings where funding issues are discussed.

Third, stronger working relations are needed between UNHCR and NGOs working in refugee camps and on the field. At present, 'there is a deplorable lack of information sharing' among the agencies (Gallagher 1989: 597). Unless and until, NGOs 'stand up' to UNHCR, challenge its policies (despite obvious funding constraints),[**********] and UNHCR willing to change its 'pragmatic' attitude (or 'culture' as Loescher would put it), the Office will be unlikely to address the notion of accountability in its broadest context.

Fourth, the concept of accountability currently underpinning UNHCR (and the UN) internal mechanisms of oversight needs to be expanded to include a rights-based approach. Presently, administrative reports seldom result in sanctions on the officials responsible for the guilty conduct. Nor do they address the crucial question of remedies to the aggrieved parties. For anyone to take the UNHCR's claim seriously that it is accountable to the people it serves, the existing internal mechanism should and must be expanded to include a Refugee Review Tribunal set up as it has already existed in most Western countries dealing with issues of asylum and refugee protection.

Perhaps, underlying all of the shortcomings revealed and suggestions made, is the lack of an external mechanism dealing with the subject matter in question. Perhaps, the UN does need to establish an Ombudsman Office as suggested by former Under-Secretary General Brian Urquhart in 1992. Or alternatively, a UN Commission and Court on Refugee Protection is what should be installed as suggested by the Lawyers Committee for Human Rights.[††††††††††††] Accessibility by and to potential victims, however, is key to the success and effectiveness of such a body and it is suggested that though the idea is a novelty one, it is not feasible nor is it crucial to the proper function of the UNHCR in the context of accountability.

What is crucial in considering and (let us hope) implementing the above recommendations is the commitment to embark on the journey, as previously mentioned, with passion and integrity. To do so, however, requires a fundamental change in the Office's

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§§§§§§§§§§§ Such as the Human Rights Committee which is allowed to hear complaints made by individual refugees by the Optional Protocol to the International Covenant on Civil and Political Rights. Such complaints however may only be filed against those parties to the Covenant that have ratified the Protocol and not the UN itself. As of 30 June 2000, ninety-four of the 143 parties to the Covenant had ratified the Protocol. For more information, refer to the 'Consultation on the International Human Rights Complaints Mechanisms Available to Refugees and Internally Displaced Persons', Queen Elizabeth House, Oxford, 22 July 2000.

********** Most NGOs working in refugee camps such as Save the Children Fund, International Social Service, Oxfam, etc. indeed receive funding from the UNHCR to carry out most of their social and educational services on location.

†††††††††††† 'UNHCR at 40 – Refugee Protection at the Crossroads', p. 11.

hiring, treatment and evaluation of personnel. At present, it is a fact well-known that 'UNHCR is a closely-knit organisation characterised by close bonds and personal loyalties. […] Staff are generally not hired and promoted only on the basis of individual accomplishment or merit. People often get desirable postings or promotions through their personal networks rather than because of competence. […] It is not uncommon for headquarters staff to suppress or filter information or requests from the field if reports are too negative or if they require action that is considered to be either impossible or undesirable […] Senior managers are likely to insist on orthodoxy and to resist policy innovation if such initiatives are perceived as challenging either traditional methodologies or their own personal control and authority. It is an ethos that stifles debate or dialogue. Strong opinions are frequently perceived as disloyal and uncooperative and are suppressed by the bureaucratic hierarchy. Under such working and decision-making conditions, individual staff members either leave the organisation or simply choose to remain apathetic to organisational policies and do their jobs unquestionably' (Loescher 2001: 360).

Marrack Goulding, the former UN Under-secretary General, openly admitted that at present there is 'little new blood brought in and the average age of staff members is now over 49 years; less than 5% of them are under 35 – hardly a recipe for the dynamic new management'. Thus, he was of the opinion that reform cannot be done 'without more far reaching personnel changes than we have seen so far' (Goulding 1999: 60). In a short paper entitled 'the UNHCR Note on International Protection You Won't See' which generated considerable discussion and as a result, was published in the respected International Journal of Refugee Law despite the identity of the author being unknown (one theory was that it came from within UNHCR Headquarters), one of the key recommendations it made was that 'UNHCR should seek to draw a larger portion of its personnel from the non-governmental sector around the world. UNHCR's reliance on career bureaucrats has contributed to a reputation of arrogance and insensitivity at the grass-roots level and among asylum-seekers…'[‡‡‡‡‡‡‡‡‡‡‡‡]

In conclusion, the paper suggested that its proposals could 'harmonise UNHCR's mandate, protection strategy, and institutional structure with global evolution over the last half century'. If it remains unresponsive, the paper warned, the UNHCR will 'undermine the hard won achievements in refugee protection of the last decades'.[§§§§§§§§§§§§]

5. Conclusion

Absolute power corrupts absolutely regardless of race, creed, gender, or colour and in this particular case, mandate. As with the UN system as a whole, there remain serious defects and inefficiencies in the human rights and refugee protection apparatus of the Office of the UNHCR. These deficiencies are the result of political compromises, poor personnel practices, improper oversight, and the reluctance to restructure its regional bureaus and procedures to meet conditions that have dramatically changed over the past half-century concerning the human rights of individuals.

As power is ever more transferred from states to international organisations, so should responsibility and accountability. It has been shown that while human rights can be violated in the course of UNHCR action or inaction, existing international legal framework regulating its

[‡‡‡‡‡‡‡‡‡‡‡‡] IJRL '[The] UNHCR Note on International Protection You Won't See' *International Journal of Refugee Law*, p 271.

[§§§§§§§§§§§§] IJRL 'The UNHCR Note on International Protection You Won't See' *International Journal of Refugee Law*, p 273.

conduct and accountability is inadequate. Similarly, state members and the UN internal mechanisms for accountability fail to recognise the wide powers that are in practice exercised by the Office and the potential impact it can unleash, positively, negatively, and in some cases fatally, on individual lives and their liberty. The recent upgrading of the Department of International Protection is a step in the right direction. So was the UNHCR decision to review its operation programmes in emergency situations or protracted refugee crises. As Goodwin-Gill succinctly summarised: 'one would be a fool to imagine that you can ever "do" protection without being pragmatic, or that the practical application of principles never calls for compromise. The art of protection resides precisely in the ability to be flexible, while remaining close by, and faithful to, the core of fundamental principles' (Goodwin-Gill 1999: 248).

Of course it is forever easier said than done and it must be acknowledged there is no quick fix for the future of the UNHCR. A good start, however, would be to seriously consider implementing the recommendations made. The struggle for the accountability of the UNHCR, or for that matter, the UN, is, after all, only at its beginning. It needs a concerted effort from everyone. Over and above all, however, it needs the political will from the Office of the UNHCR.

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