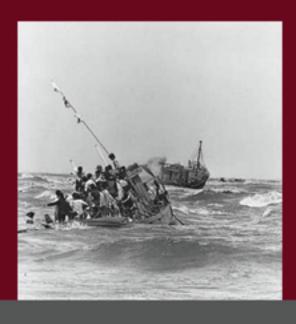Luise Druke

Innovations in Refugee Protection

A Compendium of UNHCR's 60 Years

Including Case Studies on IT Communities, Vietnamese Boatpeople, Chilean Exile and Namibian Repatriation

Introduction

Purpose

This book aims to show how innovation has been integral to UNHCR's international refugee protection over the last 60 years, not only in a general sense but specifically relating to the four evidence-based case studies included here, which I selected based on my assignments heading these operations. I hope to shed light on examples in which UNHCR approached novel refugee situations and proactively designed and implemented innovative responses. The purpose is to better understand UNHCR's role in the development and effective implementation of international refugee law. Consequently, the material illuminates UNHCR's potential to strengthen and expand its role amidst constantly changing political landscapes and underlines the link between support for its approaches and fulfillment of its responsibilities.

Research Design: These case studies analyze three concluded UNHCR operations (in Singapore, Chile, and Namibia) that presented novel refugee situations from a geopolitical perspective, in addition to examining the evolution of one particular innovation in international, political, and humanitarian affairs. This innovation, early warning and alert, progressed from traditional means of data collection and analysis to new partnerships with information and technology communities (ITCs).

Research time frame: The focus is on those times when I had responsibilities over the aforementioned UNHCR functions, between 1977 and 2006, taking into account pre- and post UNHCR work from 1973 through 2013.

Audience: This book will be of interest to students, scholars, and practitioners of refugee protection, human rights and migration studies, humanitarian assistance, international relations, international law, political science, political geography, security studies and journalism in countries around the world.

Legal Background

In the aftermath of World War II, refugees and displaced persons were high on the international agenda. Article 2 of the 1945 United Nations Charter stipulates that the principles of sovereignty, independence, and non-interference within the reserved domain of domestic jurisdiction are fundamental to the success of the Organization. At its first session in 1946, the United Nations General Assembly recognized that "no refugees or displaced persons who have finally and definitely ... expressed valid objections to returning to their countries of origin ... shall be compelled to return ...." Two years later, the UN General Assembly adopted the Universal Declaration of Human Rights. Article 14 of the Declaration recognizes that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution." The individual was only then beginning to be seen as the beneficiary of human rights in international law.

These factors elucidate both the manner in which the 1951 Convention is drafted (that is, initially and primarily as an agreement between States as to how they will treat refugees) and the essentially *reactive* nature of the international regime of refugee protection. The 1950 Statute of UNHCR adopted by the UN General Assembly through Resolution 428 (V) on 14 December 1950 reflects the interest of the more powerful states, such as the United States and the United Kingdom, that UNHCR was to serve: "to protect refugees and to find solutions to their problems." This mandate was to be carried out with only minimal operational support from voluntary sources. The formulation and further development of legal standards – and efforts to ensure that refugees are effectively implemented – are defined in a series of international instruments (e.g., conventions, resolutions, recommendations, etc.), either adopted at the universal level under the United Nations or within the framework of regional organizations such as the Council of Europe, the Organization of African Unity, and the Organization of American States. A growing number of countries have incorporated these standards into national law, in order to more effectively implement them.

By its 60th anniversary year in 2011, the UN Convention relating to the Status of Refugees of 28 July 1951 remains the most comprehensive universally and legally binding international instrument, defining standards for the treatment of refugees. The 1951 Convention, as it will be referred to hereinafter, was ratified by 144 States Parties.[1] Together with the 1967 Protocol, which removed the Convention's time limitation, 147 State Parties had committed to these standards.[2] Even though many today see the Convention as a relic of the Cold War – inadequate in the face of "new" refugees from ethnic violence and gender-based persecution, and in light of new security concerns, such as terrorism and organized crime – it is still recognized as the principal standard for refugee protection. At present exists the most comprehensive regime regarding the protection of individual rights and of forcibly displaced persons than at any time in human history. UNHCR and scholars identified a whole range of difficulties in refugee protection since 1951, of which this book examines some.

Taking a look at UNHCR's past should help society, as academics and practitioners, make sense of its future. As the noted refugee scholar Louise Holborn stated, UNHCR's practice has been to rely on the broad phrasing of UNHCR's refugee protection functions and a broadly interpreted general tenor of the UNHCR Statute in paragraph 8,[3] which contributed to UNHCR's innovative approaches. The UN General Assembly reiterated the active nature of international refugee protection,[4] and the Executive Committee of UNHCR endorses a broad range of UNHCR protective activity without providing specific responsibilities. Therefore, the organization exercises a great deal of discretion as to the substance of its work. UNHCR's refugee protection mandate encompasses more than legal obligations and ensuring respect for the right of refugees – it is also an action-oriented function to protect refugees, which enables UNHCR to proactively enhance its activities with a sufficiently elastic and extensive meaning for

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1   The 1951 Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held in Geneva, Switzerland, from 2 to 25 July 1951. The Conference was convened pursuant to Resolution 429 (V)1, adopted by the General Assembly of the United Nations on 14 December 1950. United Nations, Treaty Series, vol. 189, p. 137; 1967 Protocol: United Nations, Treaty Series, vol. 606, p. 267.

2   There are 147 States Parties to either the 1951 Convention or the 1967 Protocol relating to the Status of Refugees. As of 1 April 2011: States Parties to the 1951 Convention: 144, States Parties to the 1967 Protocol: 145, States Parties to both the Convention and Protocol: 142, States Parties to one or both of these instruments: 147. UNHCR, "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol," accessed 17 April 2013, http://www.unhcr.org/3b73b0d63.pdf.

3   Louise Holborn, "Refugees – A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951-72," (Metuchen, NJ: Scarecrow, 1975), 92.

4   United Nations General Assembly (UNGA), Resolution 60/129, 16 December 2005.

"international protection." Relevant General Assembly Resolutions and Executive Committee (EXCOM) conclusions only provide limited guidance.

In fact, as public international law scholar Guy Goodwin-Gill stated, "... while UNHCR was initially conceived as neutral, passive and reactive, the rationale for its continued existence combines recognition of the humanitarian necessity for protection with recognition that assistance is commonly essential not only to survival, but also in the transition to solutions. Indeed, the General Assembly rapidly accepted that UNHCR *should* engage in activities beyond the diplomatic, in resettlement, repatriation, and channeling funds for assistance."[5] Ensuring the strength and continuing viability of the international regime for protection of refugees remains UNHCR's primary mandate.[6] Volker Türk, the UNHCR Director of International Protection, at the time of this writing, noted, "The functions of UNHCR have expanded considerably over time. Mandated activities include preventive action and participation 'at the invitation of the Secretary General, in those humanitarian endeavors of the United Nations for which the Office has particular expertise and experience.'[7] In addition, the institution of 'good offices' and the right to humanitarian initiative have been useful tools for situations outside mandated activities. Other functions would, for instance, include relief distribution, emergency preparedness, special humanitarian activities, broader development work, and issuance of documentation for persons falling under the mandate."[8]

As scholar Corinne Lewis noted, over "60 years of its work, UNHCR has maintained the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol as the basis for international refugee law standards, even while it extended the refugee law framework to include international human rights law, the area that actually overreaches refugee law. UNHCR had to balance carefully its

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5   Guy Goodwin-Gill, Senior Research Fellow, All Souls College, Oxford, "International Protection and Assistance for Refugees and the Displaced: Institutional Challenges and United Nations Reform," (paper presented at the Refugee Studies Centre Workshop, "Refugee Protection in International Law: Contemporary Challenges," Oxford, UK, 24 April 2006), 3.

6   Ibid., 18. There is still plenty of scope for strengthening UNHCR's protection and supervisory functions with regard to refugees; see, among others, W. Kälin, "Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond," in Erika Feller, Volker Türk, Frances Nicholson, eds., *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, (Cambridge, UK: Cambridge University Press, 2003), 613-66; and "Summary Conclusions: supervisory responsibility," ibid., 667-71.

7   UNGA, Resolution 2956, 12 December 1972, para. 2.

8   See Volker Türk, "Freedom from fear: Refugees, the broader forced displacement context and the underlying international protection regime," in V. Chetail, ed., *Globalization, Migration and Human Rights: International Law under Review* (Geneva: Geneva Academy of International Law and Human Rights, 2007) in Volker Türk and Elizabeth Eyster, "Strengthening Accountability in UNHCR," *International Journal of Refugee Law* 22 no. 2 (2010): 163.

flexibility with formal approval of States. However in the context of refugee crises and states' unwillingness to protect refugees, UNHCR must act with a forward-looking creativity."[9]

As stated by Szutucki and quoted by Lewis: "[o]n the national and international level, organs and institutions, once created, tend to start their own life, and to act, *mutatis mutandis*, according to the old judicial maxim: 'boni judiciis est ampliare jurisdictionem'."[10] ("It is the duty of a good judge to enlarge his jurisdiction."). If there are novel refugees situations, solutions must be found. Of course, international refugee law must be kept in mind when identifying and implementing innovative solutions, in order to strengthen refugee protection and avoid basing practices on donor interests or a given State's policy.[11]

The reflections in these case studies are based on experience and sources gathered during my firsthand efforts with UNHCR since 1977. Part II provides a brief Background Note on UNHCR as the international actor with a universal mandate for refugees, in order to orient students and other readers substantively. The Teaching Note is intended to support and facilitate the use of case studies in the classroom. These case studies can be used not only for teaching purposes, but also to help train people interested in working in humanitarian operations generally or refugee protection specifically.

Organization

Each case study follows the same design: introduction; historical context and chronology of the conflict; the legal bases of UN mandates and UNHCR roles in the operation; the empirical details of the specific UNHCR operation, including personal stories, obstacles, achievements, and collaborations with other offices; an analysis of the challenges, outcomes, and successes; lessons learned and concluding thoughts; and exhibits of pertinent primary sources.

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9   Corinne Lewis, *UNHCR and International Refugees Law, From Treaties to Innovation*, (New York: Routledge, 2012), 167.

10 Corinne Lewis, "UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution," *International Journal of Refugee Law* 17 no. 1 (2005): 90.

11 Michael Barutciski, "Opinion: A Critical View of UNHCR's Mandate Dilemmas," *International Journal of Refugee Law* 14 nos. 2/3 (2002): 380.

Case Study One: Early Alert and ITCs

With no claim of being exhaustive, this case study primarily illustrates early warning and early alert efforts as well as UNHCR's transition over the past few decades from traditional work in this field to reaching out to new partnerships, including private sector organizations and information and technology communities (ITCs).

Strategy: The case study first looks at UNHCR's "Refugee Alert Emergency System" (REAS), which I had responsibility of coordinating in its development stage in consultation with Erika Feller, Hans Thoolen and input from UNHCR staff across the organization at headquarters and in the field. The study then focuses on novel situations and developments within and outside of UNHCR, before concentrating on new initiatives by UNHCR Innovations in the past years. These new efforts are establishing creative solutions, encouraging staff to think differently, and reaching out to a wider community for support to enhance delivery of assistance and protection, relying more heavily on ITCs.

Results: The main contemporary results of these initiatives displayed the potential to innovate UNHCR protection and assistance for refugees and other persons of concern. Using UNHCR's mandate and additional resources, UNHCR further evolves as an innovative organization. Facing enormous challenges, the organization has been thinking of new ways of strategizing and acting, such as:

- Strengthening its internal system of information management for emergency preparedness and working to stay ahead of the curve in refugee-developing situations. In 1990, UNHCR set up REAS, which became the basis of joining early alert work across humanitarian, UN, and other international organizations.
- Using additional resources in private-public partnerships. Since 2010, UNHCR has opened over 31 Community Technology Access Centers for refugees and internally displaced persons (IDPs) in urban areas and remote field locations, which UNHCR has opened since 2010 throughout Africa, Asia and Eastern Europe; these centers help refugees connect with family and build their capacities to find income-generating work in their host communities.
- Developing contacts with academic settings. At Stanford University, students design solutions to refugee community outreach activities and meet other refugee-inspired challenges. The partnership with the Humanitarian Innovation Project at the Oxford University Refugee Studies Centre helps to document bottom-up lessons learned and good practices that focus on refugee livelihoods and increasing refugees' own skills and aspirations.

Specific lessons learned: a) There is a wealth of knowledge, expertise, and skill within UNHCR that could be more exploited. Through the iFellows programme, UNHCR Innovation aims to create an active network of staff members with diverse skills, qualifications, and experiences to help resolve field-identified challenges; b) The needs of UNHCR's persons of concern should be captured from bottom-up in a more systematic manner. UNHCR Innovation's methodology draws on an evidence-based solution development process, wherein UNHCR's persons of concern are actively engaged in each stage of the process – from challenge definition to solution scale-up; c) More support and resources are needed within UNHCR to experiment new ideas; d) Good practices are yet to more systematically to be documented, shared and adapted across UNHCR. The Innovation team is exploring ways to address this challenge, including through the development of a crowdsource platform for idea management, conceived to serve as a repository of knowledge; and e) Knowledge and expertise from outside UNHCR remain largely untapped within the organization.[12]

Summary conclusions: The transition into the international humanitarian system of new partnerships with ITCs will need to build and further demonstrate reliable and consistent capabilities; this will enable traditional, formal humanitarian entities locally and internationally to make the best of and adapt to those methods of work based on open source and web services. In addition, it is useful to establish agreements on functions such as aggregating and analyzing reports from the individual voices emerging from conflict and disaster induced crises-affected communities. As this case study has shown, there has been a paradigm shift across the traditional and non-traditional humanitarian communities. Borrowing from Mary Anderson, affected people have shown that they are not only surviving but also exempting themselves from crises, that they have capacities and the agency to shape things.[13]

It may well be that the directly affected people and NGOs themselves are best suited as actors between those who govern and those who need to better sound the alarm and spur action through transparent initiatives and convincing manifestations. Encouraging innovation on the frontlines by listening to and working with the refugees and affected people more, UNHCR can play a proactive and solution-oriented role in self-help, mutual aid and external resources. UNHCR seeks to rely on the refugees' skills, talents, energy, and intelligence to create their own environment and become self-reliant. By upholding their dignity, refugees be-

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12 Received these lessons learned from Rocco Nuri, UNHCR Communications Officer on 11 April 2013. Email on file with the author.
13 Mary Anderson and Marshall Wallace: Opting out of War: Strategies to Prevent Violent Conflict, Rienner, 2013, 173.

come agents for solving existing refugee situations and preventing new ones. Provided security concerns are balanced with risks emerging from increasing power diffusion, new partnerships with IT communities offer significant potentials for refugee protection, if security risks are balanced especially in the face of increasing power diffusion.

Case Study Two: Vietnamese Boat People in Singapore

Singapore – like all Southeast Asian first asylum countries at the time of the Vietnamese boat people crisis after the Fall of Saigon – was not a State Party of the 1951 Convention.[14] UNHCR paved its way to address the refugee emergency in the late 1970s and the beginning of the 1980s, to counter policies of "shoot on sight" and "push offs". Singapore imposed five particularly harsh conditions prior to allowing boat people to go ashore there. This included a guarantee and requirement to resettle the boat people within three months of disembarkation.

Strategy: UNHCR addressed this extraordinary emergency during my appointment there, from 1978 to 1981, using soft power to persuade the Singaporean authorities to cooperate. We had worked with the Ambassador Marcel Depasse and the Deputy Ambassador Franz Michils in residence in Singapore that Belgium to initially grant visas for resettlement places to persons rescued by vessels of "open registry" whose flag states were unwilling or unable to resettle refugees, such as Liberia and Panama.

Result: UNHCR institutionalized the Disembarkation Resettlement Offer (DISERO) initiated with the help of the Belgian initial visa pool in 1979 in Singapore, which was later, increased with contributions from eight other countries. Through this offer, ship captains were encouraged to rescue drowning boat people who otherwise would have perished in the very dangerous South China Sea. UNHCR with the cooperation of local authorities and the international community, with the significant assistance of volunteers and the refugees:

- Used the UNHCR statuary mandate to face a new refugee situation in a country that was not a signatory of the international refugee regime and was able to solve the emergency issues that represent 60% of all arrivals and departures processed during the peak period of 1979-1981;

14 Out of the Southeast Asian first asylum countries, only the Philippines is a State Party at the time of writing.

- Created the initial pool of 200 visas which Belgium provided in mid-1979 under DISERO, obtaining visas from additional countries that contributed to save 67,000 Vietnamese boat people;
- Encouraged captains on vessels flying under open registry, from countries unable or unwilling to resettle rescued refugees, to rescue Vietnamese boat people (by helping with rescue at sea, which had an "immediate effect," captains received an incentive to cooperate without having to suffer temporal and financial losses);[15]
- Made DISERO crucial for the humanitarian emergency response and proved its merits of saving lives and meeting requirements of regional host governments (mainly in Singapore, which reduced its restrictive conditions);
- Ensured conditions to temporarily house Vietnamese boat people in the refugee center Hawkinsroad in dignity and safety, in a former military naval bases which UNHCR rented and adapted for this purpose;
- Proactively involved refugees in the camp to take management and operation responsibility, participate in educational activities, run income-generating businesses there; and
- Achieved official cooperation towards less restrictive policies.

Over two million people left their home countries Vietnam, Cambodia and Laos by boat, land or via the Orderly Departure Program from April 1975 to 1996. This extraordinary challenge for the region and beyond, called for great commitment on the part of donor and resettlement countries, on the temporary asylum countries and finally the countries of origin that accepted repatriation and reintegration programs after 1989.

Summary conclusions: **UNHCR's** locally created innovative measure- the Disembarkation Resettlement Offer (DISERO) contributed to rescue and resettle over 67,000 Vietnamese boat people that encouraged rescue at sea especially of vessels of open registry –whose states were unable or unwilling to guarantee and resettle refugees. The proactive UNHCR work and reaching out for cooperation to partners along with effective participation of the refugees and professional volunteers in parts for the work to be done (administration, education and operation of the refugee community affairs) at the refugee center Hawkinsroad in my time helped to overcome most restrictions. The proactive cooperation between the authorities and UNHCR was crucial to deal with the peak of the emergency in Singapore between 1978 and 1981.

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15   W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response,* (London and New York: Zed Books, 1998), 192.

Case Study Three: Chile: Exile and Return under Dictatorship

Chile was a 1951 Refugee Convention signatory. The military regime after the coup on 11 September 1973 persecuted, exiled, and systematically interdicted return of exiles. Between 1982 and 1983, in response to public protests and the dictator's weakness, the regime authorized returns to Chile from exile; the problem arose from the regime's unreliable approval lists, containing babies, missing persons, persons who had never left the country and dead people. Many people "authorized" on arrival at the airport were expelled. No one knew who of the estimated 200,000 Chileans in exile for political reasons had the right to return of those who asked for it.

Strategy: In charge of the UNHCR office in Chile from 1983 to 1985, with UNHCR's soft power and weight to support local human rights and refugee NGO actors as well as concerned individuals, I made representations that the regime took a more transparent approach towards exiles and their possibilities to return.

Results: In April 1985, following difficult and long negotiations, I succeeded in changing the policy of return. The Ministry of Foreign Affairs of Chile confirmed by official *note verbale* that people not present in the list could return without prior consultation. This formally ended the exile for thousands of Chileans, allowing them to reestablish their link with their home country or to return if they so desired.

By adjusting its role and mandate, UNHCR consulted with international and national humanitarian partners to:

- Create safe havens to temporarily house and protect persecuted foreign refugees in Chile under Swiss diplomatic flag, in a national building which the Catholic Church at the disposal of UNHCR for refugee protections;
- Provide temporary international protection in over twenty more reception centers for foreign refugees;
- Extend good offices for Chileans seeking protection in diplomatic missions in Santiago and elsewhere, in order to negotiate safe passage out of the country and resettlement abroad;
- Work on behalf of nationals to assist in commuting prison sentences into expulsions to exile;
- Assist exiled Chileans deprived of their nationality to regain it;
- Mobilize the regime to take measures that would eventually reintegrate returned exiles, such as establishing the Inter-ministerial Commission; and

- Achieve official confirmation that Chileans not named in the list of prohibitions could return without prior consultation, which formally ended the exile for thousands of Chileans.

Case Study Four: The Namibian Repatriation Operation through Angola

The Namibian Repatriation Operation took place as part of the United Nations Transition Assistance Group (UNTAG) from Angola and elsewhere inside and outside Africa. South Africa maintained military presence in Namibia after fighting against Namibian liberation struggles for years both in Namibia and outside in Angola. The refugee camps in southern Angola were perceived as a security risk due to allegations of ex-combatants remaining in the area amidst ongoing war between the MPLA and the UNITA forces within Angola. The SWAPO exile government under Sam Nujoma was interested in the repatriation of not only the Namibian refugees, but also the former SWAPO military members and SWAPO property from camps in southern Angola.

Strategy: The uniqueness of UNTAG's mandate allowed both the UN and UNHCR to use soft power and cooperate closely with concerned actors in Angola, where I led the operation during the latter half.

Results: Soft power and the flexibility of UNHCR's contribution to the UNTAG operation allowed all repatriates to return through the fire lines of war without loss of life. The UNHCR component in Angola completed the Namibian repatriation by 15 September 1989, despite quicker-than-warranted reductions of staff, materials, and funding. Repatriation occurred in a timely manner, in order to meet the deadline to register refugees for the national elections in Namibia. Nearly 40,000 Namibian refugees were transported safely from the Angolan refugee camps in South Angola, through the fire lines and the airport in Luanda, and to Namibia before the 15 September 1989 elections. Specifically, I helped UNHCR to:

- Succeed in the first-ever integrated UN mission of civilian, military and humanitarian segments for the repatriation and reintegration of over 40,000 Namibian exiles;
- Implement the tripartite agreement and hold periodic consultations to deal with any political and operational issues arising from the implementation;
- Involve Namibian exiles as staff in the operation's organization, and implementation of the operation, which proved to be an asset;
- Ensure that returnees were able to register and participate in voting (in fact, the main document used for identification purposes was the so-called "volun-

tary repatriations form" each refugee had signed. "The peace agreement stated that Namibian exiles should be permitted to return without risk of arrest, detention, intimidation, or imprisonment so they could participate in the electoral process. Provision was made for the peaceful return of former SWAPO forces under UN supervision through designated entry points." UN Security Council Res. 632 of 16 February 1989 which a.o. confirmed that the UN SC Res. 435 of 1978 remained the only internationally accepted basis for the peaceful settlement of the Namibian question.

- Create a positive environment for both ex-detainees and all returnees to return to, which significantly shaped politics of the transitional period in Namibia; and
- Earn commendations from scholars and practitioners alike regarding the successful work of UNHCR and its implementing partner, the Council of Churches in Namibia (CCN) and others who had been involved.

Refugee-specific lessons learned included:

- The number of challenges that the Namibian Operation faced in Angola, particularly the challenge of operating in a country fraught by 30 years of war, made the work of directing, organizing, and controlling UNHCR's operation at times daunting.
- The early withdrawal of key international staff and consultants required instant adjustments on the ground in order to reach the mission's goal. According to external observers, the international and local personnel compensated by performing in a highly professional manner, which contributed greatly to the success of the operation.
- The cooperative arrangement between UNHCR, SWAPO, and the major host countries, Angola and Zambia, significantly facilitated the repatriation operation.
- In addition to arousing national sentiments and mobilizing (as well as counter-mobilizing and holding anti-SWAPO sentiment), the returnees had a material impact on the transitional political process. Statistics show that returnees significantly altered the demographic profile of Namibia at a critical time just prior to the November 1989 elections that would set up their own independent state.

Summary conclusions: Despite political and security issues, financial and resource shortages, all of us institutionally and individually involved, including the Namibians themselves, were able to reach the goal of implementing the political agreement laid down in UN Security Council Res. 435 (1978) and SC Res. 632 of 1989 political agreement and paving the way to the setting up of the independent Namibian State.

Refugee-Specific Challenges

Access to protection has been a challenge, both for asylum seekers and humanitarians working in the field. While this has been true since the first High Commissioner took up his post in 1951, in recent decades this has been an increasing concern as incidents of high visibility have occurred in a number of regions of the world, including Europe, Asia, and the Middle East. UNHCR has warned of growing gaps in the global protection framework for the world's millions of forcibly displaced and stateless people, and has appealed to the international community to respond. The certainties of the eras post World War II and Cold War are no longer sufficient to ensure that everyone needing international protection in fact receives it. Today's challenges are interconnected and complex; population growth, urbanization, climate change, water scarcity, and food and energy insecurity exacerbate conflicts in many ways that oblige people to flee their countries. Protection gaps stem from inadequate implementation of existing treaties, insufficient ratifications of relevant instruments, and holes in the international protection framework. There is a need for action on an expanding list of displacement problems, for which no agreed international solutions currently exist: natural disasters, climate change, economic and other man-made calamities, gang violence, and vulnerability in post-conflict situations.

As we look back at the past 60 years and prepare for the future, one has to ask: what lessons can we learn from previous experience, and how relevant are these lessons for future challenges? The experience of UNHCR and the cases presented here show that the challenges of protecting refugees cannot be addressed merely by the assertion of principles, nor by working only with traditional actors and responses. Three factors stand out in the analysis of this book: the ability of UNHCR to work with traditional and non-traditional actors, the exceptional contribution of both UNHCR officers and *affected peoples themselves*, and the ability to translate institutional norms and regimes into concrete action using soft power. I turn briefly to the third of the methods for refugee protection – soft power.

Analyzing methods for refugee protection with the help of "soft power"[16]

The challenge of refugee protection is to get those responsible for it to do what they otherwise would not do willingly, easily, or at all. Political scientist Joseph Nye discusses two factors that compound state influence. He refers to behavioral power as "the ability to obtain outcomes you want" and resource power as "the possession of resources that are usually associated with the ability to reach outcomes you want."[17] He develops hard power as "the ability to get others to do what they otherwise would not do through threats or rewards. Whether by economic carrots or military sticks, the ability to coax or coerce has long been the central element of power."[18]

On the other hand, the resources which comprise soft power include intangible – yet traditional – country-specific characteristics such as culture, reputation, ideology and language. While there are numerous novel uses for soft power, such as forming coalitions, building consensus, and working with a range of societal actors – particularly in humanitarian approaches and with NGO support – it ultimately relies on hard power for a backbone.

For the purpose of this book, the innovations of UNHCR refugee protection mean two things: working with local, governmental, civilian, and security actors and non-governmental organizations, the media and academic partners to translate international guidelines and norms into domestic practices, policies, and laws in a creative way; and working in new partnerships with ITCs toward proactive approaches in technology and communication that involve refugees as much as possible. Often, all that is at UNHCR's disposal to persuade political and security, communities is soft power, in addition to the 1951 Refugee Convention and additional refugee related norms. Nye explains, "Soft power is more difficult to wield, because, many of its crucial resources are outside the control of governments, and their effects depend heavily on acceptance by the receiving audiences. Moreover, soft-power resources often work indirectly by shaping the environment for policy, and sometimes take years to produce the desired outcomes."[19] The application of the 1951 Convention indicates this fact. Institutions, as we have seen in much of the post-WWII economic and military realms

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16 I would like to acknowledge with thanks the fact the Christiane Lemke pointed out, to consider soft power as an analytical tool.

17 Robert O. Keohane and Joseph S. Nye Jr., "Power and Interdependence in the Information Age," in *Is Global Capitalism Working?: A Foreign Affairs Reader* (New York and Washington, DC: Council on Foreign Relations, 1998), 105.

18 Ibid.

19 Nye, *Soft Power: The Means to Success in World Politics*, (New York: PublicAffairs, 2004), 99.

can increase an actor's soft power with respect to scope, concentration, and duration; institutions solidify a set of rules and norms into international practice and regimes, especially when seen as legitimate in the eyes of others.

Nye says, "power is the ability to influence the behavior of others to get the outcomes one wants. But there are several ways to affect the behavior of others. You can coerce them with threats; you can induce them with payments; or you can attract and co-opt them to *want* what you want."[20] The last part – the attraction and co-option – is unique to soft power, which, unlike hard power, relies on setting agendas, attracting others, and thus shaping the preferences of others in world politics. Soft power uses an attraction to "shared values," "justness," and "duty," in which decisions are shaped by an open "marketplace for ideas"[21] Soft power depends upon many things, including *preferences, context,* and *legitimacy.* It is more than just command, coercion, and taking stock of an event's emergence in a rudimentary way; otherwise, "we may be as mistaken about our power as a rooster who thinks his crowing makes the sun rise."[22] Nor is power synonymous with the possession of capabilities and resources, because "often those best endowed with power do not always get the outcomes they want."[23]

Nye continues, "in international politics, the resources that produce soft power arise in large part from the values an organization or country expresses in its culture, in the examples it sets by its internal practices and policies, and in the way it handles its relations with others."[24] While the soft power of a particular country rests on culture, foreign policy, and political values, the United Nations derives its soft power from legitimacy – the institutionalization of values, then norms, and then rules and laws. While not always exceptionally useful in cases of immediate action, it becomes clear that soft power is particularly relevant to the realization of longer term objectives, such as the promotion of democracy, human rights, and open markets. In this context soft power is relevant, which could prevent new refugee situations from occurring, or address them with chances of success.

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20   Ibid., 2.
21   Ibid., 7.
22   Ibid., 2.
23   Ibid. Nye conceptualizes the power (hard and soft) in three categories: military power, economic power, and soft power, each of which illicit different behaviors, utilize different "currencies," and translate to separate types of policies. Public diplomacy and bilateral and multilateral diplomacy exist in the realm of soft power, which is exemplified in the history of the United Nations and UNHCR especially.
24   Nye, *Soft Power*, 8.

Conclusions

Conclusions are cautiously optimistic because, as the UNHCR Background Note here shows, innovation has been integral to UNHCR's international refugee protection over the last 60 years. The case studies illustrate the design and implementation of various novel initiatives and provide an encouraging insight into UNHCR's growing potential to enhance refugee protection. The case studies also found that UNHCR has maintained the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol as the basis for international refugee law standards, extending the refugee law framework to include international human rights law helping to counteract that refugee protection is deteriorating worldwide. Refugee rights cannot be taken for granted, in reality, quite the opposite.

The Background Note on UNHCR highlights also, that in some cases the progressive realization of international refugee law implementation seems to be blocked. Some states intentionally let national refugee protection systems degrade. Even though the UNHCR Statute applies to each of the 193 current UN Member States – and even though nearly 150 States have ratified the 1951 Convention and 1967 Protocol together – some might think that the international refugee regime has accomplished little to protect refugees and other persons of UNHCR's concern around the world. The means to persuade states to respect their international law obligations have predominantly involved soft power, through encouragement, persuasion, and inducement. In case of a serious violation, UNHCR has been providing feedback to the concerned State with the view to change its conduct; however, as much as UNHCR protests, the responsibility for protection rests fully within the sphere of States. For decades, the organization demonstrably and informally pursued a broad interpretation of its function, which has been crucial to its flexibility to address novel situations. Even though UNHCR and its staff, as the universal refugee organization, must be prudent not to embark on activities that conflict with specific States, it must also demonstrate an innovative resourcefulness and balancing security risks when standing between the person in danger and state authority, including in the face of increasing power diffusion from states to non-state actors.

References

Annan, Kofi. "Commencement Address." Speech, Massachusetts Institute of Technology, Cambridge, MA, 1997. Accessed 16 February 2012. http://web.mit.edu/newsoffice/nr/97/annansp.html.

Barutciski, Michael. "Opinion: A Critical View of UNHCR's Mandate Dilemmas." *International Journal of Refugee Law* 14 nos. 2/3 (2002): 380.

Goodwin-Gill, Guy, Senior Research Fellow, All Souls College, Oxford. "International Protection and Assistance for Refugees and the Displaced: Institutional Challenges and United Nations Reform." Paper presented at the Refugee Studies Centre Workshop, "Refugee Protection in International Law: Contemporary Challenges," Oxford, UK, 24 April 2006.

Holborn, Louise. "Refugees – A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951-72." Metuchen, NJ: Scarecrow, 1975, 92.

Keohane, Robert O., and Joseph S. Nye Jr. "Power and Interdependence in the Information Age." In *Is Global Capitalism Working?: A Foreign Affairs Reader.* New York and Washington, DC: Council on Foreign Relations, 1998.

Lewis, Corinne. *UNHCR and International Refugees Law, From Treaties to Innovation*, (New York: Routledge, 2012), 167.

–. "UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution." *International Journal of Refugee Law* 17 no. 1 (2005): 90.

Nye, Joseph. *Soft Power: The Means to Success in World Politics*. New York: PublicAffairs, 2004.

Nye, Joseph. *Cyber Power.* Harvard University Cambridge, MA, Belfer Center for Science and International Affairs, 2010

Robinson, W. Courtland. *Terms of Refuge: The Indochinese Exodus and the International Response.* London and New York: Zed Books, 1998.

Türk, Volker. "Freedom from fear: Refugees, the broader forced displacement context and the underlying international protection regime." In V. Chetail, ed., *Globalization, Migration and Human Rights: International Law under Review.* Geneva: Geneva Academy of International Law and Human Rights, 2007. In Volker Türk and Elizabeth Eyster. "Strengthening Accountability in UNHCR." *International Journal of Refugee Law* 22 no. 2 (2010): 163.

United Nations General Assembly (UNGA). Resolution 60/129. 16 December 2005.

–. Resolution 2956, 12 December 1972.

United Nations High Commissioner for Refugees. "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol." Accessed 17 April 2013. http://www.unhcr.org/3b73b0d63.pdf.