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Principles of International Refugee Law

1. Protection

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Protection

- An element in **refugee definition**
- An **activity**
- An international **obligation**

Forms of protection

- Diplomatic protection
 - **The right of the State**
 - **ILC Draft Articles, 2006**
- Refugee protection
 - **UNHCR Statute, paragraph 1**
 - **CSR51, Preamble**
- Human rights protection
 - **‘... to respect and to ensure... to secure...’**
- National protection
- International protection

Lack of protection – an element in refugee definition

**Russians, Armenians, Assyrians, Assyro-Chaldeans; and
refugees from Spain, from Fascism, from Nazism, from war...**

- **Not enjoying** or no longer enjoying the **protection**
of the Government of the State to which the
individual previously belonged
- **Not possessing** or not having acquired **another
nationality**

Lack of protection – an element in refugee definition

1951 Convention relating to the Status of Refugees

- Article 1A(2)
 - ▶ ... owing to well-founded fear of being persecuted... unable or, owing to such fear, unwilling to avail... of the protection of the country of nationality...

Protection as an activity

- League of Nations High Commissioner for Refugees — Tasks
 - ▶ To define the status of refugees
 - ▶ To organize their repatriation/resettlement
 - ▶ To undertake relief work with philanthropic societies

United Nations Relief and Rehabilitation Administration (UNRRA) — 1943

- Aid and relief
- Return of prisoners and exiles to their homes
- Assistance

International Refugee Organization — 1946

Article 2 - Functions and Powers

- ... repatriation, identification, registration, classification, **care and assistance, legal and political protection**, transport, re-settlement and re-establishment, in countries able and willing to receive them, of persons who are the concern of the Organization...

Protection (too) broadly considered

- ‘... **all** activities aimed at obtaining **full respect** for the rights of the individual in accordance with **the letter and the spirit** of human rights, refugee and international humanitarian... **creating an environment** conducive to respect for human beings, **preventing and/or alleviating** the immediate effects of a specific pattern of abuse... **restoring** dignified conditions of life through reparation, restitution and rehabilitation.’

Protection as an obligation

- As a matter of treaty
 - **CSR51; ICCPR66; ECHR50; ACHR69; ACHPR81**
- As a matter of customary international law
 - **Non-refoulement; Prohibition of torture**
- As a matter of national and/or regional law
 - **EU Qualification Directive; Charter of Fundamental Rights**
- As a matter of mandate responsibility
 - **Does paragraph 1 of UNHCR’s Statute impose a duty?**

Legal and political protection

League of Nations

- Legal protection
 - **Status, rights and interests**
 - **Access to services and opportunities**
- Political protection
 - **Role of governments in solutions**

UNHCR: The international protection function

... initially conceived as a ‘non-operational’ agency...

- ‘To intervene with governments on ... behalf [of refugees] in order that they might be afforded minimum rights and privileges essential to their existence and security...’ [Mrs. E. Roosevelt, Third Committee, 1950]
- ‘To exercise... both diplomatic and consular functions...’ [Mr. Perez Perozo, Third Committee, 1950]

UNHCR Statute

UNGA res. 428(V), 14 December 1950

- 1. The United Nations High Commissioner for Refugees
 - ▶ shall assume the function of providing international protection ... to refugees who fall within the scope of the present Statute
 - and
 - ▶ of seeking permanent solutions for the problem of refugees... by assisting Governments... to facilitate
 - the voluntary repatriation of such refugees, or
 - their assimilation within new national communities

UNHCR Statute, para. 8

The High Commissioner shall provide for protection by...

- (a) Promoting the conclusion and ratification of international conventions... supervising their application and proposing amendments...
- (b) Promoting... measures... to improve the situation of refugees and to reduce the number requiring protection;
- (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- (d) Promoting the admission of refugees , not excluding those in the most destitute categories, to the territories of States;
- (e) Endeavouring to obtain permission for refugees to transfer their assets ...
- (f) Obtaining from Governments information concerning... refugees... and the laws and regulations concerning them;
- (g) Keeping in close touch with... Governments and inter-governmental organizations...
- (h) Establishing contact... with private organizations dealing with refugee questions
- (I) Facilitating the co-ordination of the efforts of private organizations...welfare of refugees...

The, or one, meaning of ‘international protection’

- Using the legal tools – international treaties, national laws – which prescribe the obligations of States and which are intended to ensure:
 - ▶ that a refugee in search of asylum is not penalized, expelled, or refouled (that is, sent back to any country in which he or she is at risk of death, torture, or persecution);
 - ▶ that every refugee enjoys the full complement of rights and liberties to which he or she is entitled as a refugee (status); and
 - ▶ that the human rights of every refugee are guaranteed.

To ‘provide international protection’

Meaning in practice

- 1. To insist on the fulfilment of international obligations
- 2. Being there and using all available mechanisms
- 3. Maintaining the humanitarian and non-political character of the work
- 4. Not engaging in and disengaging from activities incompatible with international protection standards

Protection and humanitarian relief

- ‘... assistance and protection are *mutually reinforcing* and... inadequate material assistance and food shortages undermine protection...’
 - ‘Assistance to refugees, returnees and displaced persons in Africa’, UNGA resolution 60/126, 16 2005, para. 11, emphasis supplied.

UNGA res. 64/76, 7 December 2009

‘Strengthening of the coordination of emergency humanitarian assistance of the United Nations’

- Protection of civilians
- Preventive measures and effective responses to violence, including gender-based violence
- Guiding principles on internal displacement
- Access

UNGA res. 60/1, 16 September 2005

World Summit Outcome, §§138, 139

- Responsibility to protect
 - §138: Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity ... This... entails... prevention... including... incitement,...
 - §139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity...

‘Unprotected persons...’

- (a) persons who are **not nationals** of any State...
- (b) persons who, being outside the territory of the State of which they are nationals, **do not enjoy the protection of the State** either **because that State refused them protection** or because for **good reasons** (such as, for example, serious apprehension based on reasonable grounds, of political, racial or religious persecution in the event of their going to that State) **they do not desire the protection of that State**.