UNHCR's Parallel Universe

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Marking the Contours of a Problem

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by

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Madam rector magnificus of the University of Amsterdam
Mr Vice-president of the University of Amsterdam
Dean of the Amsterdam Law School
Ladies and gentlemen

Facts that Make one Wonder

On 18 January 2005, the United Nations High Commissioner for Refugees (hereafter referred to as UNHCR) expressed its deep concern over Japan's deportation of two Turkish Kurds recognized as refugees under UNHCR's Statute.[1]

On 9 August 2006, UNHCR indicated that it was shocked by the forcible return of four Uzbek refugees by Kyrgyzstan. The four had been recognized by UNHCR under its mandate. UNHCR had also secured resettlement places for them.[2]

On 21 September 2007, UNHCR raised its serious concerns with the government of Turkey regarding the expulsion of 5 Iranian refugees to northern Iraq. The refugees were recognised in Turkey by UNHCR under its mandate.[3]

On 25 April 2008, UNHCR reported that the Turkish authorities attempted to forcibly deport 60 people of various nationalities to Iraq through the official border crossing. When the Iraqi border authorities allowed 42 Iraqis to enter the country but refused to admit 18 Iranian and Syrian nationals, the Turkish police took the latter, which included five Iranian refugees recognised by UNHCR, to a place where a river separates the two countries, and forced them to swim across. According to the witnesses interviewed by UNHCR, four persons, including a refugee from Iran, were swept away by the strong river current and drowned. Their bodies could not be recovered.[4]

Commencing on 28 December 2009, Thailand forcibly returned over 4,500 Hmong asylum seekers to Laos despite concerns voiced by the UN that some

could face persecution at home. The group included 158 people recognized by UNHCR, which condemned the forced return.[5]

Human misery writ large, and the incidents where states fail refugees can easily be multiplied with categorically different instances: the arrest and mistreatment of Uzbek refugees in Kazakhstan, refugees who have no access to the national asylum system;[6] forced return of refugees without a full examination of their claims to asylum (Eritrean refugees from Egypt, Zimbabwean refugees from South Africa, Sri Lankan refugees from Ukraine, Somali refugees from Kenya, boat refugees from Italy, Angolan refugees from Congo, Rwandan refugees from Burundi);[7] lack of security for tens of thousands of Sudanese refugees from Darfur (Sudan) in Chad;[8] the Thai army operating a dump-at-sea policy with respect to Rohingya refugees;[9] the inconsistent examination of asylum claims in the European Union, in some cases in ways that may breach international refugee law (in one country UNHCR found 171 identically worded interview reports, only the name of the applicant and the country of origin differed);[10] the protracted nature of refugee situations, that is, the fact that over five million of the world's refugees have been living in exile for more than five years;[11] and the related phenomenon of 'warehousing' refugees, meaning that many refugees spend one, two, three or more decades in camps without such basic human rights as freedom of movement, protection from violence, and the right to support their families.[12] Etc.[13]

These facts make one wonder about the obligations of states and, more generally, about the nature and effectiveness of the international refugee law regime. I will be more specific and identify the contours of a problem that will constitute the core of my research in the coming years.

Historical Background of the Contemporary International Refugee Law Regime

The contemporary international refugee law regime was built on the ruins of the Second World War. Vast displacements had occurred during the war. Major efforts were undertaken to repatriate all those displaced until it became evident that not everyone wanted to return to their respective countries of origin. They feared persecution or worse, or were simply too traumatized to be able to face living in societies whose genocidal practices they had barely survived. The practice of just repatriating them all was halted, and states, represented in the General Assembly of the newly established United Nations, recognized that repatriation should take place on a voluntary basis. Those with valid objections to return – refugees – could not be compelled to do so.[14] The

future of those refugees became the concern of the International Refugee Organization (hereafter referred to as IRO), a specialized agency of the UN. In order to persuade the Soviet Union and its satellites which favoured repatriation to join the Organization, the primary task of the IRO became repatriation rather than resettlement, but its main feat was the resettlement of refugees in third states. The IRO was a highly operational organization. It described itself as "the largest mass transportation agency in the world", and it disposed of a fleet of twenty-five ships on full charter with the capacity of moving 19,000 persons per month, and comprised a staff of 4,289 persons deployed in 26 states.[15] When the IRO decided to discontinue its work, it indicated that the UN should assume responsibility for the remainder of the Second World War refugees[16] as well as 'new' refugees, those fleeing communist rule. The suggestion from the IRO resulted in the creation of the contemporary regime.

The Contemporary Regime in Conceptual Terms

The universal regime that was created is a beautiful one: simple, consistent, and generous, imbued by the spirit that held sway just after the close of the Second World War when the international community, still shell-shocked, was united in the desire to prevent international wars on the scale just witnessed and the concomitant atrocities with proportions that made Dante's description of hell look pale.[17]

It proceeded from a clear allocation of responsibilities. Unlike the recent past, it would not be an international organization protecting refugees but the states hosting those refugees, preferably on the basis of the 1951 Convention Relating to the Status of Refugees. The role of the UN accordingly became a very limited one. UNHCR was created – a subsidiary organ of the General Assembly – and charged with a supplementary role: providing international protection and seeking durable solutions for the problem of refugees, but in a generic and indirect sense.[18] UNHCR was correspondingly set up as a non-operational office with a very small budget and few staff members.

The regime that was created constituted a normative continuum, consisting of two instruments: the 1951 Convention Relating to the Status of Refugees (hereafter referred to as 1951 Convention), which defines the rights of refugees and the corresponding obligations of states, and the Statute of UNHCR that outlines the competence of the High Commissioner as well as the tasks that supplement those of states. The two legs of the regime were formally joined by means of the obligation of states to cooperate with UNHCR in the exercise of its functions, and substantively by means of identically defined refugees.

Refugee Definitions

That is to say, the regime was meant to be predicated on identically defined refugees, but the scope of the 1951 Convention was curtailed. First, the definition of refugee in the Convention was temporally limited and confined to those who fled as a result of events occurring before 1 January 1951. In addition, this temporal limitation could be taken to mean events occurring *in Europe* before 1 January 1951. States, in other words, could opt to confine the scope of the Convention to Europe. No such limitations were inserted in the definition of refugee in the Statute of UNHCR. UNHCR's mandate was neither temporally limited nor geographically in recognition of the fact that UNHCR, as a UN agency, should have a universal mandate. The scope of the 1951 Convention was, however, made timeless and universal in 1967 by means of the adoption of the Protocol Relating to the Status of Refugees (hereafter referred to as the 1967 Protocol). The definition of refugee in the 1951 Convention was henceforth to be read as if the date of 1 January 1951 had been omitted. Along with it, the possibility of connecting a geographical limitation to it vanished, save that existing limitations would continue to apply (until withdrawn).

Definitions Drifting Apart: Extensions of UNHCR's Mandate *Ratione Personae*

The adoption of the 1967 Protocol did not, however, signify that the regime was henceforth geared to identically defined refugees since meanwhile, in what turned out to be an inexorable process, UNHCR's mandate *ratione personae* had been extended. At first on an *ad hoc* basis: the General Assembly authorized UNHCR to 'use its good offices' to extend its assistance to those who did not come within its competence.[19] This authorization gave way to a more general designation of UNHCR's competence as covering 'refugees of concern to the High Commissioner'. The expansion continued, gradually but nonetheless unmistakably, culminating in a structurally expanded mandate. UNHCR's current "competence with regard to refugees covers

> all persons who are refugees within the meaning of the 1951 Convention [that focuses on fear of persecution] as well as those who are outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order and who, as a result, require international protection".[20]

In view of the fact that the 1951 Convention definition of refugee has not been subject to change, the definitions applied by states and UNHCR, respectively, are now worlds apart.[21] It is worth recalling that drafts of the 1951 Convention suggested including the possibility to extend refugee status to such other persons as the General Assembly might determine from time to time.[22] This suggestion, which would have secured identical beneficiaries, was abandoned because it would have introduced an amendment procedure alien to the conventional law of treaties.

UNHCR and the IRO, Two of a Kind

The extended definition is indicative of parallel extensions of the substantive scope of UNHCR's mandate. When UNHCR was created, the intention had been *not* to create another IRO.[23] Instead, in accordance with the decision to allocate the responsibility for the protection of refugees to the states hosting them, UNHCR had been created as a non-operational agency. More than half a century later, it can no longer be qualified as a non-operational agency. In fact, it can hardly be distinguished from its predecessor: UNHCR and the IRO are essentially two of a kind. This identification can best be substantiated by giving some figures. The current number of staff employed by UNHCR is 6,650, 80% of whom work 'in the field', that is, the territory of 118 states. The organization comprises, apart from Headquarters, 108 regional and branch offices, 151 sub- and field offices. Its budget increased from 300,000 USD in 1950 to 3.058 billion USD in 2010.[24] The number of persons of concern to UNHCR is 25.1 million, a category that comprises 10.7 million refugees[25] and 14.4 million internally displaced persons.[26] Arguably, the needs that led to extending the substantive scope of its mandate, along with other less altruistic intentions such as retaining and expanding its humanitarian market share, account for UNHCR's evolution into a highly operational agency, a "service organization".[27] Its activities comprise, besides legal protection and the implementation of durable solutions, the reception and care of refugees; physical protection; assistance in the form of providing food and water, non-food items, health care and sanitation, shelter, education, sports, and counselling; capacity building geared towards strengthening national authorities and domestic law to ensure the proper handling of refugees; the promotion of self-reliance of refugees; micro-credit loans; breast-feeding programmes; policing refugee populations; the rehabilitation of basic infrastructure in water, education, agriculture and health sectors; sustainable energy management in refugee settlements; reforestation, etc.[28] UNHCR works with implementing partners, but it is obvious that the range of services is vast and its responsibilities considerable.

Meaning of the Expanded Definition

Regardless of whether needs and acting upon those needs triggered the substantive extensions of UNHCR's mandate or whether eventually the structural personal extensions of its mandate justified expanding the activities of the agency to a point where it turned into the very opposite of its original blueprint, or both in a dialectical process, UNHCR now proceeds from a broadly defined category of refugees. A category that extends well beyond those who have a well-founded fear of persecution for specific reasons as enumerated in the Convention, Protocol, and Statute, and includes those who risk falling victim to indiscriminate threats to life, physical integrity or freedom.

As to determining who actually falls within UNHCR's mandate, UNHCR recognizes refugees on a collective, *prima facie* basis, based on information about the circumstances that caused their flight set against the applicable refugee definition,[29] but it also conducts individual status determination procedures. UNHCR indicates that it proceeds to conducting individual status determination when a state is not a party to the 1951 Convention and/or 1967 Protocol, or if it has not enacted refugee legislation, or if it did but the legislation is either not functioning or manifestly inadequate, or where determinations are based on an erroneous interpretation of the Convention or do not meet minimum standards for fairness and efficiency.[30] The last-mentioned instances are particularly interesting for they suggest that UNHCR may intervene when a state does not live up to certain standards. In 2007 – the most recent year covered by UNHCR's statistical yearbooks – UNHCR was responsible for refugee status determination in 45 states.[31] This meant it received over 75,000 new applications that year.[32] In the same year, the overall recognition rate in UNHCR individual status determination procedures was 77%, and that of states 38%. Apart from the fact that states tend to be more restrictive,[33] UNHCR explains the difference by the fact that it primarily carries out refugee status determination in regions where people flee military conflicts and/or human rights violations.[34] In other words, the difference is predominantly caused by the divergence in the definitions that the states and UNHCR apply. The first question that immediately comes to the fore is whether refugee status granted by UNHCR is opposable to states.

Opposability

State practice may yield answers to this question. It would seem relevant to consider practice in instances both where UNHCR asserts its competence directly, that is, when it bestows refugee status on the basis of its (extended)

definition, and where it is confronted in a more indirect manner with its rather encompassing mandate.

Refoulement

The instances of forced return – the technical term for which is *refoulement* – recounted at the start of this lecture were not randomly taken examples. They have in common that the people who were forcibly returned to their country of origin by the country of refuge had been recognized by UNHCR as refugees. They are indicative of the fact that UNHCR refugee status is not a guarantee against *refoulement*.[35] In response to the *refoulement* by India of Burmese refugees who had been recognized by UNHCR, UNHCR reportedly stated that "if India … wanted to take action against any recognized refugee, their office 'could not do much'".[36]

No extraterritorial effect of UNHCR refugee status

What if refugees who have been recognized by UNHCR leave the country of asylum in search of another, safer, state?[37] Does the status granted by UNHCR carry any entitlements *vis-à-vis* third states?[38]

Let us stay close to home: how does The Netherlands proceed in this respect? The court of first instance in The Hague had to address this question when a Kurdish refugee from Iraq, who had been recognized as a refugee by UNHCR Ankara, requested asylum in The Netherlands. The court, with reference to national regulations,[39] observed that UNHCR recognition of refugee status does not have extraterritorial effect: the state has an independent responsibility regarding refugee status determination.[40] In another case the same court had to consider this question again, this time with respect to a Congolese refugee who had been recognized by UNHCR in Kenya, a recognition the refugee claimed entitled her to asylum in The Netherlands. The court reiterated the independent responsibility of the state to make its own eligibility assessment.[41] In appeal, the Council of State confirmed the withholding of extraterritorial effect to a UNHCR recognition of refugee status, adding that there is no legal basis for the contrary view.[42] There is no reason to assume other states give extraterritorial effect to UNHCR status determinations.[43] So far, I have found only one exception – I assume it is the one that proves the rule – a judgment of a Russian court dating from 1999 concerning an Afghan refugee who had been recognized by UNHCR Uzbekistan. The argument of the court is interesting, and rather exceptional: "once they accede to the 1951 Geneva Convention and the 1967 Protocol, States thereby agree for UNHCR to

be a priority agent for providing international legal protection to refugees, with its decisions on refugee status in principle binding on all States".[44]

The inference that refugee status conferred by UNHCR does not have extra-territorial effect, and hence does not carry the promise of protection against *refoulement*,[45] is confirmed in related instances where UNHCR proceeded on the basis of collective assessments of refugee status. Tamil refugees who fled to Europe in the mid-1980s were not considered to be refugees by the European countries of refuge, even though UNHCR considered most of them as qualifying for refugee status under the 1951 Convention. It did not press its conviction home and suggested that the refugees be treated as extra-Conventional refugees and given temporary protection.[46] In April 2009, UNHCR issued guidelines advising states to refrain from forcibly returning Iraqi refugees originating from central Iraq, and recommended that they be recognized under the extended refugee definition.[47] Those guidelines were ignored by a number of European states who forcibly returned central Iraqi refugees.[48]

Resettlement blues

Another instance where UNHCR asserts its own competence directly pertains to one of the durable solutions it has been charged to pursue: resettlement. UNHCR emphasizes that resettlement under its auspices "is strictly limited to *mandate refugees* who have a continued need for international protection".[49] The reference to 'mandate refugees' should be taken to refer to those who satisfy UNHCR's extended definition of refugee.[50] This means that the eligibility criteria of UNHCR do not match those of the major resettlement states, all of whom are party to the 1951 Convention and/or 1967 Protocol, and hence adhere to a much narrower definition of refugee. In addition, those states apply additional selection criteria,[51] consequently enlarging the gap between the definitions applied by states and UNHCR, respectively.

Whether setting additional criteria is legitimate depends on the meaning of 'resettlement'. Proceeding from the Statute of UNHCR, which refers to the assimilation of refugees within new national communities as a permanent solution for the problem of refugees, it appears to be the functional equivalent of the other durable solution UNHCR is meant to pursue, that of voluntary repatriation to the country of origin. Voluntary repatriation aims at reintegration in the country of origin whilst resettlement is geared to integration in a third state when reintegration at home is excluded as a possibility. Both solutions appear to signify an end to involuntary displacement and refugee status.[52] From this perspective, resettlement constitutes a form of immigration,[53] and it would seem that setting additional selection criteria,[54] such as the potential for integration, is understandable.

It is a moot point whether resettlement should still and invariably be taken to signify a final solution in the sense indicated. In practice, states are not very generous, and relatively few resettlement places are offered. In response, UNHCR, maximizing the little that is available, promotes the 'strategic use of resettlement' as a so-called tool of protection.[55] The resettlement state functions as the stand-in for the asylum state when the requisite protection is not forthcoming in that state. In such instances, resettlement shares the temporary nature of international refugee protection, leaving the possibility of voluntary repatriation open if the situation in the country of origin so warrants.[56] From this perspective, additional selection criteria and, beyond that, the practice of 'cherry-picking', which is short for selecting the most attractive refugees, are not acceptable.[57] The only difference between refugees already present in the resettlement state and those who are added by means of resettlement is that this state is asked to take in a few more refugees by UNHCR.

Beyond the issue of additional criteria, it is clear that there is a substantial gap between the definition applied by UNHCR and that applied by the resettlement states.[58] As a consequence, resettlement appears to be a solution only for those who satisfy the 1951 Convention definition rather than those who satisfy UNHCR's extended definition.

The aftermath of voluntary repatriation movements

UNHCR is charged to pursue durable solutions, and the generally preferred one is voluntary repatriation to the country of origin. Voluntary repatriation is usually governed by agreements that emphasize the voluntary nature of return. Even in states not party to the 1951 Convention and/or 1967 Protocol, the status and basic entitlements of the refugees they host appear to be rather secure from the moment those voluntary repatriation agreements are concluded, even if they had been denied earlier. However, the devil is in the detail, that is, when the movement phase of a voluntary repatriation operation ends and the country of refuge is faced with refugees who refuse to return home. They are usually referred to as the 'residual caseload'. Here are two examples: the Cambodian refugees – ultimately numbering 573 persons – who had refused to return to Cambodia in a voluntary repatriation operation organized by UNHCR were deported by Thailand using the buses that had earlier been used by UNHCR and were still covered with UNHCR insignia.[59] A more recent example, dating from last year, concerns some 500 Burundian refugees – again an instance of a 'residual caseload' – who were deprived of options except to return home immediately and were forced to do so at gunpoint, despite an agreement on the voluntary nature of any return concluded between Rwanda, Burundi and UNHCR.[60]

Divergence leading to paradox

The divergence in applicable definitions may be illustrated, lastly, by means of Pakistan. Pakistan is the state that hosts the largest number of refugees in the world and has done so already for several decades. Pakistan is not a party to either the 1951 Convention or the 1967 Protocol. It applies a rather generous refugee definition comparable in scope to UNHCR's own definition of refugee.[61] Yet, UNHCR urges Pakistan to accede to the 1951 Convention and 1967 Protocol. This entails that Pakistan has to choose between proceeding as it currently does, that is, applying a categorically wider refugee definition than the one comprised in the Convention and Protocol, albeit without incurring the specific obligations those instruments comprise. Or, alternatively, it may opt to discard its generous practice in favour of accession to those two instruments, which means enhanced and well-defined protection for a categorically smaller group. If Pakistan were indeed to accede to the 1951 Convention and 1967 Protocol, what would that mean for UNHCR, which could act upon its extended mandate *ratione personae* in Pakistan? More in particular, what does it mean for those who do not satisfy the Convention definition but would be eligible under UNHCR's extended mandate? The issue raised touches upon one that extends beyond Pakistan: what does UNHCR's extended mandate mean when the host state abides by the narrower Convention definition of refugee? If Europe – which does adhere to the Convention definition – is indicative, it means that those who fall within UNHCR's extended definition of refugee but outside the confines of the Convention definition are *not* entitled to protection by virtue of international refugee law.[62] They may merely qualify for temporary, subsidiary forms of protection that originate in *non-refoulement* provisions in human rights treaties.[63]

UNHCR's Parallel Universe

The picture that emerges is a rather bleak one: it appears that refugee status granted by UNHCR can not be opposed to states. States adhere in principle to their own status determination procedures which are predicated on the definition of refugee comprised in the 1951 Convention and/or 1967 Protocol and do not feel bound to give effect, one way or another, to status determinations made by UNHCR on the basis of its mandate irrespective of whether UNHCR applied its extended mandate or its original, less extensive one. In fact, states have criticized UNHCR for acting upon its extended mandate and have viewed its attempting to do so in terms of UNHCR assuming "the sovereign state's function of deciding whether or not asylum outside the Convention

should be granted", which inhibits "the normal (and proper) functions of immigration control and *de facto* enlarges the effective limitation of the refugee definition in the 1951 Convention".[64]

UNHCR for its part simply observes that "territorial asylum can only be accorded by States. UNHCR may grant refugee status under its mandate, but it cannot provide asylum".[65] As a non-territorial entity, UNHCR is forced to operate detached from territory in a universe of its own despite, ironically enough, its virtually worldwide presence in the field. In the absence of ties – legal obligations – that ensure substantive attachment,[66] UNHCR's world constitutes a parallel universe.

Marking the Contours of a Problem

"Refugees within the mandate of UNHCR", it has been observed, are "eligible for protection and assistance by the international community".[67] In legal terms, however, the 'international community' is a non-entity: it is not a subject of international law, and hence cannot be the bearer of international rights and obligations. Taken as a short-hand term for the closest approximation of what is probably meant, it would point to the UN, in particular its deliberative organ, the General Assembly, as representative for that rather elusive notion, from a legal point of view, of 'international community'. As indicated earlier, the General Assembly is also the parent organ of UNHCR, and UNHCR accordingly has to follow its policy directives.[68] In that respect, it has been observed that "the Statute is not a full statement of the legislative authority of the Office. Later General Assembly resolutions are of equal stature in setting the bounds of its mission and competence".[69] Those resolutions obviously include the ones which pertain to the competence of UNHCR, and following them is what UNHCR is doing when it acts upon its extended mandate.

When states emphasize their sovereign right to control entry with reference to treaty obligations that are predicated upon a much narrower definition of refugee to ward off any suggestion that UNHCR would be entitled to oppose its extended mandate *ratione personae* to states,[70] there is something disingenuous about this curt reference to sovereign rights and limits to obligations once incurred regarding refugees. This disingenuity originates in the fact that these very same states, represented in the General Assembly, consented time and again to the extensions of UNHCR's mandate.

The first rejoinder to the charge of disingenuity could be that rather than states, an organ of an international organization adopted the pertinent resolutions. This is correct, but the fact that the resolutions are adopted by the General Assembly should not detract from the other fact that even though the

Assembly consists of states' representatives who are meant to function as an organ of an international organization to contribute to realizing its objectives, they also simultaneously represent individual states: they have a dual role, sometimes referred to as '*dédoublement fonctionnel*'. The second rejoinder would likely be that General Assembly resolutions are not legally binding instruments. Generally speaking, this is also correct. However, the resolutions concerning UNHCR and its mandate are binding for UNHCR as decisions that are concerned with the internal working of the UN – just as resolutions regarding budgetary issues and requests for advisory opinions of the International Court of Justice are binding for the UN. The fact that these resolutions are binding on the Organization, including UNHCR as an integral part of the UN, rather than states does not mean that they are devoid of external effect.[71] On the contrary: they were meant to have such an effect. There can be no doubt about that, as what would otherwise be the point of those resolutions? They were adopted with a view to enabling UNHCR to act upon them in the world at large (in the 'international community', if you wish). In that respect, it is abundantly clear that those resolutions cannot be dismissed as merely binding on the Organization for it is obvious UNHCR would act upon them, would have to act upon them in the territory of states, in principle all states represented in the General Assembly, and consequently would not be devoid of external effect.

In view of this objective, what did states – assembled in the General Assembly – mean or intend by consenting to such extensions of UNHCR's mandate, bearing in mind that UNHCR is a non-territorial entity? More specifically: what did states, party to the 1951 Convention and/or 1967 Protocol, actually mean by consenting to them, that is, did they at all consider that such extensions would have (legal) repercussions for themselves?[72] In view of the fact that the extensions to which they consented were meant to be acted upon by UNHCR: were those extensions perhaps meant to benefit refugees *elsewhere*? That is, were they meant to accommodate and support states not party to the 1951 Convention and/or 1967 Protocol who nonetheless generously hosted refugees who would, in the affluent west, not qualify for refugee status under the Convention and/or Protocol? The following observation of then High Commissioner Hocké suggests an affirmative answer to this question:

> "[…] the vast majority of today's refugees and asylum-seekers in the developing countries of the Third World do not correspond to the formal definition of a refugee provided for in the 1951 Refugee Convention. In other words, they are not all victims of persecution […]. They belong to the wider category of people who leave their countries because of the danger to their lives and livelihood caused by armed conflict and other forms of vio-

> lence. The recognition by the international community that such persons are in need of international protection is evident in the various resolutions adopted by the General Assembly, and in its assistance to my Office on their behalf. If such persons move to other regions, they must remain of concern to the international community until appropriate solutions are found for them. There cannot be different standards for different regions".[73]

What did states not party to the 1951 Convention and/or 1967 Protocol think consent to resolutions expanding UNHCR's mandate would mean? Getting material assistance without legal strings attached, that is, an appropriate legal status and rights for the beneficiaries, refugees?[74]

In 1949, a day before the General Assembly decided to establish UNHCR as of 1 January 1951,[75] the French representative, comparing the Office of the High Commissioner with the IRO, characterized the Office as follows:

> "its spirit would be the spirit the Assembly gave it; its aims would be those the Assembly assigned to it; its work would be whatever the Assembly intended to entrust to it. Responsible to the Assembly […] the High Commissioner would be what the Assembly made him […]".[76]

He could hardly have meant that UNHCR would have to discharge the tasks assigned to it by the General Assembly in a parallel universe. (He did not: France was one of the first states to conclude a host state agreement with UNHCR; France also recognized UNHCR recognitions of refugee status regarding non-European refugees whilst its own obligations were confined to European refugees.)[77]

More than half a century after the refugee law regime was created, it would seem the beauty, simplicity, consistency, and generosity of the original regime with its clear allocation of responsibilities between states and UNHCR has ceased to exist. The consistency of the regime has vanished as a result of widely diverging definitions of its beneficiaries affecting the original allocation of responsibilities between states and UNHCR in favour of the latter.[78] Although UNHCR's mandate has been adjusted to enable it to do so, states simultaneously feel free, if not entitled, to dispense with any consequences – legal obligations – such adjustments may have for themselves, thus creating a parallel, *i.e.* unattached, universe for UNHCR. This parallel universe is problematic both at a conceptual level – set against the original regime – and at a practical one for it directly affects the international protection of refugees. It therefore requires critical analysis that proceeds from the fundamentals of the regime

itself, including the premises on which it was created. I propose doing so in the coming years.[79]

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The final words are for the students. Practically every year some students who completed the International Refugee Law course venture out into 'the field', either in the form of internships or to take up a post in UNHCR or refugee-related NGOs, or engaging in PhD research in International Refugee Law. I find this truly rewarding, and I intend to continue inspiring interest in

this particular field of law, the importance of which cannot be underestimated in view of its ultimate objective: the international protection of refugees.

Ik heb gezegd.

Notes

1. UNHCR Press Releases, "UNHCR: Deep concern over refugee deportation from Japan", 18 January 2005.
2. UNHCR Press Releases, "UNHCR shocked by Kyrgyzstan's extradition of Uzbek refugees", 9 August 2006.
3. UNHCR Briefing Notes, "Turkey: Expulsion of Iranians confirmed, UNHCR raises concerns with government", 21 September 2007.
4. UNHCR Press Releases, "UNHCR deplores refugee expulsion by Turkey which resulted in four deaths", 25 April 2008 (UNHCR had requested Turkey not to deport the five Iranian refugees). More in general, see the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June-3 July 2009, paras. 66-71 (available at https://wcd.coe.int/ViewDoc.jsp?id=1511237&Site=CommDH, accessed on 11 April 2010).
5. UNHCR, News Stories, "Deportation of Lao Hmong must stop: UN High Commissioner for Refugees", 28 December 2009; AlertNet, "Q+A What is the fate of the Hmongs deported from Thailand?", 25 January 2010. The 158 refugees referred to had been detained for over three years before they were deported, see UNHCR News Stories, "UNHCR seeking access to returned Lao Hmong", 29 December 2009; UNHCR Briefing Notes, "Thailand: UNHCR calls for end of three-year detention of Lao Hmong", 17 November 2009 (several states had offered resettlement places for those refugees).
6. UNHCR Briefing Notes, "Kazakhstan: UNHCR concerned about arrest and mistreatment of Uzbek refugees and asylum seekers", 15 September 2009.
7. See respectively, UNHCR, Press Releases, "UNHCR alarmed over reports of forcible returns of Eritreans from Egypt", 19 June 2008, UNHCR, "Zimbabwe: UN Urges Govt to Halt Deportation of Zimbabweans", 11 July 2008 (17,000 Zimbabweans were deported despite calls from UNHCR to suspend all deportations), UNHCR Press Releases, "UNHCR concerned about forced return of Sri Lankans by Ukraine", 7 March 2008, UNHCR Briefing Notes, "UNHCR calls on Kenya to stop forcible return of Somali asylum seekers", 27 January 2009, UNHCR Press Releases, "UNHCR deeply concerned over returns from Italy to Libya", 7 May 2009; UNHCR News Stories, "Some 30,000 expelled Angolans in 'dire' need of assistance", 20 October 2009, AllAfrica.com Press Release, "Burundi: Stop Deporting Rwandan Asylum Seekers", 3 December 2009 (available at http://allafrica.com/stories/200912030731.html, accessed on 11 April 2010). In December last year, with reference to the *refoulement* of Uighur refugees from Cambodia, UNHCR referred to a "disturbing increase worldwide in such cases", UNHCR, "UN refugee agency deplores forced return of Uighur asylum-seekers from Cambodia", 21 December 2009.
8. UNHCR Press Releases, "UNHCR concerned for refugees in Chad as security deteriorates", 16 June 2008.
9. CNN, "Thai military faces more 'dump-at-sea' claims", 3 February 2009 (available at www.cnn.com/2009/WORLD/asiapcf/02/03/thailand/refugees/index.html?iref=allsearch#cnnSTCText, accessed on 4 April 2010).

10. UNHCR Briefing Notes, "UNHCR study finds inconsistent examination of asylum claims in EU", 26 March 2010. For the report, see UNHCR, "Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Key Findings and Recommendations", March 2010 (available at http://www.unhcr.org/4ba9d99d9.html, accessed on 4 April 2010). The report does not disclose the identity of the state where UNHCR found the identically worded interview reports.
11. UN doc. EC/59/SC/CRP.13 (2008) (Protracted Refugee Situations: Revisiting the Problem), para. 10.
12. United States Committee for Refugees and Immigrants (USCRI), "Too many African Nations Fail Refugees", 13 August 2009 (available at www.refugees.org/article.aspx?id=2380, accessed on 18 April 2010).
13. The Assistant High Commissioner for Refugees for Protection refers to a "disturbing number of refugees today who do not enjoy the rights which refugee law formally guarantees them", Statement of the Assistant High Commissioner-Protection at the 59th session of the Executive Committee; UNHCR Press Releases, "Assistant High Commissioner reports mixed year for refugee protection", 8 October 2008.
14. UN doc. A/Res/8 (I), 12 February 1946.
15. The International Refugee Organization, *The Facts About Refugees*, Geneva, 1948 at 16, 22.
16. The 'remainder' consisted of the so-called 'hard core' of refugees, professionals such as doctors, engineers, and lawyers, who could not be resettled as resettlement states feared the competition on their national labour markets eliciting the qualification of an "embargo against brains" by the IRO, The International Refugee Organization, *The Facts About Refugees*, Geneva, 1948 at 17, a description succinctly epitomized in the following strophe of W.H. Auden's poem Refugee Blues: "Came to a public meeting; the speaker got up and said; 'If we let them in, they will steal our daily bread': He was talking of you and me, my dear […]".
17. Those experiences resonate forever in the convictions that introduce the operative text of the Charter of the United Nations: "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" (Preamble).
18. *Cf.* Art. 8, Statute UNHCR.
19. Interesting in the present context is that the drafters of the OAU Convention, which comprises besides the 1951 Convention definition, also a much broader definition intended to include in the definition refugees who do not qualify for Convention refugee status under the 1951 Convention and/or 1967 Protocol and who are assisted by UNHCR by virtue of the good offices resolutions, G. Melander, "Further Development of International Refugee Law" in D.S. Constantopoulos (ed.), *Thesaurus Acroasium of the Institute of Public International Law and International Relations of Thessaloniki,* 1987, 473-512 at 485-486.

20. *UNHCR Resettlement Handbook*, November 2004 at III/2. See also UN doc. A/AC.96/830 (1994) (Note on International Protection) paras. 31-32.
21. For the view that those who satisfy the extended definition also qualify as refugees in the sense of the 1951 Convention and 1967 Protocol, see I. Jackson, *The Refugee Concept in Group Situations*, 1999 (covering the period 1950-1985); J. McAdam, "The Refugee Convention as a rights blueprint for persons in need of international protection", UNHCR Research Paper no. 125, July 2006. The divergence in definitions referred to is not a universal phenomenon, it does not exist in states party to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, see Art. 1 para. 2: the text is not clear as to whether these refugees enjoy the same rights as those who qualify for refugee status under the 1951 Convention, but see G. Okoth-Obbo, "Thirty Years On: A Legal Review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa", 20 *Refugee Survey Quarterly* 2001, 80-135 at 98. As far as Europe is concerned, the European Council on Refugees and Exiles, an NGO, advocated the adoption of a supplementary refugee definition for Europe that would comprise those who fall within UNHCR's extended definition, see Position of the European Council on Refugees and Exiles on Temporary Protection in the Context of the Need for a Supplementary Refugee Definition, March 1997, para. 3. For other suggestions to bridge the gap between the definitions, see P. Kourula, *Broadening the Edges; Refugee Definition and International Protection Revisited*, 1997 at 293-296.
22. *Cf.* UN docs. E/AC.32/L.38; E/1618 and Corr. 1, Annex 1 (1950). The suggestion gave way to recommendation E in the Final Act of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, see n. 62 *infra*.
23. L.W. Holborn, *Refugees: A Problem of Our Time. The Work of The United Nations High Commissioner for Refugees, 1951-1972*, 1975 at 88, 90.
24. UNHCR web site, www.unhcr.org/pages/49c3646c14.html, accessed on 17 May 2010.
25. More precisely, 10.5 million refugees, and 0.2 million asylum seekers whose applications were pending, UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced Persons and Stateless Persons*, 16 June 2009 at 3.
26. *Ibid.*
27. The designation used by Holborn for the IRO, L.W. Holborn, *The International Refugee Organization; A Specialized Agency of the United Nations; Its History and Work 1946-1952,* 1956 at 85.
28. UNHCR web site, www.unhcr.org, accessed on 11 April 2010.
29. UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention Relating to the Status of Refugees, 7 February 2006 para. 9.
30. 2007 *UNHCR Statistical Yearbook* at 45 and UNHCR, *Refugee Status Determination, Identifying Who is a Refugee, Self-Study Module 2*, 1 September 2005 at 17-18; see also UN doc. EC/SCP/5 (1977) para. 9.
31. 2007 *UNHCR Statistical Yearbook* at 45; it, however, mentions the figure of 68 states at 50, and in this respect it is worth adding that UNHCR indicated already in 1951 that it is under its Statute obliged to assume responsibility for determining eligibility in any circumstances which may make this function necessary, Memor-

andum by the High Commissioner on Certain Problems Relating to the Eligibility of Refugees (Conference room doc. no. 1), 15 November 1951, para. 11. In addition, UNHCR shares the responsibility of individual refugee status determination in 15 states, 2007 *UNHCR Statistical Yearbook* at 45. UNHCR has conducted status determinations in Belgium for several decades (about 35 years): when UNHCR was established, Belgium indicated "that the protection of refugees was a matter for an international organization" and delegated eligibility authority to UNHCR Belgium; a remarkable statement in view of the fact that Belgium had, with France, formulated the first proposal for a High Commissioner's office whose task would be anything but operational (quotation taken from J. Cels, G. Loescher, "The refugee determination procedure in Belgium and the role of the United Nations High Commission for Refugees", in A.C. Bramwell (ed.), *Refugees in the Age of Total War*, 1988, 324-350 at 331). The authority given to UNHCR by Belgium was confined to eligibility under the 1951 Convention and did not comprise recognition under UNHCR's mandate, *ibid.* at 345.

32. *2007 UNHCR Statistical Yearbook* at 47. The majority of the applications were lodged in Kenya, Malaysia, Turkey, Somalia, Egypt, Yemen, Cameroon, India, Libya, and Pakistan, *ibid.* In 2008 UNHCR took over 62,000 status decisions, more than any other status determination authority (including states party to the 1951 Convention), Statement by the Assistant High Commissioner-Protection, 60th session of UNHCR's Executive Committee.
33. And states differ highly among themselves, see *e.g.* the recognition rate of Iraqi refugees (Convention status) which ranges from 1.7% in Sweden to 98.8% in Germany, *2007 UNHCR Statistical Yearbook* at 50.
34. *Ibid.* at 51.
35. See also UNHCR Press Releases, "UNHCR shocked by Kyrgyzstan's Extradition of Uzbek Refugees", 9 August 2006 (*refoulement* of refugees, recognized as such, for whom UNHCR had secured resettlement places).
36. The incident took place in 1996, see South Asian Human Rights Documentation Centre, "Survival, Dignity, and Democracy: Burmese Refugees in India" 1997 (available at http://www.hrdc.net/sahrdc/resources/survival_dignity.htm, accessed on 11 April 2010) (As to the fate of those who were *refouled*: some are believed to have been sentenced to death, others have received sentences ranging from seven years to life in prison, *ibid.*). More in general: "In many countries, for example, Thailand, a UNHCR-recognised refugee is still considered 'illegal' by the government, and durable solutions remain elusive. For many people, recognition by UNHCR appears to have little tangible outcome, and the significance of such recognition varies from country to country, from one person to another, and over time", M. Alexander, "Refugee Status Determination Conducted by UNHCR", 11 *International Journal of Refugee Law* 1999, 251-289 at 285.
37. Occasionally, they are even advised to move on as happened to Iranian (former) members of the People's Mojahedin Organization (Mojahedin-e-Khalq Organization) who were accommodated in the Temporary Interview and Protection Facility (subsequently named the Ashraf Refugee Camp) that was created by the US forces in Iraq. When this facility was closed, the Americans advised them to seek asylum elsewhere for without the protection of American and Bulgarian forces, their safety

would be imperilled since (former) members of the People's Mojahedin Organization were considered to have participated in the brutal repression of the uprising of the Kurds and Shi'ites against Saddam Hussein in the Gulf War, see M.Y.A. Zieck, "Niet-Europese vluchtelingen in Turkije, het land van ooit" (on the case of Abdolkhani and Karimnia, Judgment of the European Court of Human Rights, 22 September 2009), 35 *Nederlands Tijdschrift voor de Mensenrechten / NJCM-bulletin* 2010, 184-205.

38. As to the reverse – is refugee status granted by states opposable to UNHCR – UNHCR observes that a status "determination need not, however, be considered binding by UNHCR and in certain circumstances the Office may make its own determination under its own mandate", *UNHCR Resettlement Handbook*, 1 November 2004 at III/3.
39. Ch. C1/4.2.13 of the *Vreemdelingencirculaire* 2000.
40. The Hague Court of first instance, judgment of 8 January 2004 (LJN: AO4092), para. 11.
41. The Hague Court of first instance (location Arnhem), judgment of 6 June 2007 (AWB 06/47527), paras. 6, 7.
42. Council of State, judgment of 15 August 2007 (200704731/1), paras. 2.2.1, 2.2.2.
43. Turkey does not recognize status granted by UNHCR outside of Turkey, UNHCR, Written Submission by the Office of the United Nations High Commissioner for Refugees in the *Case Abdolkhani and Karimnia v. Turkey* (Application No. 30471/08), para. 4.5.
44. Case of *Muhammad Sadiq Zarguna v. Rostov RMS*, judgment of 22 November 1999 (with reference to conclusion no. 12 of UNHCR's Executive Committee, on which see n. 45 *infra*), UNHCR RO Moscow, "Analysis of the courts practice in the Russian Federation as pertaining to refugee status determination", June 2002 at 18 (available at http://www.ecoi.net/file_upload/mv132_hcr-rus-caselaw0702.pdf, accessed on 11 April 2010); see also n. 76 and accompanying text *infra*.
45. With respect to refugee status granted by states party to the 1951 Convention and/or 1967 Protocol, UNHCR's Executive Committee observed that "the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States", conclusion no. 12 (1978) on Extraterritorial Effect of the Determination of Refugee Status sub (f); ten EU member states as well as Switzerland have stated that they in principle adhere to this conclusion, Study on the Transfer of Protection Status in the EU, Against the Background of the Common European Asylum System and the Goal of a Uniform Status, Valid throughout the Union, for Those Granted Asylum, 25 June 2004 at 123-124 (available at http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/transfer_protection_status_rev_160904.pdf, accessed on 11 April). See also UN doc. EC/SCP/5 (1977) (Note on Determination of Refugee Status under International Instruments), paras. 20, 25; and in particular UN doc. EC/SCP/9 (1978) (Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees).
46. G. Loescher, *The UNHCR and World Politics; A Perilous Path*, 2001 at 237-238.

47. UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers, April 2009 at 10, 18.
48. UNHCR Briefing Notes, "Involuntary Returns to Central Iraq Contrary to UNHCR Guidelines", 23 October 2009; UNHCR Briefing Notes, "UNHCR reiterates concern about involuntary returns to Iraq amid violence", 11 December 2009.
49. UNHCR, *Resettlement Handbook*, Ch. 3, 1 November 2004, at III/1 (emphasis added).
50. *Ibid.* at III/2.
51. Reference has been made to the "present trend of categorising refugees into 'first class refugees' and others, which turns into a fight between various resettlement countries on getting the most 'attractive refugees'" FORUM/CG/RES/04 at 7; *cf.* n. 58 *infra.*
52. *Cf.* the explanation made by the IRO in which both solutions are referred to as forms of 're-establishment', International Refugee Organization, *The Facts About Refugees*, Geneva, 1948 at 11.
53. "Resettlement begins when a nation indicates a general willingness to receive refugees as immigrants", *ibid.* at 14.
54. Nothing new, see n. 16 *supra.*
55. With the strategic use of resettlement, UNHCR aims at resettlement that maximizes benefits other than those received by the refugees being resettled, see UN doc. EC/53/SC/CRP.10/Add.1 (2003), para. 6.
56. This form of resettlement is comparable to the autonomous attempts of refugees to find a third safe country when the original country of asylum turns out not to be safe (a practice known as 'irregular' or 'secondary movement'), both boil down to seeking protection elsewhere.
57. *Cf.* The Michigan Guidelines on Protection Elsewhere, 2006.
58. How many refugees can, as a result, not be resettled is not clear, very few figures are available but possibly indicative: nearly two-thirds of the Iraqi refugees submitted for resettlement by UNHCR Beirut in 2004-2005 were rejected by at least one resettlement country, *UNHCR Country Operations Plan 2007* – Lebanon, 1 September 2006 at 3. See also UNHCR, Discussion Paper for the Annual Tripartite Consultations on Resettlement (22-23 June 2006) at 6 where reference is made to the fact that resettlement countries sometimes return submissions to UNHCR without explanation, a practice qualified as 'cherry-picking'. Canada observed that inclusion of broader eligibility criteria going beyond the 1951 Convention definition could give added flexibility and help to provide durable solutions for residual populations in protracted refugee situations, FORUM/CG/RES/05 para. 14.
59. See M.Y.A. Zieck, *UNHCR and Voluntary Repatriation of Refugees; A Legal Analysis*, 1997 at 312-313.
60. UNHCR Press Releases, "UNHCR concerned over return of Burundian refugees by Rwanda", 3 June 2009; Human Rights Watch, "Governments and UN Refugee Agency Should Urgently Clarify Refugees' Options Before Camps Close", 19 June 2009. Rwanda is party to both the 1951 Convention and the 1967 Protocol.
61. See M.Y.A. Zieck, "The Legal Status of Afghan Refugees in Pakistan, A Story of Eight Agreements and Two Suppressed Premises", 20 *International Journal of Refugee Law* 2008, 253-273 at 254, 260.

62. This despite recommendation E in the Final Act of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: "*Expresses* the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory *as refugees* and who would not be covered by the terms of the [1951] Convention, the treatment for which it provides" (emphasis added). This particular recommendation originated in a proposal of the United Kingdom, UN doc. A/CONF.2/107, see also n. 22 and accompanying text *supra*.
63. *Cf.* the proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, 12 September 2001, COM (2001) 510 final at 5, 26. The proposal resulted in Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30 September 2004 at 2–23. The terminology used is somewhat confusing: temporary supplementary or complementary protection, subsidiary protection, temporary protection, temporary refuge: the first two designations refer to the protection provided by those who fall outside the confines of the 1951 Convention definition, the designation 'temporary protection' is used in cases of mass influx and may entail the temporary suspension of eligibility procedures under the 1951 Convention and/or 1967 Protocol, whilst 'temporary' refuge is an older designation that denotes protection against *refoulement* of those – usually in large numbers – who flee situations of internal armed conflict regardless of whether they are refugees in the sense of the 1951 Convention or not on the basis of (an independent principle of) humanitarian law, see D. Perluss, J.F. Hartman, "Temporary Refuge: Emergency of a Customary Norm", 26 *Virginia Journal of International Law* 1985-1986, 551-626.
64. R. McDowall, "Co-ordination of Refugee Policy in Europe", in G. Loescher, L. Monahan (eds.), *Refugees in International Relations,* 1990, 179-186 at 186.
65. *2007 UNHCR Statistical Yearbook* at 45.
66. The cooperation agreements that 'secure' attachment do not suffice in that respect. Although they contain a substantive provision on cooperation that would go a long way, it is not specific enough, moreover, UNHCR does not oppose it to states. On the cooperation agreements, see M.Y.A. Zieck, *UNHCR's Worldwide Presence in the Field, A Legal Analysis of UNHCR's Cooperation Agreements*, 2006.
67. G.S. Goodwin-Gill, J. McAdam, *The Refugee in International Law*, 2007 at 49. An observation which is confirmed by the government of Bangladesh which has "registered 28,000 Rohingya, who receive protection, humanitarian assistance, and food rations from UN agencies and international NGOs" but has, since 1993, "denied 200,000 subsequent Rohingya arrivals official refugee status, making them ineligible for UN aid and protection", Physicians for Human Rights Press Release, "Burmese refugees face starvation in Bangladesh camps", 10 March 2010. A comparable example is the forced return of "a large group" of Rwandan asylum seekers from Burundi on 12 October 2009 who were falsely informed that UNHCR considered them ineligible for refugee status, Human Rights Watch, "Government

Should Cease Expulsions of Rwandans Seeking Refugee Status", 16 October 2009 (available at http://www.hrw.org/en/news/2009/10/16/burundi-review-rwandans-asylum-claims, accessed on 14 April).

68. As well as the ECOSOC, Art. 4, Statute UNHCR.
69. D.A. Martin, "Refugees and Migration", in O. Schachter, C.C. Joyner (eds.), *United Nations Legal Order* (volume 1) 1995, 391-432 at 402; "Subsequent resolutions of the GA pertaining to the HC must be read together with the Statute if the full breadth of the HC's present authority and the full scope of his responsibilities is to be understood", Holborn, 1975 *op. cit. supra* at 91.
70. "It must be recalled in this regard that the General Assembly has charged UNHCR with providing protection to, and seeking durable solutions to the problems of, all refugees, formally recognized or not, who fall within the Office's mandate, and that this mandate is not restricted according to the international obligations assumed by a particular government", UN doc. A/AC.96/777 (1991) (Note on International Protection), para. 26.
71. *Cf.* M. Dixon, *Textbook on International Law* 2007 at 48. The classical examples are the termination of trusteeship agreements by means of a General Assembly resolution, see *Case concerning the Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgement of 2 December 1963: ICJ Reports 1963, p. 15* at 32*; Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgement, ICJ Reports 1992, p. 240* at 251.
72. I do not refer to questions of funding, for only part of the administrative expenses of UNHCR are borne by the United Nations: all its operational activities depend on voluntary contributions so voting in favour would not of necessity mean being obliged to contribute financially.
73. J.-P. Hocké, "Beyond Humanitarianism. The Need for Political Will to Resolve Today's Refugee Problem" in Loescher, Monahan 1990 *op. cit. supra*, 37-48 at 43-44; see also UN doc. EC/1992/SCP/CRP.5 (Protection of persons of concern to UNHCR who fall outside the 1951 Convention: a discussion note), para. 1. Yet it appears that UNHCR itself has opted for different standards, see UN docs. A/AC.96/609/Rev.1 (1982) (Note on International Protection), para. 19; EC/50/SC/CRP.18 (2000), EC/55/SC/CRP.16 (2005) which includes a suggestion for a conclusion of the Executive Committee, one that was subsequently adopted in 2005 (no. 103 on international protection including through complementary forms of protection) which addresses the situation of persons who fall under the mandate of UNHCR.
74. Apparently so in view of the complaints voiced by the then – 1960s – senior UNHCR legal adviser Paul Weiss that most African states sought UNHCR involvement only for the money and viewed UNHCR concerns over legal protection as unwanted interventions, Loescher, 2001 *op. cit. supra* at 119.
75. UN doc. A/Res/319 (IV), 3 December 1949 (see also Art. 1 of the Annex to this resolution).
76. UNGAOR, 4th session, Summary Records, 264th Plenary Meeting, 2 December 1949, para. 101.
77. See A. Grahl-Madsen, *The Status of Refugees in International Law*, 1966, Vol. 1, at 306, 320.

78. The Assistant High Commissioner-Protection considers the high degree of reliance by some states on UNHCR a worrying trend, Statement at the 60th session of the Executive Committee; see also the Statement of the Assistant High Commissioner-Protection at the 59th session of the Executive Committee in which reference is made to "an over-reliance on UNHCR as protection provider".
79. The findings will be published by Edward Elgar Publishers in a book entitled: *The international Protection of Refugees: UNHCR's Parallel Universe*.