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**Protective Strategies in the 1990s:  
A Review of the Policy Discourses  
in UNHCR and the Executive  
Committee**

**Report prepared under a grant from the  
Research Programme on Forced Migration,  
the Research Council of Norway**

**Gro Tjore**

**R 1998: 3**

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## **Summary**

The study examines changing policy doctrines for protecting refugees, as reflected in the official documents of UNHCR and its Executive Committee (ExCom) composed of nation states. Collectively, the two bodies determine what is legitimate international practice for protecting refugees within the framework of international law and which should constitute the point of departure for national asylum policies. To contextualize the changing doctrines, the structure and working procedures of UNHCR are examined (section 1), as well as major trends in international refugee movements (section 2). The major part of the study examines the discourse on protection strategies in the 1990s. While the specific issues varied, the study found that the overarching theme was the need to safeguard the institution of asylum which was increasingly in danger.

The study was supported by a grant from the Program on Forced Migration of the Norwegian Research Council. Gro Tjore is a researcher at the Chr. Michelsen Institute.

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ISSN 0805-505X

**Indexing terms**

Refugees

Refugee policy

Asylum policy

UNHCR

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## 1. Introduction

This study is a review of the international community's debate on strategies to provide international protection for refugees. The debate will be traced as it appears in official documents of the United Nations High Commissioner for Refugees (UNHCR) and its Executive Committee (ExCom), the equivalent of a board. The material is supplemented with unofficial reports from the national delegation of Norway to the Executive Committee. The study aims to identify and analyze the development of the policy discourse on protective strategies within UNHCR. While there have been numerous studies of protection from a legal point of view, no systematic study of the policy discussion has been undertaken.

The changing discourse will be placed in a historical and political context so as to clarify both new problems and strategies of response. There have been definite changes in the perception of which populations UNHCR should assist and protect, and also in the practices of UNHCR in delivering assistance and protection. To understand this, and appreciate the nature of the developing discussion, it is necessary to briefly examine the changing nature and magnitude of the international refugee problem.

The study will also examine the procedures and working methods of the Executive Committee, and its institutional structure as it has developed over time.

An analysis of the evolving policy debate is important for several reasons. UNHCR is the only intergovernmental organization that has an exclusive mandate to protect and assist refugees. As such, the organization is the foundation of the international refugee regime. Its Executive Committee is composed of states which have a professed interest in refugees, and includes important asylum countries as well as major donors of UNHCR. Within the framework of international refugee law, UNHCR and ExCom collectively determine what is legitimate international practice in dealing with refugees. Analyzing the discourse in UNHCR/ExCom yields systematic insight into international concepts and strategies in this area. International norms and practice constitute relevant points of departure for national policies. But national policies also affect the discourse and choice of strategies in UNHCR/ExCom, as well as UNHCR's ability to fulfil its mandatory tasks. The process is thus one of mutual influence and multiple feedback.

The present study focuses on the policy debate from the late 1980s onwards. The main question to be answered is: What were the views within ExCom concerning developments in the global refugee situation and appropriate strategies of response? What assessments were made within UNHCR regarding the organization's mandate and strategies to assist contemporary mass flows? Of particular interests in this connection is the issue of how conflicts between individual rights, as stated in international legal instruments, and collective needs, as demonstrated in conflict situations and refugee emergencies. How are these conflicts perceived and dealt with? A related question concerns the relationship between UNHCR and its board. To what extent do the views expressed in ExCom correspond to the High Commissioner's assessment of needs and preferred strategies?

Most analysts agree that UNHCR's approach to protection issues changed fundamentally in the early 1990s. Attempted prevention became a main element of protection. The so-called country-of-origin approach, the emphasis on repatriation, and the call for a more efficient emergency response were all elements of this trend. This study "maps" this change as it appears in the official debate and the "Conclusions" of UNHCR and its Executive Committee, thus documenting the doctrinal background to current protection strategies.

## Sources

This is not a case study that compares debates on solutions in particular refugee situations; rather, the aim is to identify and analyze trends in organizational doctrine. The material for the analysis has been gathered from various sources. The documents and reports can be divided into two major categories, most are available from *RefWorld*, a UNHCR internet database that contains official documents of the High Commissioner. Since the aim of this reports is to analyze a set of primary documentation, the voluminous secondary literature on refugees in law and the social sciences is generally not referenced.

Table 1.1: A categorization of sources

Documents presenting UNHCR's preferences and assessments	Documents presenting ExCom's views and recommendations
Notes on International Protection	ExCom General Conclusions on International Protection and thematic Conclusions on protection
The High Commissioner's Opening Statements at Annual ExCom Sessions	ExCom Reports from the plenary sessions to ECOSOC, General Assembly Documents, series A/AC.96
	Reports from the Sub-Committee of the Whole on International Protection, 1977-1995
	Standing Committee reports 1996-1997

Notes on International Protection: The Notes on International Protection are to be seen as background papers for the ExCom meetings leading up to a General Conclusion on International protection. These documents are produced for ExCom by UNHCR, General Legal Advice section of the Division of International Protection (DIP). UNHCR meets with national delegations or regional groups

prior to writing the Notes so as to be certain to cover areas of interest for ExCom members as well as UNHCR priorities.

The High Commissioner's Opening Statements at Annual ExCom Sessions: These speeches present the High Commissioner's priorities - her or his views on UNHCR's mandate and cooperation with states, other UN agencies and NGOs. They also provide an overview and assessment of regional developments and of the overall refugee situation, and international (and national) efforts to provide protection and assistance.

ExCom General Conclusions on International Protection (GCIP) and other Conclusions: During the first years of its existence, the Executive Committee did not have international protection per se on its agenda. The topic was later recognized as important by the Committee, which since 1963 has adopted Conclusions on refugee protection (Johnsson 1990:7). In 1975, a Sub-Committee was established to study in more detail the "technical aspects" of refugee protection. This Sub-Committee of the Whole on International Protection submits Conclusions on various protection issues. In the following, all Conclusions will be referred to as ExCom Conclusions, as the Sub-Committee emanates from ExCom. The same delegations, usually also the same persons, sit together as the Sub-Committee of the Whole and as the ExCom.

ExCom Reports from the plenary sessions to ECOSOC: Discussions in ExCom are not fully recorded. A summary report is prepared from the plenary session in October, in which the various statements are registered, albeit in general terms.

The present study has also used documents and reports from one national delegation. For practical reasons the Norwegian delegation was chosen, and data material for the period 1985 to 1996 was kindly made accessible for the purpose of the study. The material includes unofficial reports and summaries from the general debates at the plenary session in October, reports from informal meetings and sub-committee and standing committee meetings, notes, letters and commentaries. The material has been extremely helpful to supplement, interpret or contextualize the information in official UN documents. Open-ended interviews with Norwegian delegates to ExCom and with UNHCR officials were also undertaken to supplement information from official and unofficial documents.

## **Analytical framework and structure**

Numerous theories have been developed in the field of political science to explain protective strategies, e.g. theories on alliances, on game theory, and on foreign policy generally. However, these theories are not relevant for this study. They primarily address relations among states, or, alternatively, relations between a state and its subject. They do not bear directly on issues of international legal protection as it is undertaken by an international organization to benefit individual persons that cannot avail themselves of the protection of their state of origin. Moreover, the material for this study is drawn from sources that do not reveal the motives and bargaining potential of individual actors that constitute the focus of some of these theories.

A historical and textual approach seemed more appropriate to the task at hand. Although the time period is limited to recent years - official documents from 1990 onwards will be studied in depth - earlier material was examined in order to

establish points of departure for significant trends and changes. When, for instance, did temporary protection become an issue? Was international "burden-sharing" always an important concept?

The study does not focus on institutional change per se, but institutional developments within ExCom was examined as one possible cause of policy change. Other factors to be taken into account are the global refugee situation, the global political order (particularly Cold War and post-Cold War), and refugee-relevant issues on the agenda of the international community (especially human rights and gender). Policy development in Europe and European responses was given special attention.

The study is organized as follows: The first part gives the background to the study, the analytical framework and a clarification of the methodological approach. In the second part, the mandate and organizational structure of UNHCR are outlined, and the origins and structural developments in the Executive Committee are discussed. Part three explores the concept of international protection and provides a historical introduction and legal interpretation to the basic principles involved. A brief overview of protection issues in ExCom is given by way of examining Conclusions up to the mid-1980s. The next section briefly reviews main trends in the global refugee situation in the 1990s. UNHCR's policy preferences are presented as they appear in critical protection issues discussed in the Notes from 1990 to 1996. The last section reviews ExCom's debates on international protection issues in more recent years, as illustrated by the outcomes of the debates found in the Conclusions. New concepts and strategies expressed in ExCom documents are examined.

## 2. The office of the United Nations High Commissioner for Refugees

UNHCR is the principal international mechanism for protecting and assisting refugees. Established in 1951, UNHCR has a mandate assigned to it under international law. Its founding statutes make clear that the work of the organization is humanitarian and non-political.<sup>1</sup> The mandate, defined in the 1951 Convention Relating to the Status of Refugees and revised in the Additional Protocol of 1967, is to protect refugees (as defined in the 1951 Convention) and furthermore, to seek permanent solutions to refugee situations.<sup>2</sup> While the mandate describes the task as humanitarian, it clearly has political implications in that it relates to the exercise of power by states. The granting of asylum is a sovereign matter for governments; still, the "non-refoulement" principle, as stated in Article 33 of the 1951 Convention, indicates a duty for states to protect individuals, as persons seeking refuge can not be returned to countries where they fear persecution or where their lives may be in danger. Since UNHCR does not control any territory, it must rely on states, and consequently on national policies, to provide the physical protection needed. Its mandate is to work with governments to see that this is done.

UNHCR was originally meant to be a short term agency, set up for a term of only three years. The option for extension laid down in the statutes has, however, been used to keep UNHCR in operation for the past 46 years. When UNHCR was established, there was an existing framework of international protection mechanism to build on. After World War I, Fridtjof Nansen had been appointed "League of Nations High Commissioner for Refugees". The activities and responsibilities of the High Commissioner ranged from legal protection to humanitarian relief and constituted a major step towards international cooperation in refugee matters. In 1930, after Nansen's death, these activities were taken over by the "Nansen Office", and later by the office of the "High Commissioner for Refugees coming from Germany". In 1939, both were replaced by a new "League of Nations High Commissioner for Refugees".

By the end of World War II, Europe had an estimated 15 million refugees or displaced persons. The experience from the war led not only to the creation of the United Nations; there was general agreement that several problems needed to be handled at an international level and managed cooperatively within the framework of an international regime. Recognition of the refugee problem as an international question was an important step forward to meet the needs of refugees. The first agency to be concerned primarily with refugees and displaced persons from World War II was the International Refugee Organization (IRO). Created in 1946, IRO administered camps in Europe, helped repatriate or resettle displaced persons, and provided legal protection for refugees. In some ways,

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<sup>1</sup> Article 2, GA res. 428: "The work of the High Commissioner shall be of entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees<[>...]"

<sup>2</sup> Article 1, GA res. 428: "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 <[>...]"

UNHCR was to continue the work of IRO, but its mandate differed in important respects by being linked to the 1951 Convention on the Status of Refugees. As later supplemented by the 1967 Protocol, the 1951 Convention is the main international instrument for the regulation of refugee policy and constitutes the legal basis of what may be called the international refugee regime.

### Institutional organization

The structure of UNHCR and ExCom are of interest in that institutional arrangements may affect decision-making outcomes. Structures constitute the framework within which choices are made and to some degree regulate and limit the choices available.

The High Commissioner is chosen by the UN General Assembly and is responsible to the General Assembly and its Economic and Social Council (ECOSOC) which sets the general policy directives. Over the years, there have been numerous directives. Their common feature has been to request and authorize the High Commissioner to protect a wider category of persons than those covered by the 1951 Convention.<sup>3</sup>

#### Box 2.1: High Commissioners since 1951

Mr Gerrit J. van Heuven Goedhart (Netherlands)	Dec 1950 - July 1956
Mr Auguste R. Lindt (Switzerland)	Dec 1956 - Dec 1960
Mr Felix Schnyder (Switzerland)	Dec 1960 - Dec 1965
Sadrudin Aga Khan (Iran)	Dec 1965 - Dec 1977
Mr Poul Hartling (Denmark)	Jan 1978 - Dec 1985
Mr Jean Pierre Hocke (Switzerland)	Jan 1986 - Nov 1989
Mr Thorvald Stoltenberg (Norway)	Jan 1990 - Nov 1990
Mrs Sadako Ogata (Japan)	Jan 1991 - present

When drafting the UNHCR statutes, the UN General Assembly envisaged the establishment of a committee to advise the High Commissioner (cf. para. 4 of the Statute), and such a committee was established by ECOSOC on 10 September 1951. The General Assembly described its function as “giving directives to the High Commissioner in carrying out his programme” and to “control the use of funds”. In 1955, ECOSOC established UNREF (United Nations Refugee Emergency Fund) which took over the advisory function. The fund also received broad executive functions to oversee programmes and funds. In 1958, the General Assembly decided to create a new body, and called upon ECOSOC to establish a

<sup>3</sup> *Refugees*, no. 92, 1993: 15.

