



EUROPEAN UNIVERSITY INSTITUTE
Department of Political and Social Sciences

**CONSTRAINTS AND OPPORTUNITIES FOR IGOS'
AUTONOMY: THE CASE OF THE UNITED NATIONS HIGH
COMMISSIONER FOR REFUGEES (UNHCR)**

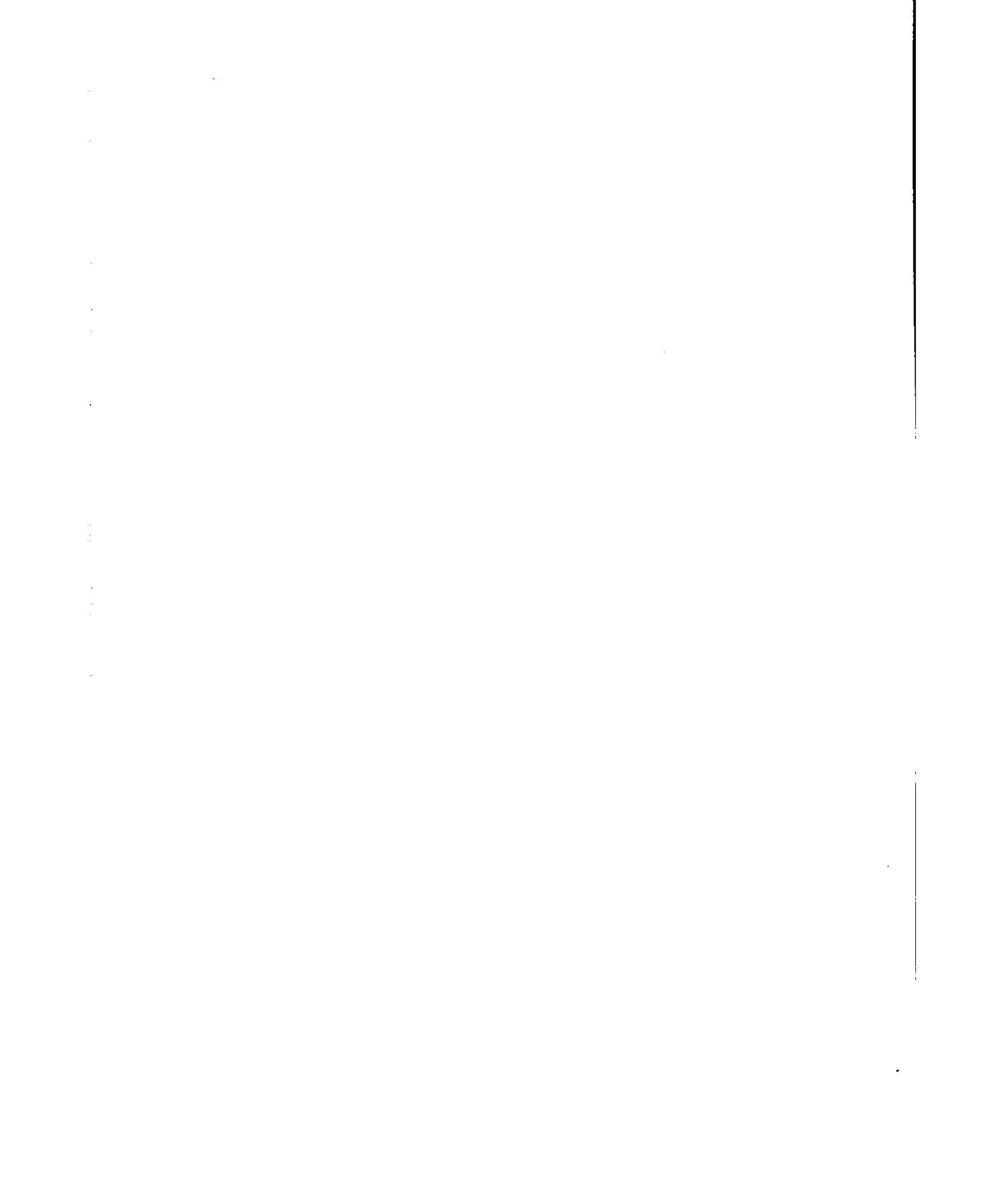
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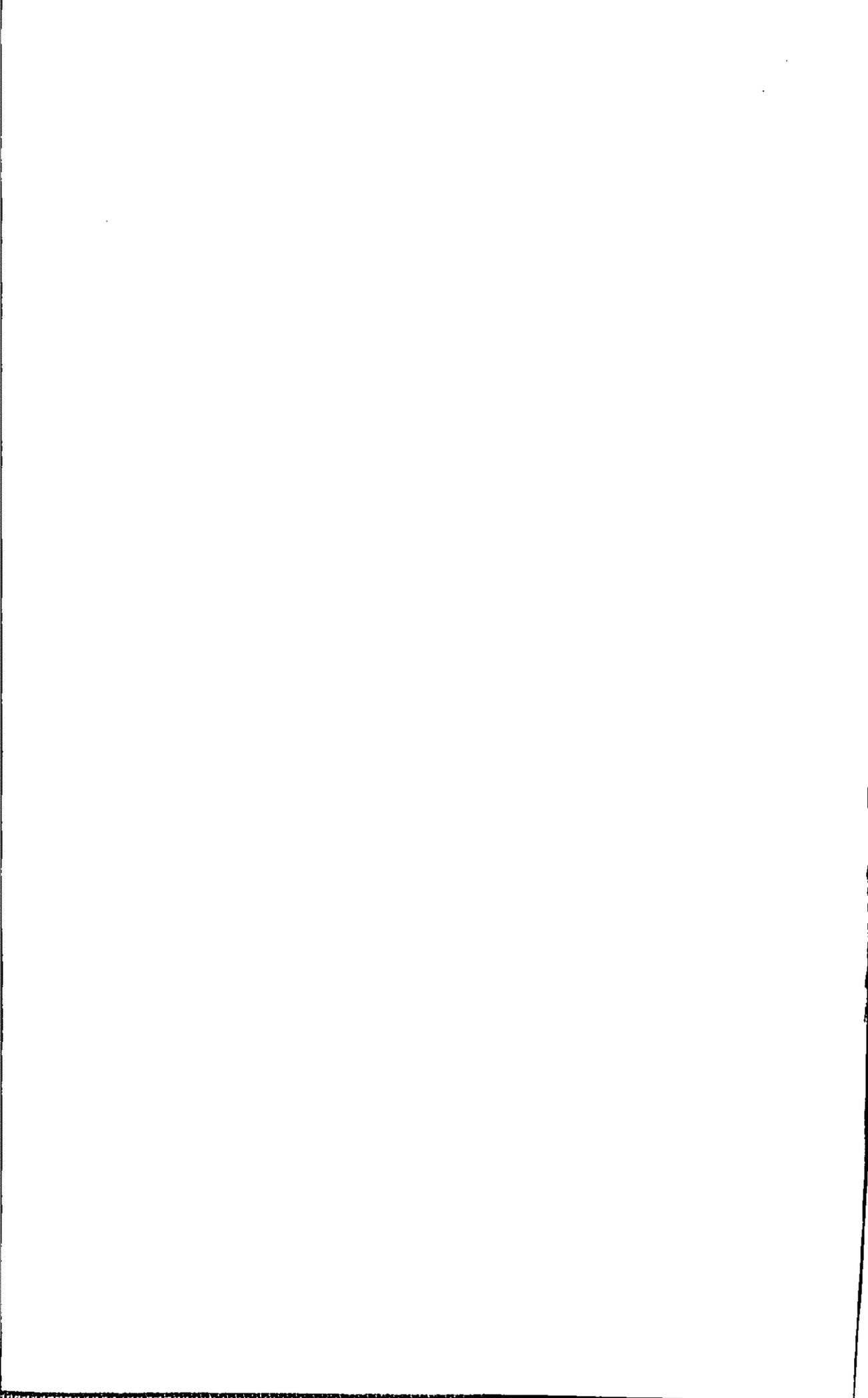
Raquel FREITAS

Thesis submitted for assessment with
A view to obtaining the Degree of Doctor of the
European University Institute

Florence, April 2005

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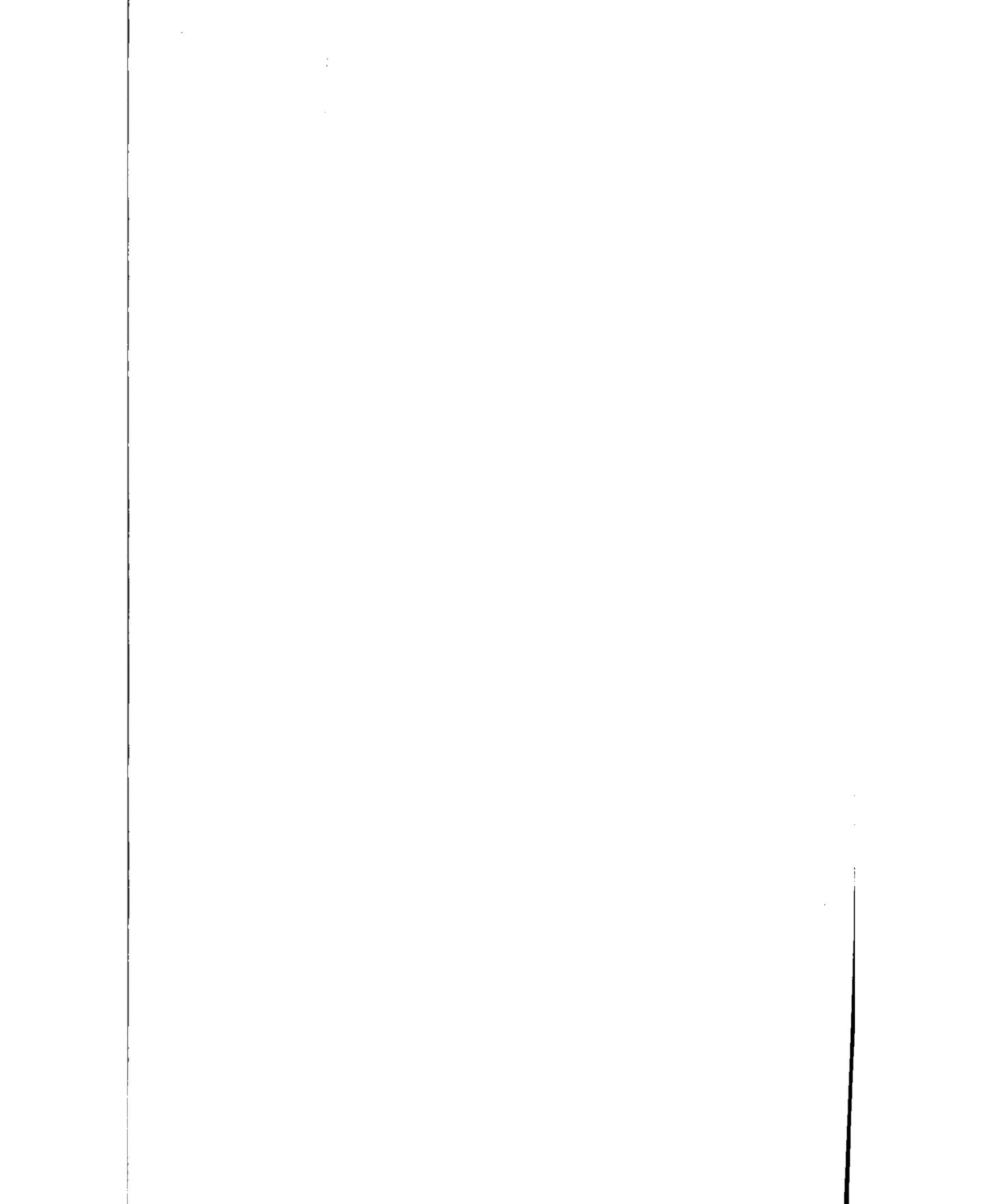
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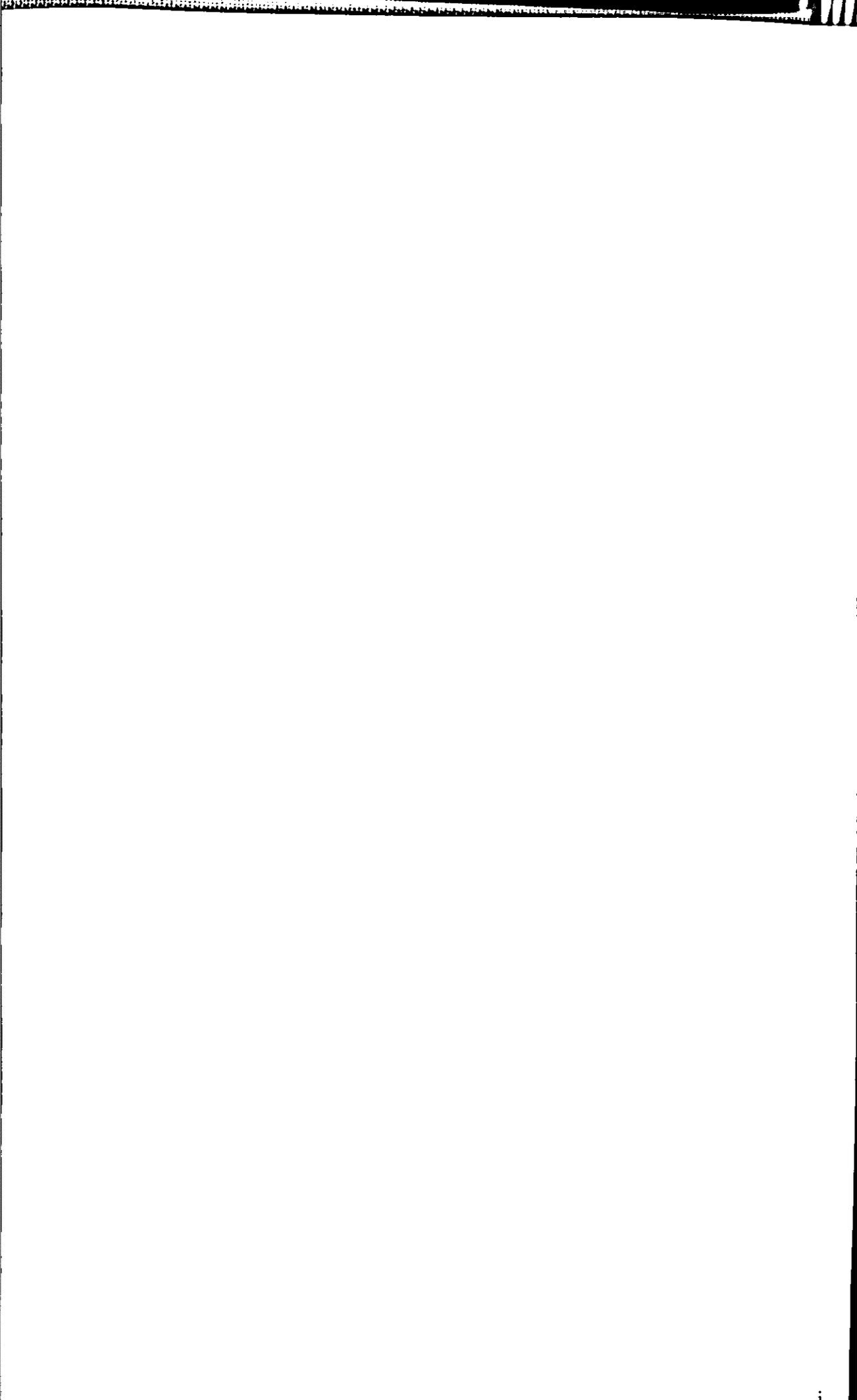
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One of the most stimulating reflections that this research has inspired in me was the question that if the world is not a coherent, rational and consistent place, how can we make it into something of such nature in a doctoral dissertation? The complexity of reality is such that, especially in the realm of the social sciences, we can at best expect to be able to convey such complexity in a reasonable way, conscious of the fact that part of that reality is emphasised in detriment of another part... "*raison oblige*". I try here to be fair to all dimensions of the complex issue that is object of analysis, running the risk of losing some of the rationality that would be enhanced by more simplicity. This thesis illustrates not only the dilemmas of decision-making within the UNHCR but also my own dilemmas during the progress of this research project. I would first of all like to thank my family and friends for the unfaltering support over these years. My heartfelt gratitude goes also to the UNHCR officials that have given me so much support, encouragement and the opportunity to be acquainted with the organisation. I am also indebted to all those who were available to be interviewed for this research. My thanks are due also to the supervisor of the thesis and to the other professors that provided inputs for the project. I take the opportunity to acknowledge the funding received from the Portuguese Ministry of Foreign Affairs and from the Portuguese Foundation for Science and Technology for the completion of the thesis.

Finally, I would like to dedicate this work to the memory of my grandmother and of my mother.

Raquel Freitas

April 2005



ABSTRACT

This dissertation addresses international and institutional change, with a focus on the evolution of the mandate and role of the United Nations High Commissioner for Refugees (UNHCR) since the inception. It starts with the observation that the organisation is currently competent for making decisions over areas of its own mandate, i.e., it has expanded the range of its activities and defines its own policy and criteria for involvement in particular contexts such as complex emergencies involving internally displaced persons (IDPs). This represents a challenge to the conventional idea of state control over international organisations (IGOs). The main question that drives the research is what explains such policy discretion in certain areas and to what extent and under what conditions is the organisation autonomous from states. The thesis argues that rational-choice institutionalist theories explain only part of the question because they disregard the importance of the historical evolution of the organisation's activities and of its own preferences. I propose an approach based on a combination of institutional contributions of different theoretical traditions: rational-choice and historical institutionalism. The argument holds that in circumstances of unclear or diverging state preferences the organisation has leeway to make autonomous decisions concerning the direction of its role and mandate. However, those decisions have a double effect of increasing organisational autonomy and the range of policy options that it can take and at the same time setting it on a specific decisional path that becomes dysfunctional in circumstances where states develop clear preferences towards specific policy options. This risk has an impact on organisational preference definition and on the forms of autonomy that it seeks.

ACRONYMS

DHA – Department of Humanitarian Affairs
DIP – Department of International Protection (UNHCR)
ECOSOC – Economic and Social Council
EPAU – Evaluation and Policy Analysis Unit (UNHCR)
ERC – Emergency Relief Co-ordinator (within OCHA)
ExCom – Executive Committee of the Office of the United Nations High Commissioner for Refugees
HC – Humanitarian Co-ordinator
IASC – Inter-Agency Standing Committee
IBRD – International Bank for Reconstruction and Development
ICRC – International Committee of the Red Cross
ICVA – International Council of Voluntary Agencies
IDPs – Internally Displaced Persons
IGO – Inter-governmental Organisation
IOM – International Organisation for Migration
IRO – International Refugee Organization
MSF – Médecins Sans Frontières
NGO – Non-Governmental Organisation
NRC – Norwegian Refugee Council
OCHA – UN Office for the Co-ordination of Humanitarian Affairs
RC – Resident Co-ordinator
RSG – Representative of the Secretary-General on Internally Displaced Persons
UN – United Nations
UNDP – United Nations Development Programme
UNGA – United Nations General Assembly
UNHCR – United Nations High Commissioner for Refugees
UNICEF – United Nations Children’s Fund
UNSC – United Nations Security Council
UNSG – United Nations Secretary-General
WFP – World Food Programme
WHO – World Health Organisation

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Introduction

The increasing importance of international governance structures has drawn attention to evidence of a change in traditional relations between states and inter-governmental organisations (IGOs). While some international relations theories argue that there is no real change and that states control decision-making in IGOs, other theories explore the conditions under which these organisations pursue and obtain leverage for decision-making. The present research focuses on the interaction between states members of the United Nations and one of its agencies – the United Nations High Commissioner for Refugees (UNHCR) -, seeking to explain autonomous behaviour of the latter, through the analysis of policy-making in areas of the organisation's role and mandate.¹ While acknowledging that IGOs are largely the product of states' preferences, this research is interested in explaining what enables and constrains their autonomous behaviour and in understanding how they actively seek and retain such independence.

The UNHCR has during its evolution exhibited signs of relative autonomy, through the use of the good offices function of the High Commissioner and the continuous expansion of its tasks, in a pattern of systematic adjustment to change in the international environment. Its mandate has been enlarged over the decades following its creation in 1950, to include new groups of concern, while its activities have increased in scope and range. The organisation's involvement in situations of in-country assistance and protection of Internally Displaced Persons (IDPs) can be considered the apex of the debate concerning the redefinition of the UNHCR's role and mandate.² Such issue-area emerges in the context of what will be designated as the "humanitarian step", i.e., the expansion of the UNHCR into activities designed to protect and assist victims of internal armed conflict or of human rights violations causing mass displacement within a country. These situations are termed "complex emergencies" and often involve different sorts of populations in need, some of which formally within the UNHCR's mandate (refugees and returnees); others not so clearly within the mandate, such as IDPs; and others clearly outside the mandate (local populations at risk of displacement). The increasing international attention given to the plight of IDPs raised the problem of defining an international responsibility for their assistance and

¹ Although widely seen as a specialised agency, it should be noted that the formal status of the UNHCR is a subsidiary organ of the General Assembly under art. 22° of the UN Charter, and belongs to the category of programmes and funds.

² The main distinction between IDPs and refugees lies in the circumstance of the latter having crossed the border of the country of origin to the territory of another country, and this aspect defines their distinct legal statuses.

protection in order to ensure more predictability in the response of the humanitarian system. Due to its expertise and operational capability, calls have been made for the UNHCR to assume full responsibility for these populations and to become the international agency in charge of their protection. This would imply the attribution to the UNHCR of a formal mandate for IDPs and further expansion of its tasks. The leadership of the organisation, however, has systematically rejected such calls, while retaining an *interest* in the issue. This represents unprecedented leverage for preserving decision-making autonomy concerning areas of the organisation's mandate.

Given that states are responsible for delegating authority and functions on the organisation and that decisions concerning the UNHCR's mandate are their prerogative, either through the Executive Committee of the UNHCR (ExCom) or other competent organs of the UN, such as the General Assembly (GA) or the Economic and Social Committee (ECOSOC), this research will explore how the organisation has obtained a capacity to deliberate over areas of its own mandate in a relatively autonomous way. Bearing in mind arguments that maintain that UNHCR's involvement with IDPs is a result of states' manipulation to fulfil narrow national interests, such as the replacement of political action and implementation of a containment strategy to deter refugee influxes, it is surprising that a formal mandate for IDPs has not been imposed on the organisation. Hence, the UNHCR retains formal decision-making authority in this issue-area for both policy decisions and for case-by-case decisions. This means that the organisation can choose in which situations it will become involved, and even establish broad conditions for such involvement, which was not the case with other areas of expansion, where new activities were subsequently incorporated in the mandate through General Assembly resolutions. There are two inherent dimensions of this puzzle: why have states not imposed a mandate for IDPs on the UNHCR? And why has the organisation resisted formalising expansion in this issue-area? Translating into my theoretical question, how has the organisation been able to obtain such decisional authority and how has it sought to retain such autonomy? In other words, the main research question this dissertation will address is *what explains UNHCR's autonomy concerning the definition of its role and mandate?*

The subject addressed in this dissertation, draws its relevance from the main debates within the discipline of forced migration studies concerning the evolution and direction of the UNHCR but is also inspired in its analytical dimension by the principal-agent framework applied to international relations theories and in particular to the sub-field of international organisation research. Theoretical contributions in the neo-liberal institutionalist area tend to assume that states have

clearly defined preferences and that the leeway enjoyed by IGOs is the result of strategic calculations of interests, knowing that the agent will anticipate their preferences (Martin, 1993; Huber and Shipan, 2002). As will be seen, this does not adequately explain the observed autonomy within the UNHCR because it does not question the process of preference definition both at the level of states and at the level of the agent. In the new-institutionalist research programme a growing literature has concluded that international organisations tend to escape the control of states in order to pursue their own independent preferences (Ness and Brechin, 1988; Eisner, 1993). Some such approaches suggest lack of agreement among multiple principals as explanations for organisational autonomy (Cook, 1989). While this explanation has been suggested within a principal-agent context, it is here applied in a framework that goes beyond circumstantial problems between principals and agents and inserts a dimension of structural change in longer-term hierarchical relations. Other approaches focus on the independent influence of organisational process and agency in explaining organisational outcomes, namely sociological and historical institutionalism. Such theoretical debates and their relevance to the current topic will be the subject of discussion in the first chapter of this thesis.

This research has a dimension of causal inference and another one of descriptive inference but the questions these dimensions address provide complementary analysis on related aspects of the puzzle. From here follow two levels of analysis on which corresponding levels of generalisations will be drawn. An explanatory level of analysis, where a hypothesis for explaining autonomy of the organisation will suggest a causal link between the spread of states' policy positions and the leeway observed. However, as conceived in this thesis, autonomy for policy choices also has dimensions of variation that are fairly independent of states' preferences. It is hypothesised that agent drift itself has an impact on variation of autonomy, conceived as the range of policy options that the agent can effectively decide upon. The second level of analysis aims to understand the complex web of constraints that influence UNHCR policy decisions and how it makes use and strives to secure the leverage obtained. In order to evaluate the preferences of states and UNHCR, this research will consider constraining factors that delimit actor policy definition and co-ordination. Chapter two will address these structural dimensions of decision-making and define ways of assessing the suggested influence dynamics as well as the concept of autonomy. In order to obtain variation in the analysis of such broad policy decisions as those that are made over organisational mandates, I decided to extend the analysis of the evolution of the organisation in historical terms, starting with the delegation process (chapter three) and two broad policy periods: a phase of expansion (chapter four) and a phase of paradigm consolidation (chapter five). The IDP

policy-area is but one instance of an evolutionary trend: since it was the main focus that inspired the research, the IDP policy-area will be the subject of a separate and more detailed chapter (six) that will confirm the hypotheses proposed but also point to flaws in existing theories. The analysis provided in the chapter will also suggest avenues where further research may contribute to improve theoretical debates and possibly to empirically make the case for a more solid combination of rational and historical new-institutionalism, a development that as has insistently been suggested in the literature over the past decade.

The analysis is thus divided into chronological policy clusters, which do not form hermetic units, since subtle variations are identified in the transition between periods. They do however have an internal coherence in terms of the general evolutionary trend in the organisation's pattern of autonomy that is to be explained here. The selection of these policy clusters was based on the variation of the autonomy of the organisation, with an alternation of periods with higher degree of autonomy and others with lower degree of autonomy, enabling the identification of covariations that may provide explanations to the observed puzzle.

The period covered for this research starts in the original delegation process, i.e., when the first negotiations took place to create the organisation, in 1948/49. In this post-World War II period, Europe had to deal with large numbers of refugees that could not find a solution to their problem after the end of the open conflict and at the beginning of the Cold War. Chapter three explores the conditions of initial delegation to establish the original degree of flexibility inserted in the Statute of the UNHCR and how that could affect subsequent developments. State preferences are also assessed through the type of responsibilities they were willing to accept in the negotiations of the 1951 Convention. It is concluded that the UNHCR emerged out of the possible consensus in a situation of clearly contrasting state preferences and that a certain degree of flexibility resulted from there and was embedded in the Statute.

The period of initial organisational expansion, addressed in chapter four, has been set since the first years of organisational activity, when the UNHCR starts embarking on different types of activities distinct from what was originally foreseen and that indicate a new direction of policy decisions. In this period, a climate of Cold War, strong divergences of state preferences are observed, together with the identification of autonomous moves towards organisational expansion and an actual enlargement of the range of functions of the UNHCR. This led to considerably more autonomy for decision-making, including the possibility of pursuing a certain policy direction that

minimised the effective role of repatriation activities despite the contrary preferences expressed by certain states, namely from the Eastern bloc. The particular decision to expand activities to a totally new geographical area and into operational tasks - as happened in the case of involvement in the Algerian refugee crisis - set the organisation on a specific policy orientation towards operational expansion. Such orientation would tend to be reinforced by subsequent decision-making in the same direction. While retaining an open range of policy options, it is observed that organisational expansion towards operational activities would henceforth be systematically reinforced as long as it produced increasing returns to the organisation, which happened until the late 1970s.

The phase of paradigm consolidation is set between the early 1980s and 1999 and is analysed in chapter five. In this period, state preferences converge towards one policy direction, namely, less open asylum policies, a focus on voluntary repatriation as the preferred durable solution to the refugee problem, and a paradigm dominated by country of origin assistance and root causes strategies to prevent refugee flows. The result was that the UNHCR had less autonomy for choosing which solutions to privilege and pursue. Still, there is no clear contrast of preferences between the organisation and states in this period: crucial choices for expansion made by the organisation in the previous period and diversification of policy options had locked it into a stabilisation of procedures and institutional change around this new type of tasks, for which it had developed unparalleled expertise. This movement was reinforced by the states' gradual convergence of preferences in the same direction that becomes clear after the end of the Cold War. It is therefore observed that this period of less autonomy is caused both by the evolution that the organisation had autonomously chosen since the previous period and by the convergence of state preferences that actually limited the range of policy options available to the organisation by restricting asylum and emphasising repatriation and country of origin policies rather than keeping all options at the same level of openness. Maintenance of organisational autonomy would be reflected in the preservation of the previous possibility of promoting solutions like resettlement and local integration. It would also be reflected in the organisation's focus on its rule-supervisory and less operational role, which otherwise made it substantially dependent on external funding and had other impacts at the level of substantive autonomy, as will be seen.

It is in this context of limited autonomy that the puzzle of the IDP issue-area presents itself as particularly challenging (chapter six). Such issue-area was emerging since the 1970s and evolved across a number of periods: the late phase of autonomous expansion in the late 1970s, through the

repatriation and country of origin focus of the 1980s and in particular 1990s, to a final stage where there is again a divergence among state preferences concerning the organisation's policy direction. The IDP issue-area initially represented a functional extension of activities that was undertaken in very occasional circumstances and later became the object of some pressures for interventions and debates concerning its inclusion in the formal mandate of the UNHCR. This involvement, together with the generalised focus on repatriation and prevention strategies geared to reduce refugee flows, eventually became dysfunctional and led the UNHCR's leadership to recalculate the nature of returns from increased expansion. Given the low or even decreasing returns of such prospect, it opted for exploiting the leeway offered by states' lack of converging preferences in this specific issue-area. Hence, it was able to lock out of the previous pattern that would drive it towards increasingly formalised expansion and restrict its options to the political priorities of the states, eventually rendering it unable to fulfil parts of its mandate. Chapter six will also analyse a third dimension of the puzzle that will be addressed only in exploratory terms but will provide insights on the need to revise certain assumptions in principal-agent literature. This is the apparent principal-agent problem that emerges when in the face of clear expressions of policy preferences by the major donor state to the organisation in the sense of pressuring it to take over responsibility for IDPs, the latter refuses such a role and issues policy papers stating its own criteria on the issue.

The overall goals of the research are to scrutinise the internal and external dynamics of preference definition by the actors that are influential in an IGO's decision-making and to explore the relation between states and IGOs in the international system, including structural and process-related factors that may change such relation in the longer term.

The conclusions of the research aim at drawing lessons that may contribute to the clarification of what is at stake in the future evolution of the UNHCR's mandate and its position in the humanitarian system. Indeed, the direction that the UNHCR takes in defining its policy/mandate concerning IDPs has had in the past few years a significant impact on how the co-ordination of humanitarian action is being organised, as it has systematically been a lead-agency for the co-ordination of the humanitarian response in different complex emergencies.

Hence, there are two major empirical sources of relevance of the present research: locating accountability for organisational policy choices by clarifying the motivations and influence of the actors and processes involved; and reflecting on system-wide conditions for establishing a

responsibility for internally displaced persons. The IDP issue-area is an area that reflects the change dimension at the level of the international environment: as a newly internationalised issue-area, it reflects the challenges to established norms of sovereignty and international protection of the citizens within the borders of one country. It thus presents strong empirical and theoretical complexities that impinge on the relationship between the organisation and its external and internal environment. This research is not intended to provide an assessment of the benefits or disadvantages of IGO autonomy. It merely aims at analysing in objective terms the nature of organisational autonomy and see how it came about: to what extent states had foreseen certain developments, to what extent they had allowed them, to what extent was the UNHCR taking advantage of circumstances on the ground or instead being manipulated and how its own process of evolution shifts the boundaries of its policy options. It assesses the nature of autonomy, what are the implications for the substantive policy developments and what are the theoretical lessons to be learned.

Chapter 1. Decision-making in international organisations

A primary goal of the present research is to explain the observed autonomy of the UNHCR in making decisions over its own mandate and role. This translates into the substantive question of what explains policy direction: to what extent is the bureaucracy fully responsible and to what extent are there other sources of constraints. On a more general level, it regards situations of institutional change and the conditions under which international organisations have more or less autonomy from the states that created them. This chapter is designed to overview existing debates within this research area and to set the theoretical bases on which the proposed explanations for the observed autonomy will be grounded.

A discussion of the major debates concerning the work of the UNHCR will show that existing approaches in isolation do not adequately account for the varying degree of institutional autonomy. It will also show that such empirical debates largely parallel those in International Relations on the relation between states and IGOs, thus linking the substantive arguments concerning the evolution of the work of the UNHCR and the more general ones on institutional change and the dynamics of organisational autonomy. An overview of the directions that research has taken in the sub-field of international organisations will then place this thesis in the general context of the international relations (IR) discipline and justify taking an IGO - the UNHCR - as the object of analysis. The ambition of this research is to construct an analytical framework that is capable of adequately explaining the specific empirical case and can also serve as inspiration to derive explanations for other situations of autonomous institutional behaviour in a context of change. Through its focus on decision-making within the UNHCR, this research links up two levels of theoretical debates: those in the international relations discipline concerning the relation between states and international organisations (see for example, Martin and Simmons, 2001), and contributions from middle-range theories on specific dimensions of such relations, taken from areas like public choice and political science (see for example, Moe, 1997).

The puzzle that drives the research can be framed theoretically in terms of the principal-agent approach, which explores the dynamics of control and autonomy inherent to organisational decision-making processes. This move towards incorporating other levels of analysis has been called for in recent years by international relations literature (see Carlsnaes and others, 2002) and in particular in the sub-field of institutionalist research (see Weingast, 2002). Further, the very

evolution of international affairs and the trend towards increasing integration in world politics leads to the emergence of new research questions that call for interdisciplinary approaches (Slaughter and others, 1998; Wendt, 2001).

It is here understood that organisational autonomy is not merely the result of a zero-sum game framed by the hierarchical relation between states and organisations. Autonomy - seen as the capacity to make decisions and define policy - may be constrained by other factors, internal or external to the organisation and it is important to know these factors and how they interact, if the hypothesis holds that states don't always control policy outcomes. Since the focus here is centred on structural decisions concerning UNHCR's mandate and role, this research will also assess the influence of the historical evolution of the organisation's policy direction and structure on its own capacity for decision-making. This involves going beyond the basic theoretical debate on whether institutional change and policy direction is driven by states or by the organisation, and will enable the exploration of the constraining effects of past organisational decisions on future choices of the bureaucracy. Proposing the relaxation of some of P-A's classical rational choice assumptions and the combination with other analytical approaches deriving from historical institutionalism, the chapter will explore theoretical propositions that shed light on the dynamics of institutional change and organisational autonomy.

1.1. UNHCR and IR literature: basic arguments

As the central agency in charge of refugees and one of the lead humanitarian agencies, the UNHCR has been the focus of considerable attention by academics and in particular by practitioners and advocates of human rights.³ Ultimately at stake in the empirical debate is the organisation's current policy direction and whether the UNHCR should be performing the type of tasks that it currently considers as part of its role and mandate; whether it should be confined to a strict interpretation of the original mandate, or whether it should actually be doing more to protect and assist forcibly displaced populations beyond what was originally stipulated. While much of this debate is normatively driven, it presents an interesting challenge for social science, since the

³ There is a sizeable number of publications, not only monographs and edited books but also journals, devoted to the analysis of refugee issues and forced displacement in general, which give considerable attention to the activities of the UNHCR. Among these are the *International Journal of Refugee Law*; *Refugee Abstracts*; *Journal of Refugee Studies*; *International Migration Review* - in particular volume n° 35, devoted to UNHCR at its 50th anniversary; *World Refugee Survey*; *Forced Migration Review*.

question of *what the organisation should be doing* is inextricably linked to the question of *why it is doing what it does*, and such is the goal of the present research: to highlight the constraints on decision-making that may shed light on implications of future policy options. The assessments of what explains policy direction provide an indication on the inherent degree of organisational autonomy for decision-making. This impinges on issues of delegation, accountability and responsibility for outcomes that will be discussed when reflecting on the implications of this study's conclusions.

Different types of interpretations have been made of the evolution and direction of UNHCR's role and mandate and in many ways they reflect the cleavages identified in the IR literature. Such explanations are torn between one-sided views of the work of the organisation and lack a clear, integrated analytical approach on the basis of which arguments can be assessed. Many of such approaches do not seek systematic analytical inference, and usually they are based on implicit, unassessed assumptions. While some maintain that the UNHCR is instrumentalised by states and that these are the actors that account for policy outputs, other studies observe a degree of independence in the work of the organisation and a significant role of its staff and leadership in explaining policy outputs. Some see in the initial conditions of creation of the organisation the major constraint for subsequent policy direction and yet another group values the dysfunctions created by the organisation's progress as constraining autonomy. What I aim to do is to confront arguments from different theoretical traditions that have in some way been assessed in isolation in different studies that address the evolution of the role and mandate of the UNHCR. These can be grouped into the instrumentalisation argument, the embedded limitations and functional adjustment argument, and the dysfunctional evolution argument.⁴

1.1.1. The instrumentalisation argument

⁴ It should be noted that this is not a hermetic boxing of approaches to the UNHCR, rather an identification of tendencies, since many interpretations are not even explicit concerning their theoretical grounds. Adelman (2001), for example, identifies four distinct types of approaches to the evolution of the UNHCR: the continuity thesis, sustained by UNHCR and some of its critics; the conservative thesis, sustained by what he designates as fundamentalist scholars; the instrumentalisation thesis, sustained by critical theorists and political realists and his own conditioning thesis, which sees in the original delegation the determinants of subsequent policy direction. Since there are few common analytical grounds for assessment of the contrasting explanatory capacity of these, added to the fact that some of them supposedly are not even explanatory, I will organise the most relevant arguments around the criteria of how they address the dynamics between states, as principals, and the bureaucracy, as the agent.

A significant segment of the analyses that are produced focusing on UNHCR's work is based on the assumption that the evolution of the organisation's policy direction is the result of external pressures from developed states to fulfil two main types of political goals: containment of refugee influxes, and provision of a substitute to effective political action. These have, according to such observations, direct implications on the organisation's policy direction: subversion of original activities and politicisation of choices. Some of these observations are based on specific case analyses but the conclusions invariably extend to the overall direction of the role and mandate of the UNHCR.⁵

Containment and subversion

The containment argument holds that states pursue a consistent strategy of keeping potential refugees within - or close to - their region of origin. This strategy is deduced from a number of factors that are consistent with the argument's underlying assumptions: states' presumed deliberate goal of using the UNHCR for their own purposes, thus undermining the organisation's original role. A containment strategy is observed through the increasing restrictivism concerning refugee policy in developed countries since the decade of the 1980s (Newland, 1981), which arguably correlates with increasing focus on country of origin solutions and root causes approaches to forced migration (Lindstrom, 2003) that was promoted particularly since the end of the Cold War. The current concern with limiting refugee flows and avoiding long-term settlement results in a policy shift towards "internalising" displacement (Bennett, 1998a: 4). These and other measures such as visa requirements on the nationals of refugee-producing states, carrier sanctions, burden-shifting arrangements, usually relegated to the South, have been designated as the "politics of non-entrée", effectively precluding access to the developed countries, sparing them from having to resort to refoulement, which represents a violation of international law (Hathaway, 1997; Vedsted-Hansen, 1999). Other factors that contribute to the development of containment strategies are the increasing perception of refugees as threats to international peace and security (Loescher, 2003) or to the safety of others (Mills, 1998). According to some positions, refugees seen as threats to security require solutions that prevent them from leaving their countries or regions (Zimmermann, 1995) and containment is seen as a preferable and less costly strategy than humanitarian intervention (Martin, 1997). Containment policies of the developed world are

⁵ In the specific area of UNHCR policy for IDPs, using neo-liberal institutionalism as a theoretical basis Feldmann (2000) attributes the inconsistency observed in UNHCR policy to the dependency on donors and the need to tailor policy to their interests, as well as the organisation's own goals of task expansion.

arguably destroying the principles of refugee protection in the rest of the world (Chimni, 2000: 16).

As maintained by observers, foremost among them legal scholars, involvement in operations within the country of origin not only undermines the core mandate of the UNHCR but leaves the organisation in the hands of the manipulative instrumental logics of states for the containment of refugee influxes (Hathaway, 1995; Macdonald, 2001). The restrictive measures concerning access and entry of asylum-seekers into developed countries such as return of asylum-seekers to "countries of first asylum", show the unwillingness of Western states to accept new refugees (Shacknove, 1993: 516). Such arguments identify a coherent general policy approach towards asylum flows in the post-Cold War era, characterized by restrictive measures and measures designed to deny access to the system (Copeland, 1998).

According to the same critics, the increasing involvement of the UNHCR in country of origin activities also ends up legitimising the closure of borders by neighbouring states to new refugee influxes, and generating unwillingness to provide resettlement opportunities (Aleinikoff, 1992). Ultimately it legitimises Western states' – usually donor states - generally restrictive asylum policies (Goodwin-Gill, 2001). The literature that addresses asylum policies in Europe and North America is generally very critical of the relation between state interests and norms, and also of the role of the UNHCR in supervising the application of such norms (see for example, Hartigan, 1992; Loescher, 1992b; Ferris, 1994; Fitzpatrick, 1994) (Weiner, 1995). They point to the pressure laid on the UNHCR to assist IDPs as a means to divert the organisation from its fundamental role of protecting refugees (Goodwin-Gill, 1999).

These "country of origin" solutions are based on an emphasis on voluntary repatriation as virtually the only solution to the refugee problem (Chimni, 2003) and on the displacement of protection mechanisms and focus towards assistance to the country of origin (Roberts, 1998), such as the creation of safe areas to prevent the outflow of refugees (Schmeidl, 2003), which amount to a de facto containment strategy (Hyndman, 2000; Duffield, 2002). The humanitarian arguments upheld by states to justify such measures of in-country protection are according to observers, rather policies of control and deterrence: the "source-control bias" replacing the "exilic bias" (Aleinikoff, 1992: 129). The donor states' policies are portrayed as being determined by a clear definition of the national interests, with containment as the declared alternative to asylum (Shacknove, 1993; Hassner, 1998). This is observed particularly in the European case, where the

process of integration has been placing more emphasis on the harmonisation of refugee policies (Ferris, 1994; Guild, 1996). Further, the case of involvement in Bosnia is often used as illustration to containment associated with the reinforcement of non-admission policies in the West (Barutciski, 1996).

Politicisation and manipulation

In this line, some arguments hold that UNHCR humanitarian involvement in such situations of in-country protection risks politicising the organisation (Cunliffe and Pugh, 1997), which then becomes target of manipulative strategies to cover the lack of political will of states to become involved in specific situations. Such lack of political will is illustrated by the selectivity of international involvement in humanitarian crises (Whitman, 2000).

Humanitarian action in this perspective is seen as a device for minimising the effects of humanitarian disasters – damage control - and as a replacement for effective political action to solve the conflicts (Rist, 1994; Lautze, Jones, and Duffield, 1998). The provision of a limited amount of humanitarian assistance in some emergencies can be pictured as band-aid operations to keep public opinions within donor countries satisfied that international action is being taken (Debré, 1997). The selective provision of funds registered for emergencies around the world is an indicator of the predominance of interests in the definition of humanitarian policy, and the manipulation of norms seen as a deliberate strategy for the same cause (Herrmann and Shanon, 2001). Other political and strategic goals are identified in the promotion of measures of in-country protection, such as the preservation of stability in neighbouring countries to the conflict. This has been particularly noted in the case of the safe-zone for the Kurdish stranded at the border with Turkey at the time of the first Gulf War (Wheeler, 2000; Kirişçi, 1996) and Kosovo refugees fleeing to Macedonia (Suhrke and others, 2000).

It is among the legal scholarship that can be found the most outspoken critics of the UNHCR and of its alleged tendency to abide by state interests. Such assessments are based on a specific legal purism position that sustains that the organisation has gone astray from its traditional supervisory role into an operational role that has undermined its mandate and its autonomous capacity (see Adelman, 2001). Thus, an expansion of UNHCR's role and mandate is considered to be in conflict with its traditional mandate (Hathaway, 1995).

Besides the legal scholars, practitioners and policy analysts in the more empirical humanitarian sphere of activity have also severely criticised the expansion of UNHCR's functions into in-country protection and root causes approaches.⁶ Most of such contributions highlight the impact of politicisation and manipulation of IGOs by states for their own purposes, much in the line of the neo-liberal institutionalist tradition.⁷ They provide the core arguments in favour of what I call the instrumentalisation argument in explaining the direction and causes of organisational change. A major argument within this line is that the security paradigm, for example, has been applied by Western governments expressly as a goal of containment (Beyani, 2003), that distorts the UNHCR's palliative role by promoting root causes approaches (Hathaway, 1995; Suhrke, 1994).⁸ However, these approaches are largely normative, with behaviouralist assumptions and a deductive perspective about the relations between states and the organisation. Many avoid the analysis of the mechanisms of how decisions are made, how do the influential actors shape their preferences for certain policy lines and how the process of convergence/divergence of preferences may have an impact on the balance of influence between states and organisations.

Link with International Relations (IR)

These criticisms raise interesting points for investigation at the conflation between refugee/humanitarian research and IR research in that they impinge on the relation between states and IGOs. Interestingly there are two lines of IR approaches where the instrumentalisation argument fits in, although they have rather contrasting positions as IR theories: neo-liberalism and critical IR approaches.

Explanations within the instrumentalisation perspective are based on the assumption that state interests are the only element that counts in organisational decision-making and that their preferences are clearly defined in the form of strategies, in the neo-liberal institutionalist tradition. In line with such propositions, institutions are addressed only as intervening variables in the policy process: providers of useful services and promoters of co-operation to further national interests, unable to provide strong constraints or limitations to state power (Krasner, 1982; Abbott

⁶ Essential on this debate are (Barutckski, 2002; Landgren, 1998; Mooney, 1999; Hathaway, 1995; Goodwin-Gill, 2001).

⁷ Note that many studies that include the combined analysis of interests and norms conclude that interests do prevail when of relevance to states, and that norms are most often manipulated when suitable for their interests (Herrmann and Shanon, 2001).

⁸ Adelman, in contrast, sees the paradigm as UNHCR's "...effort to recognize the full range of its activities and encompass them within a coherent frame..." (2001: 30).

and Snidal, 1998).⁹ In the same line many organisational approaches see the evolution of mandates as the direct result of the “*changing attitudes of member states*” (Dijkzeul, 1997: 159). This is a very important point for the present research, which will show that states’ attitudes have in certain dimensions followed the evolution of UNHCR’s activities rather than guided it.

Much of the neo-utilitarian tradition in IR takes motivations for behaviour by assumption and such approach has been used extensively in the refugee/humanitarian studies area. However, as Hurd (1999: 380) notes, this should be a matter of empirical research, not of assumption. Neo-liberal institutionalism takes a reductionist approach to rational-choice assumptions, which undermines its ability to explain autonomous behaviour of IGOs. Consistently with this perspective, the UNHCR is conceived as a mere instrument to pursue states’ purposes. It also generates an important expectation concerning the evolution of the UNHCR’s mandate: if states have consistent containment policies, as much of the literature assumes, then it would be expected that a mandate for the protection and assistance of IDPs would be imposed on the UNHCR, as has been argued to be the line of instrumental use of the organisation.

This explanation is based on neo-liberalism’s view that states’ interests are clearly defined and dominate organisational policy outputs. It also relies on static categories for its analysis. It is my argument in this research that this is a partial and incomplete assessment, because it assumes that the direction of institutional change and the variation in organisational autonomy is only the result of external sources like states and also assumes that the observed co-variations represent clear policies by states, without assessing the specific preferences of both actors nor the constraints posed by the organisation’s evolution.

This line of argumentation can also be linked to critical IR perspectives, taking basically the same assumptions as neo-liberalism.¹⁰ The legal scholarship that can be associated with such perspectives implicitly imputes on the UNHCR the responsibility of allowing manipulation by states to occur and of consciously promoting their strategies, as a tool for their interests. Such accusation leads to the paradoxical observation that the organisation must have an option in the policy process, the conditions of which, however, are not fully explored. When confronted with autonomous behaviour by an organisation, these approaches rely on the alternative justification

⁹ For a contrasting view, see (Young, 2002).

¹⁰ According to Smith (2002: 196), the term *critical* describes a school of thought that self-consciously wants to challenge conventional ways of interpreting and explaining the social world.

that the organisation merely anticipates states' preferences, under the guise of autonomous decision-making. Critical approaches also side with neo-liberal institutionalist explanation for organisational leeway, which is related to the salience of the issue-area: IGO leeway or autonomy would then be inversely proportional to the importance of the area for the states, namely through the distinction into areas of high and low politics. Hence, autonomy would be an intended or at least allowed feature by states as a result of strategic calculations for instrumentalisation and organisational manipulation. This is regarded as a matter of negative judgement rather than descriptive fact (Adelman, 2001: 10). The locus of responsibility is here unclear due to a fuzzy analytical framework. However, there is an implicit attribution of responsibility to both sides, which will be considered in this research.

1.1.2. Embedded limitations and functional adjustment arguments

Two other interpretations of the direction of the work of the UNHCR emerge in the literature, although with much less emphasis than the instrumentalisation proposition. I designate them the embedded limitations and functional adjustment propositions.

The theory of embedded limitations corresponds to the "conditioning thesis", advanced by Adelman (2001) and remains attached to the neo-liberal institutionalist camp. It largely argues that a degree of constraint on the policy options of the UNHCR was embedded in its constitution, which limits the choices and sets the direction of possible organisational change (Adelman, 2001). Despite a degree of analytical imprecision, this proposition explains the evolution of the role and mandate of the UNHCR as a result of the initial environment in which it was created and that the current role with IDPs is consistent with the human security approach in which the organisation's mission is currently framed. This assertion is linked to theoretical debates on institutional design and its impact over IGO autonomy and influence (see Olsen, 1998; Cortell and Peterson, 2003). While some approaches consider that institutional design has a strong impact on subsequent organisational behaviour (Rosendorff and Milner, 2001; Moravcsik, 1998), other approaches claim that such impact is limited and that subsequent decisions by the organisation are fairly autonomous from original constraints (Barnett and Finnemore, 1999; Nielson and Tierney, 2003). Hazelzet argues that although the autonomy of international organisations is constrained by power politics, it can be enhanced in various ways, namely by exploiting the policy vacuum and erosion of national sovereignty left by globalisation (Hazelzet, 1998: 37). Lastly, there are assertions that

posit that the leeway attributed to organisations in the mandates is the result intended by states during negotiations (Huber and Shipan, 2002), and others claim that leeway is dependent on the intensity of the collective action problem: when the collective action problem is more severe states will create organisations with more independence (Cortell and Peterson, 2003).

In contrast to the embedded limitations, the approaches on functional adjustment place more emphasis on the unintended consequences of change in the environment but also on the independent organisational task expansion and spill-over of activities, in a neo-functionalist fashion.

One of the few systematic organisational studies of the UNHCR takes a historical perspective, by analysing the importance of environmental changes in explaining the expansion of the UNHCR (Abd El Razek, 1982). However, the approach remains attached to a conception of the organisation as a reactive entity that adjusts functionally to the changes in the environment. It basically outlines what Adelman (2001) designates as the continuity theory, which argues that expansion of the organisation has been merely a consequence of functional adjustment to changes in the international environment. In the same line are other historical perspectives on the evolution of the organisation that are produced by its own research and documentation services. The UNHCR has since over a decade invested in its research activity and regularly produces evolutionary accounts of its work and of the refugee situation (see UNHCR, 1991; UNHCR, 1993a; UNHCR, 1995c; UNHCR, 1998; UNHCR, 2000). Although this literature can be contested by some (Chimni, 1998), it provides important background information on historical facts, but also substantial information on how the organisation perceives its evolution and interprets its mission.

By taking organisational goals by assumption, analytical approaches to functional adjustment sometimes lose their explanatory capacity. The logic of functional adjustment is also espoused by organisational theories that assume fixed organisational goals, utmost importance being attributed to the goal of task expansion within a logic of functional spill-over of activities and unintended consequences. While many of these assertions do not analyse the formation and outcomes of such goals, other approaches focus on its impact when expansion originates organisational dysfunctions.

1.1.3. Dysfunctional adjustment

This third type of assessment of the policy direction of the UNHCR has not been explored in depth in an explicit analytical way and the present research proposes to make a contribution in this regard. It embodies a combination of the arguments of the previous two explanations, but because arguments in this line are largely scattered in the literature, this research will further on subsume them into an analytical framework. It explicitly confronts state interests and organisational preferences, within a structure consistent with P-A analysis.

These are UNHCR approaches that combine a balanced consideration of the influence of state interests and other factors in explaining UNHCR evolution. Much of the discussion ends up revolving around the issue of the conditions for autonomy of the UNHCR in deciding on its own evolution. Gil Loescher, for example, has long devoted his work to the analysis of the workings of the UNHCR and produced a long range of studies focusing on different dimensions of the organisation's work, emphasising among other aspects the interaction of the organisation with states' interests (Loescher, 1992a; Loescher, 1993; Loescher and Monahan, 1989; see Loescher and Scanlan, 1986; Loescher, 2001b). Although most of his conclusions tend to underline the prevalence of state interests in the definition of international responses to forced displacement, his most comprehensive work on the UNHCR's historical development notices and highlights the existence of significant elements of organisational autonomy (Loescher, 2001b). In fact, there seems to be a pattern towards increasing emphasis on the autonomy and internal dynamics of the UNHCR (Loescher, 2001c), certainly a reflection of the empirical observation of indications of autonomous policy-making. Also focusing on the decision-making process of the UNHCR is the work of Mills (2003), reflecting on the dynamics between the organisation's preferences as a humanitarian actor and state interests. Hammerstad (2000) analyses the process of organisational expansion through the discourse on security produced by the organisation, which reflects the way it views its mandate and mirrors organisational dynamics. Other studies focus on organisational dynamics, namely the impact of funding on decisions (Vayrynen, 2001), and the impact of bureaucratic fights and turf battles on internal decision-making (Helton, 2001b). While producing extremely interesting results, explicit theoretical systematisation is largely absent from these studies. The observed autonomy is studied in a more structured way by approaches that focus on organisational behaviour and dysfunction.

Walkup (1997) combines the historical institutionalist with a sociological approach and analyses the effects of the environment and internal dynamics on UNHCR policy dysfunction, focusing on the organisational culture element. However, the author fails to contrast these with states' preferences. A very interesting case study on conflict between rule-supervisory role of UNHCR and state interests is done by Hartigan (1992), and other studies explicitly confront the work of the UNHCR with state interests and pressures in different policy areas (Rudge, 1998; Cunliffe, 1995). Although not explicitly included as an analytical framework, these can be seen as instances of the application of a principal-agent perspective. Barnett and Finnemore (1999) also focus on the pathologies and dysfunctions of international organisations and use extensively UNHCR examples for substantiation of arguments, although they do not embark on a systematic study of the organisation. These authors suggest the use of P-A analysis for assessing the mechanisms that lie at the ground for organisational autonomous and even dysfunctional behaviour. More in-depth analyses of areas of the work of the UNHCR by Barnett (Barnett, 2001a) have produced useful insights on the dynamics of external constraint in specific policy options. These empirical arguments will be translated into a theoretical framework that combines rational-choice and historical institutionalism for assessing constraints on organisational autonomy vis-à-vis state, its principals.

1.2. The study of Inter-Governmental Organisations in a globalising world

This section will place the concept of intergovernmental organisations (IGOs) in the framework of existing theoretical approaches to IR focusing in particular on accounts of their relation with other actors in the international system.

IGOs: between state and non-state actors

IGOs, as the name indicates are organisations that were created by groups of governments to fulfil specific tasks. However, it is legitimate to question to what extent these entities are just instruments of state activity at the international level or non-state actors in the shape of an independent agent with its own agenda and preferences. Hence, the characterisation of international organisations itself can be issue of theoretical debate: while other international or transnational actors have a more clearly defined status vis-à-vis states, such as international NGOs or transnational corporations, IGOs are states' creations and in principle should be controlled by

them. Yet, such is not always the case and the question of autonomy has dominated recent debates on IGOs within the context of the international relations discipline (see Reinalda and Verbeek, 1998). Such debates concern the nature of these entities, the agents, supposedly working for the principles set out in their constitutional mandates and the implications of the directives given by their principals, the states. The observation of a substantial degree of autonomy in IGOs is in the light of existing IR theories, particularly puzzling and requires an exploration of the mechanisms of decision-making inside them to examine the extent to which states actually are in control (Reinalda and Verbeek, 2004a).

Hence, while defining IGOs as non-state actors may be misleading, treating them as mere extensions of states is also inaccurate and may lead to erroneous conclusions. Here lies the theoretical relevance of the present research, in that it clarifies several dimensions of the relation between states and IGOs: as will be seen in the analytical structure, states are both part of the internal and external dimension of analysis and while partly constituting the participant sub-system with management-type and guidance functions, they are at the same time sources of external pressure not only as political and diplomatic actors in the world system but also as providers of funding (see Cox and Jacobson, 1973). That is why particular concern will be devoted to separating out the types of actors involved and in which capacity they provide decision-making inputs. The theoretical importance of including IGOs in this exploration lies in the possibility of assessing not just *whether* IGOs – like non-state actors - matter, but also *why* and *how* they matter (see Lake, 2002: 153) in the present international system. It is here argued that one way to assess this is through the study of the nature of and conditions for their autonomy and the extent to which they are responsible for policy outcomes in the context of a changing international system. The implications of this for international relations are significant in that it impinges on the hierarchical organisation of an increasingly populated international system with multiple competitors for control over a broadening range of issue-areas of international concern.

IGOs and IR approaches

The role of IGOs as actors of relevance in world politics has for a long time been neglected by the IR discipline.¹¹ Indeed, the study of international organisation has evolved over the years, much to

¹¹ Services such as the provision of information to governments in situations of incomplete information and uncertainty are pointed out in regime theory as some of the most important function of IGOs (see Keohane, 1982).

the flavour of the dominant theoretical approaches in the IR discipline (Rochester, 1986; Strange, 1998). Many approaches to IGOs are dependent on the waves of perceived success and failure by the most visible ones (see Ruggie and Kratochwil, 1986), and this is particularly the case of the UN, taken as a whole. Currently there is a growing tendency to overcome this bias and to focus on IGOs as elements of structural change in the politics of international relations, whose influence is not assessed merely on the basis of circumstantial fluctuations of the work of these entities.

The changes occurred in the international environment during the second half and in particular in the last decade of the twentieth century, generated a thriving literature devoted to the analysis of the scope and range of those changes and their impact on the future organisation of world politics (see for example, Holsti, 1991; Rosenau, 1997; Ruggie, 1998). International organisations, foremost among them the UN and its specialised agencies and programmes, such as the UNHCR under focus here, have progressively acquired importance as providers of important new services, many of which states could not manage in isolation. The present research is in its broad dimension immersed in the literature that seeks to capture the relations between IGOs and states in an era of change, when new international issue-areas emerge for which states had no previous decision-making authority and where the adjustment to such changes implies subtle modifications in traditional actor relations. This has led to an increasing interest in issues of autonomous behaviour by IGOs, placing the phenomenon under research in the interface between classical IR, with its focus on the state's side of the relation- such as regime theory -, and international governance with its focus on other actors with varying degrees of independence from official state structures. Further, the emergence of an international political space also leads to the creation of relations between these other actors, including in the IGO area, where the networks of influence have over the years become stronger and stronger.

Regime theory and global governance: filling gaps

Indeed, an important catalyst for interest in the study of IGOs from the 1970s on, was regime theory, which included in its analytical framework broadly defined notions of institutions that functioned as intervening variables in explaining international co-operation (Krasner, 1983; Keohane, 1989). The influence attributed to IGOs by neo-utilitarian approaches – neo-realism and neo-liberalism –, remained largely limited to their functions as instruments of states' policies (see

although the range of situations in which they are relevant in the present system has tended to exceed the strict boundaries of functional competences enshrined in constitutional documents.

Ruggie, 1998: 3; Verbeek, 1998: 11). Regime theory, an explicit derivation of neo-liberal institutionalism, is currently giving way to theorising on global governance, which focuses broadly on the impact of the process of change and globalisation on the structures of governance and on the relation between actors in the international system. In particular, it focuses on the emergence of new problems or governance tasks and new actors (Brühl and Rittberger, 2001; Braithwaite and Drahos, 2000). These studies highlight a series of gaps that accompany the emergence and development of issue-areas related to political and economic liberalisation and technological change that are no longer exclusive area of deliberation of the sovereign state: the operational gap, related to the provision of services in new international issue-areas, and the participatory gap, related to the legitimacy for decision-making in such areas (see Rinicke and Deng, 2000). Hence the new international environment is lacking a collective actor at the centre and is made up of fragmented organisational systems that produce rapid organisational expansion and change (Meyer, 1994: 31).

These emerging gaps are linked to an important aspect addressed in globalisation literature: the notion of relocation of authority, suggested by Rosenau (see Rosenau, 1997) and subsequently translated into the concept of Spheres of Authority (SOAs), which are proliferating at an exponential rate as an element of change in the international system (Rosenau, 2000; Rosenau, 2002).¹² However, the global governance agenda largely leaves aside IGOs as actors in this relocation and focuses more on institutions broadly or on transnational corporate networks and NGOs (see Keohane, 2002: 210). Such has to do with the conception of IGOs as actors too closely linked to state entities. However, this literature suffers from lack of specification and encompasses many internal differences. The present research aims at remedying this flaw through the study of a concrete empirical case of organisational expansion to new issue-areas not foreseen originally by states and not initially part of the international agenda, hence developing along the creation and filling of gaps for which there was no established juridical structure at the international level. It explores the dynamics of such relocation of authority and indirectly to what extent and under what conditions it may occur. The issues of concern revolve around questions like where does such authority go, how is it shared and under what conditions it is held by other actors and also how irreversible is it?

¹² "One feature of global change that the global governance concept highlights is a shifting of the location of authority in the context of both integration and fragmentation." (Hewson and Sinclair, 1999: 5).

Neo-utilitarianism and constructivism: building bridges

The differences between regime theory and global governance parallel the cleavages between rational choice and constructivism as meta-theories in IR. The discipline of IR has largely been dead-locked in an inter-paradigm competition between realism and constructivism (Lake, 2002; Fearon and Wendt, 2002), dominated by epistemological and ontological debates. The lines of division underlined by the corresponding rationalist and reflectivist approaches tend to exaggerate antagonisms while slighting complementarities (Koremenos and others, 2001a). Both are too much concerned about largely abstract concepts that are repeated over and over without accurate operationalisation, problematisation and empirical testing (see Checkel, 1999; Trondal, 1999; Herrmann, 2002). The effectiveness with which states actually control the workings of the IGOs they create has largely been taken for granted in the realist and neo-liberal institutionalist circles, while on the constructivist side only the impact of institutions, ideas, beliefs and rules on states' preference definition had so far been explored, taking state preferences, and not institutions or IGOs as the dependent variable. Much of constructivist research has until recently focused on the grand level of analysis, addressing norms, broad institutions and ideas, and avoided the use of middle-range theories to complement their findings (Checkel, 1998).

New-institutionalism: new avenues

With new-institutionalism, signs have been emerging that this trend is reversing at the empirical level, through an increasing concern for the study of international organisations and the scrutiny of the conditions of their work, their effectiveness and the interaction with world politics.¹³ New-institutionalism focuses on institutional change and is based on middle-range propositions that generate the possibility of overcoming the great divides discussed above that plague IR theorising (Reinalda and Verbeek, 2004b: 27-28). A number of studies within the new-institutionalist framework have now been exploring the link between the analysis of the internal dynamics of international organisational forms and the consequences for international theories in a more systematic way, using inputs from principal-agent analysis and contributing to the refinement of agency theory. The Program on International Organisation and Change, based on St. William and Mary College, Virginia, brings together scholars interested in this area and has been in recent years organising an extremely rich series of conferences and workshops, whose results once

¹³ On the theoretical core of new-institutionalism, see (Immergut, 1998).

published will significantly improve research in this area.¹⁴ There is also a need to overcome the tendency of bureaucratic approaches to focus only on the dynamics of the bureaucracy and its interests, instead of contrasting those with states' preferences, and this is where the explicit use of P-A as an analytical framework is useful. Decision analysis in public policy provides extremely useful inputs, but it is too confined to bureaucratic decision-making without actually encompassing the external dynamics of such process (see for example, Cyert and March, 1963; Cohen and others, 1988; March and Olsen, 1989; Brunsson and Olsen, 1998). The ideal is to join the inside and the outside of the box and this is partly suggested by March and Olsen's reformulation of the analysis of institutions in their approach to new-institutionalism (see March and Olsen, 1998). Approaches that combine these aspects are well applied in the study of the IMF by Martin (2003) and of the World Bank, by Nielson and Tierney (2003).

The intention is here to propose a model that includes these different propositions in the extent to which they may apply to the present case. The assumption is that they are complementary and not mutually exclusive. This enables the creation of a framework for studying the relation between states and IGOs: the conditions under which states will have predominant influence in organisational policy direction or those under which other factors will prevail.

1.3. P-A: a framework for studying the relation between states and IGOs

This section will discuss the main concepts and use of the principal-agent approach for the study of the relation between states and IGOs. It will argue that although the P-A approach is traditionally conceived within a rational-choice framework, it contains a conceptual and analytical core that accommodates analyses that consider factors beyond the strict limits of the interaction between the two actors. I will here make explicit the theoretical roots of this approach and the possibilities for its combination with other approaches such as historical institutionalism that will enrich the analysis of the present case study.

The principal-agent framework is a middle-range analytical tool that addresses the relations between two actors in a situation of hierarchy within a specific environment. Such is the case of

¹⁴ More information on this program is accessible at <http://www.internationalorganisations.org>.

international organisations in interaction with the states that created, fund or support them and which in most cases also actively manage them. The approach itself has a number of core concerns: as a pragmatic analytical framework, it aims primarily at improving the relations between the principals and the agents, given the systematic observation of problems in such relations, also designated as the “compliance problem” (see Noll and Weingast, 1991; Torenvlied, 1996). P-A analysis was originally designed to provide tools for improving firms’ and later bureaucracies’ effectiveness, and to ensure optimal mechanisms of control over implementation in the presence of indications that an organisation was going astray. The principal-agent design has been extensively used by students of U.S. Congressional politics and public policy (see Shepsle and Weingast, 1994). More recently, it was also extended to the area of European integration studies, which had for a long time been concerned with explaining some autonomy of the supranational institutions but within other theoretical strands (see Haas, 1964). In this area, much of the emphasis is put on studying elements of supranational autonomy and influence of the EU institutions on policy outputs, with an underlying tone that such progress will be the engine of increasing European integration (see Pollack, 1997; Pierson, 1998), as opposed to an analysis based solely along strategic intergovernmentalist lines and on domestic preference formation (see Moravcsik, 1993). As European integration literature shows, once IGOs stop being merely what their founders have designed, they become objects of political interest and their internal processes worth investigating. They reveal the dynamics between different actors at the international level in situations that go beyond the hierarchy of control that traditionally defined the relation between states and international organisations (Ness and Brechin, 1988). The advantage of the P-A approach is that it goes beyond the traditional neo-functionalist approaches to explain institutional change and stimulates the study of the dynamics between actors.

Two essential concepts can be highlighted as providing the core structure of analysis in the P-A framework and are broadly related to the main lines of explanation that will be proposed in this research: hierarchy and environment.¹⁵ From each of these concepts derive three important dimensions that structure and constrain the principal-agent relation. Hierarchy is established in the original contract where decision-making authority is *delegated* on an agent by the principals, who are the *legitimate* (or material) holders of decision-making authority and hence of the capacity to *control* the agent. The environment where the agent is embedded provides the setting for the

¹⁵ Hedge and others (1991). propose three essential concepts that constitute the principal-agent framework: hierarchy, environment and control. However, I opted for including control under the hierarchy dimension, since the legitimacy for the exercise of control derives from the relation of hierarchy established in the original contractual relation.

definition of the functions with which the agent is tasked, but it also *changes*, creating permanent needs of both principals and agents to *adjust* to such change (mutual drift), which in the process may result in *dysfunctions* concerning the originally contracted competencies. This in turn raises the problem of control and the possibility of enacting control mechanisms, in situations of adjustment.

These two key concepts pave the way for the incorporation of strategic/rational type of considerations and historical elements to explain institutional change. While those concepts related to hierarchy can be seen as linked to a static view of the relation between principals and agents, dominated by the goal of resuming principal control - in the line of U.S. Congressional studies -, the concepts related to the environment present a more dynamic approach that addresses the effects of change and adjustment to change on the directions and options of the different actors, which is being applied more in the context of new-institutionalism. This section will elaborate critically on the different dimensions of principal-agent analysis, explore different types of approaches to P-A, and highlight areas where some refinements are in order based on the existing literature. In particular, it will argue that the construction and aggregation of preferences should be taken as a true variable affecting control and not a value taken by assumption. Thus the principal-agent framework should incorporate the analysis of drift of principals' preferences and its implications for the P-A relation. It should also consider the effect of the type of adjustment to change in explaining variation in the relation.

1.3.1. Hierarchy: delegation, legitimacy, control

Upon the creation of a new organisation the stakeholders establish a contractual relation, imprinted in a constitutional document that defines the general goals and functions of the new entity. The hierarchical relation between principals and agents is thus set up with the original act of delegation. By creating IGOs, states delegate decision-making authority on agents that are responsible for carrying through specific tasks aimed at fulfilling the goals set out in the initial agreement. The agent then becomes responsible for a number of related activities in order to discharge the mandate (Wood, 1989), but the principals retain legitimacy to ensure that such activities fulfil the original goals, through control mechanisms.

Delegation

There are different types of goals at the origin of the delegation act and they all have different implications for the relation between states and IGOs. I will highlight three types of delegation: cooperative, supervisory, technical. Cooperative delegation results from states' need to enhance mutual co-operation, reduce transaction costs, share information, etc (Jacobson, 1984; Epstein and O'Halloran, 1999). This is the type of relation mostly analysed by regime theory (see Krasner, 1983; Keohane, 1984; Rittberger and Mayer, 1995). Supervisory delegation establishes specific bodies to supervise the implementation of agreements and even treaties, and exercise an oversight function over states' compliance with their international commitments. Much of the literature devoted to the analysis of this type of delegation is done by constructivists on the impact of norms and ideas on states' policies, in particular human rights literature (Finnemore and Toope, 2001), although competing explanations for this type of delegation have been suggested (Moravcsik, 2000). Finally, the technical delegation is the one destined to provide services on behalf of the principals either in areas of shared sovereignty, or in new international issue-areas that emerge but for which no one state has a specific decision-making authority or competence. Literature on governance and globalisation has been particularly devoted to this type of delegation, such as global information technologies or the environment (see Hurrell and Kingsbury, 1992).

The different types of delegation have different consequences for principal losses of control over the agent. Cooperative delegation entails a significant retention of principals' capacity for control, since the agent is charged with merely assisting different states in facilitating co-operation between them. Technical delegation is also designed to provide a specific service, and hence states enact measures to ensure that such services are provided, except in areas where there was no prior specification of the scope of activity, such as the case where new international issue-areas emerge, where actors have to adjust to new circumstances. The expertise developed by the agent is the major factor that often leads to autonomous outcomes (Barnett and Finnemore, 1999; Nicholson, 1998). Finally, rule-supervisory delegation is the sort of delegation that entails more losses of states' legitimacy for control, because the agent is designed as an impartial and neutral mechanism that should be above interest-driven control by principals. Particular conflicts of interest between principals and agents emerge when states attempt to interfere and politicise the activity of agents endowed with this sort of delegation in what amounts to the instrumentalisation of the agent.

Legitimacy

The principal-agent approach is about how effectively states convert their power into influence in IGOs, or conversely, how effectively organisations avoid such control. At stake in many principal-agent debates is the attempt to help principals retain their “legitimate” control over the agents and also to retain the democratic accountability for actions to those who have been elected to do so, and not to the bureaucracies and administration agents (see Cook, 1989: 969). Hence, control implies not only a power, or influence relation, but also a notion of legitimacy. The tension between legitimacy and power as sources of influence reflects different theoretical approaches: state-centric, realist approaches and their focus on the structural capabilities of actors, versus constructivists’ normative-based view of the world as based on a locus of legitimacy deriving from a normative framework which does not attribute automatic influence to a specific category of actors. This has an impact on processes of governance, in particular in new international issue-areas, where previous decision authority did not exist and that window of opportunity has been exploited mostly by international institutions.

By delegating powers, principals hand over some of their decisional authority over particular issue-areas. Delegation, in principle entails only the transfer of technical competencies limited to the original contracted relation. On the other hand, as seen above, the legitimacy to control is also dependent on the type of delegation. Thirdly, legitimacy to control exists in areas where states had previous decisional authority. This becomes a complicated matter in new international issue areas and in traditionally internal affairs linked to sovereign constraints, where decisional authority is traditionally an exclusively internal matter.

This is one of the most interesting aspects of global governance, since it touches the debate referred above on the relocation of authority. The notion of decisional authority is here crucial for delimiting areas where states have inherently decisional supremacy and legitimacy for control, compared to areas where such capacity is not clear from a point of view of previously existing decision-making authority. This is linked with Rosenau’s redistribution of authority (1997) and with Barnett’s state formation/bureaucratisation literature (2002), with the underlying argument that currently there is a relocation of authority into new bureaucratic structures at an international level.

Finally, legitimacy to control and decisional authority derives from the will of the people, hence the democratic legitimacy. Three theoretical approaches have addressed this effect: studies of U.S. Congressional politics focus directly on the democratic accountability of the bureaucracies and

their theories are more driven to the enforcement of control mechanisms by the legitimate holders of decisional authority. Regional integration theory also focuses on the “sharing” of decisional authority, although not so much on issues of control.¹⁶ The democratic accountability in integration studies is more removed from the analysis of delegation (see on this debate, Menon and Weatherill, 2002). The focus then emerges on the problems deriving from this displacement of authority to the international level and the inefficiencies of international bureaucracies, more detached from the public scrutiny. Finally, global governance literature and critical theory have an ambiguous approach: while largely circumventing the importance of the state in world politics as the entity with legitimate decision-making authority, they devolve it to the civil society networks and transnational organisations, whose democratic accountability can also be questioned.

Control

Different authors that use the principal-agent approach emphasise different control mechanisms used by principals, with equally differing degrees of effectiveness. Some conceive of principals as using a mixture of oversight and manipulation incentives to control agents. Oversight procedures allow principals to *ex post* monitor agency behaviour and influence it through the application of positive or negative sanctions (Pollack, 1997: 108-109).¹⁷ Other mechanisms include budgetary control or “financial strings”, control over appointments, policy guidelines, new legislation and revision of administrative procedures laid down in the mandate, definition *ex ante* of the scope of agency activity (Eisner, 1993).¹⁸ Principals thus retain a number of mechanisms of control and their efficacy constitutes the core of principal-agent studies in the area of political science.

However, the principal-agent relation of hierarchy and the mechanisms of control that ensure it have their limitations, particularly in the international realm. For example, it has been argued that long chains of delegation, typical of IGOs, reduce the capacity to control (Martens and others, 2002; Nielson and Tierney, 2003). Such limitations are particularly apparent in three areas: long-chains of delegation, nature of the tasks (expertise), and multiple principals. Frey notes that

¹⁶ Regional integration, for example, can be seen as one of the most significant areas of delegation, and is characterised by Schmitter as the study “... of how national units come to share part or all of their decisional authority with an emerging international organisation” (1971: 232).

¹⁷ However, there aren't many gains for political actors from monitoring and overseeing IGOs because of its high costs - relies on expertise that they don't have.

¹⁸ There is growing emphasis of the literature on the analysis of *ex ante* control, which centres on issues of delegation (Moe, 1997: 466) instead of the traditional focus of congressional dominance theorists on *ex-post* control mechanisms. For UNHCR, control has largely been *ex-post* and that enables expansion to occur and only later to be sanctioned.

“International bureaucracies and bureaucrats have greater room for discretionary behavior [than the national bureaucracies] because the national bureaucrats, politicians, and voters have little incentive and possibility to control them effectively.” (1997: 119). Due to their wide scope and range of activities, control over international organisations is made more difficult than with other types of agents that are under closer scrutiny of the central government at the state level. As (Brühl and Rittberger, 2001) pointed out, the nature of international organisations’ tasks is sometimes so broad that it makes it difficult for states to control their activities. Lastly, the multiplicity of principals creates often contrasting or vague policy directions that the agent has to manage. This will be explored as the main explanation for the observed autonomy of the UNHCR.

The ever-changing international environment where the principals and agents are embedded compounds these difficulties by requiring permanent adjustment.

1.3.2. Environment: change, adjustment, dysfunction

While P-A approaches take the environment and change as a serious variable, they don’t normally incorporate it in the analytical framework. This is so because most analyses focus on the control side of the approach and take a static view of the situation, analysing isolated elements of the relation. This can be improved so that P-A can more adequately tackle the dimension of change in world politics, by taking the environment as an important element of context in the P-A relation. Although the environment by itself is not a direct cause of change in the hierarchical relation, it may have an indirect effect. A mismatch between the original mandate and the activities of an organisation may be caused by organisational preferences (mission-creep), by a necessary adjustment to new situations (functional expansion) and by pressures from states (originated by principal preference drift). This mismatch may merely constitute an adjustment that does not conflict with the original functions assigned to the agent, or it may be a dysfunction, understood as activities that undermine the stated objectives of the mandate. These evolutions affect the hierarchical relation in reshaping preferences of both principals and agents.

Change in the environment

This aspect is particularly relevant for research in the area of international relations, since significant change in the environment may lead to opportunities for changes in the hierarchical relation between states and IGOs. Change in the international environment may be a cause and/or consequence of changing preferences of the actors. Assuming a mutual constitution between agent and structure (Ruggie, 1998; Checkel, 1998), the activity of both agents and principals may contribute to changing the environment. In the same manner, changes in the environment will have an impact on the activities of the agent and the preferences of the principals and consequently on the nature of the relation: change may limit an IGO's range of activities, or what is more common, it may enhance its range of activities. This provides grounds for a functional spill-over of activities through an adjustment to new needs. Conversely, change in the environment may also change the preferences of the principals and the nature of the goals they had in mind for the organisation at the time of delegation. In circumstances of P-A problems it is therefore important to scrutinise the nature of change (if in the environment or if in the preferences of one of the actors) in order to determine what kind of P-A problem we are facing. This will be done in 1.3.3.

Adjustment

Adjustment is a necessity that results from change in the environment. If we suppose that an organisation is created to fulfil specific needs in the system, a change in those needs will probably require a necessary adjustment of functions. By itself, adjustment is not negative, but a distinction should be made between functional expansion resulting from adjustment to change in the environment - based on Parsonian structural-functionalism, (see Shepsle and Weingast, 1994) -, and organisational drift generated by specific organisational preferences, such as task expansion or the organisational goal of remaining alive and relevant, leading it to expand to other areas when its original scope has ended or been eroded by change in the international system (Megens, 1998). It is important to be conceptually clear concerning these different terms since ignoring certain subtle distinctions may lead to a disregard for crucial aspects of bureaucratic politics. These sorts of adjustments do not always happen through formal channels and there are stretches of time when unclear systems of tasks and competencies are in place. This type of adjustment does not necessarily imply concessions in terms of the original functions and goals but such may be the case if it entails contradictions with those functions. Adjustment to change or simple organisational expansion implies a de facto bureaucratic appropriation of decision-making authority from states, at the international level.

Dysfunction

Organisational dysfunction in principle entails that the agent is no longer performing the functions and achieving the goals for which it was created, although the nature of the dysfunction may be more serious and imply an actual subversion of those initial goals. Dysfunction may be the result of adjustment to an environment where the original functions are no longer totally relevant or it may be motivated by changes in states' preferences that put pressure on the organisation to pursue different goals. Such direction may also be imprinted by the organisation itself through its goals of task expansion.

The distinction between simple functional expansion and dysfunction should be underlined: while the agent may drift from the originally mandated activities, such drift may merely constitute an expansion or an adjustment if it does not imply a conflict with the original goals of the mandate and if it doesn't preclude the agent from fulfilling the original tasks at the same time. In situations where an agent's activities do subvert or undermine the original mandate, we are in the presence of a dysfunction.

Dysfunctions can take several forms: they can be seen as a drift between the originally intended goals of the delegation act and the actual activities performed (shirk) when those activities are inimical to the preferences of the principals (slippage or slack). Slippage occurs when agents behave opportunistically in the pursuit of their own interests and slack occurs when the structure of delegation provides incentives for the agent to behave in ways inimical to the preferences of the principals (see Pollack, 1997: 108). Organisational dysfunction is not by itself the same as organisational slack, since it cannot be said that states' preferences remain stable and immutable and hence in favour of the maintenance of the status quo enshrined in the constitutional act.

In sum, organisational drift can take the form of expansion, when the agent broadens its activities in a manner consistent with the original goals of the delegation, and it can take the form of dysfunction when the agent broadens its activities in a manner that is inconsistent with the continued implementation of the goals of the delegation. This has implications on organisational autonomy, since while expansion that is consistent with the original goals retains and expands the

authority of the agent, a dysfunction implies an erosion of such authority since, I would argue, it compromises the fulfilment of the organisation's originally mandated goals.¹⁹

The nature of the dysfunction may vary according to the motivation for its emergence. An important question is what drives expansion and dysfunction. The tendency is to say that expansion is driven by organisational goals. However, a crucial distinction should be made concerning the nature of organisational goals, which will be implicitly explored in the present research: functional goals and instrumental goals. Functional goals derive from the emergence of activities in connection with the original mandate and role that require an expansion of the originally foreseen activities. Instrumental goals derive from specific organisational interests linked with competition within the organisation and outside the organisation, turf battles and the management of the issue-area. This is important to highlight the fundamental role of the analysis of goals when assessing a P-A relation.

Another important distinction is between dysfunction and deviation. As seen in the P-A literature, agent deviation is the contrary of compliance with policy decisions issued by the principals (see, Torenlid, 1996). However, variation in state preferences is generally not considered in the analytical framework.²⁰ Consequently, also the ambiguity that this preference change generates in the policy alternatives available to the agent may cause dysfunction in situations where the preferences of the states in some way create tensions with the original mandate.²¹ This raises the issue of the different forms that the P-A relation may take.

1.3.3. Delimiting the *problem*: types of approaches to the P-A relation

This section will specify the different dimensions that the principal-agent relation can assume and elaborate on their theoretical implications: different theoretical approaches focus on different types of P-A problems, concerning different aspects of the relation and providing specific propositions for their explanation. This specification will later be helpful to frame the empirical dimensions of the present research's puzzle and define the scope of conclusions to be drawn in theoretical terms.

¹⁹ For a discussion on the impact of consistency/inconsistency between goals and activity on organisational change, see (Brunsson, 2000).

²⁰ Ferejohn and Weingast (1992) do so by explicitly exploring Congressional influence in the interpretation of agency statutes in situations of different Congressional majorities where there is a shift in preferences.

²¹ On the effect of ambiguity and flexibility on EU capacity to act and influence, see (Zielonka, 1998).

The principal-agent framework is conceived in terms of an observed *problem* that arises when there is something wrong in the relation between the two types of actors: principals and agents. Traditionally, a P-A problem assumes a disjuncture between the preferences of the two actors, often defined in terms of the performance by the agent of activities that were either not foreseen originally or that are detrimental to the preferences of the principals. Very often original mandates are assumed as coincidental with state preferences. Hence, a P-A problem should not arise if both actors have motivations to remain faithful to the original terms of the contract, a situation that can be designated as “mutual co-operation”. The classical P-A problem emerges when the agent has or develops, incentives to drift – “agent drift”. But, as Elgie and Jones (2000) point out, there are two other sources of a P-A problem: a principal-centred one, where principals have or develop incentives to drift from their original preferences – “principal drift”; and finally a complex P-A problem of “mutual defection” where both actors have or develop incentives to drift from the original goals.²² In this case preferences can no longer be deduced from constitutive documents or simply from policy outcomes since the question then arises concerning which actor is responsible for policy outputs and how to establish their similarity or contrast of preferences in order to assess a causal link. The classification suggested by these authors of the types of relations between principal and agent based on the incentives to remain faithful to the original commitments and the incentives to stray is here reproduced:

Table 1 – The problems of delegation (taken from Elgie and Jones, 2000)

		Agents	
		<i>Faithful</i>	<i>Unfaithful</i>
Principals	<i>Faithful</i>	Mutual Co-operation	Agency Drift
	<i>Unfaithful</i>	Principal Drift	Mutual Defection

The separate consideration of “principal drift” and “mutual defection” problems does not mean that these two situations are not addressed in existing studies that focus on the principal-agent relation. It does, however mean that sometimes the nature of the relation is not made explicit nor

²² The principal-centered problem is partly addressed by Keohane on the issue of delegation and compliance: why should states guided by rational self-interest comply with obligations that have become inconvenient? (Keohane, 2002: 8).

specified enough. This happens when the preferences of each actor are not explored in detail and the nature of conflict is only presumed. Of course, the relevance of introducing such specific distinctions is dependent on the research's goals but for this particular research it is very relevant. This has a strong impact on the delimitation of autonomy and on the scope of the conclusions to be taken in order to avoid abusive generalisations. The important distinction between the approaches lies in the way the analysis of preference formation and change is included or excluded from the equation.

Principal drift

Unlike the traditional P-A problem, where drift is identified on the side of the agent, the principal-centred problem analyses situations where the agent retains preferences that remain consistent with the original contract and states' interests change in ways that are inconsistent with the original contract. A gap then emerges between the functional preferences of the organisation and those of states, but unlike what is more common in the classical P-A problem, it is the agent that remains attached to the original goals and the principal strays from those. The assessment of the problem is made on the basis of the contrast between the new preferences of states and those stipulated in the original contract and in this case consistent with the agent's preferences. In this situation, a strict observation of the original contract by the organisation would be a display of autonomy vis-à-vis the states, as again the organisation would act despite the contrary preferences of the states. Conversely, a move away from original activities would be explained by the pressure of states, in a neo-liberal institutionalist type of explanation, hence a display of less autonomy. These are situations where the subversion of the goals of organisations is attempted in order to fulfil the specific self-interest of states (see Garrett and Weingast, 1993). However, without a thorough assessment of the preferences of the organisation this explanation cannot be upheld by itself since we do not know whether the agent drifts in the same direction due to its own preference development relatively independently but coincidental with the direction taken by states (mutual drift).²³ This argumentation at the same time becomes part of the puzzle outlined below and the possibility of determining who is responsible for outcomes in situations where both

²³ Agent preference drift may be caused by outside pressure of principal drift or by internal adjustment of functional goals as a result of change in the environment or change in instrumental goals in the bureaucratic politics domain. I will from here on use the expression "mutual drift", since I consider it more adequate to address changes of preferences from the original ones than Elgie and Jones' "mutual defection" that already contains a negative dimension of undermining original goals.

actors' preferences shift and hence there is no more reference to the original contract as a tool for assessment of preferences.

Mutual drift

What in practice more often happens, but is less formalised in analytical models, is a drift of both principals' and agents' preferences. In such situations we are in the presence of a problem of mutual drift: when both actors have incentives to drift, their new preferences either go in the same direction, or in contrary directions. This means that the assessment of the problem and of which actor actually explains policy outputs has to be made through the analysis of the contrast in preferences rather than by reference to the original contract. The latter then becomes a reference point to evaluate the direction of the drift: whether a functional expansion that is beneficial to the goals and principles in the contract or a dysfunction that undermines those principles. In this case the focus of analysis may lie on the problem of gap between political action (logic of consequences) and commitments to principles (logic of appropriateness). The tendency when the observed organisational outcomes co-vary with state preferences, is to use neo-liberal institutionalism to explain organisational drift as anticipation of state preferences due to the threat of sanctions or mere deference to principals' preferences. In cases of conflict we are in the presence of the P-A deviance problem identified as the compliance problem (see Torenvlied, 1996): it is similar to the classical P-A problem but the nature of preferences is not identified with original goals in any of the actors and therefore needs specification. It can occur due to anticipation of state preferences but also as a result of different incentives to drift in the same direction. These approaches identify mutual drift and search for the process behind organisational goals and decision-making to explore other constraints beyond state pressures that may drive the organisation to drift in a direction compatible with drifting states' preferences, for example, a functional adjustment to the environment with unclear consequences for organisational behaviour or even bureaucratic politics independent of states. Such approaches use process-tracing and historical analysis to trace the deeper sources of preference formation.

1.3.4. Assumptions in the P-A approach

There is much fuzziness in the literature concerning the real nature of the disjuncture between principals and agents, since very often, such nature is defined on the basis of assumptions about

preferences and apparent behaviour. This section will provide a critique of some of the assumptions that frame the P-A approach and argue that the rational choice assumptions and methods in principal-agent approaches could benefit from a combination with other methods and theoretical propositions to enable more robust theorising that will explain comprehensively the true nature of principal-agent relations. The main critique to the principal-agent framework is that it stands on too many assumptions namely the unitary actor assumption, the fixed preferences assumption and the rationality assumption. If we relax these assumptions we observe that a principal-agent relation cannot be simply portrayed as an open conflict of clear preferences

The unitary actor assumption

In the rational choice tradition states are assumed as unitary actors. Several studies have shown that this is not the case and as will be seen in the last part of this research such fact has strong implications in terms of foreign policy outputs (Hill, 2003). In the same line, many P-A approaches treat principals as a unitary actor that sends directives and guidelines to the executive staff and monitors the implementation of such guidelines (Wood, 1988). These guidelines are also assumed to be clear and complete as far as the division of competencies between principal and agent is concerned. However, such is not always the case. This research challenges the neo-utilitarian coherence assumption, which lies on the unitary actor assumption and holds that "...central decisionmakers maintain sufficient control over different organisational elements of their governments to allow them to direct and coordinated government actions in such a way as to implement the decision-makers' strategies, and to do so in a way that reflects their rank-ordering of goals." (Grieco, 1997: 166). The logic of the unitary actor with capacity to control can be applied to the coherence of the positions among multiple principals that will be explored in this research. The unitary actor assumption will also be questioned as part of the analytical model but not explored in a systematic way. Rather it will be discussed in what is designed as the third cut of the analysis and will be built into the analytical framework as a particular exploration of a dimension of the case where the unitary actor assumption is challenged.

Fixed preferences assumption

Largely nested in a rational choice framework, the traditional P-A framework does not in general question the nature of the preferences, how they are formed, and the degree to which the process of preference definition may have an influence in or be influenced by the P-A relation itself. Hence, typical preferences of organisations and of principals are inserted in the analytical framework as assumptions, and the theoretical contributions in this line of research are largely limited to the determination and evaluation of effectiveness of the mechanisms of control and autonomy used by principals and agents respectively, in order to pursue those pre-defined goals. Some such assumptions include the instrumental rationality and task expansion as motivations for principals and agents respectively. The approach fails to explore interest definition and reduces institutional interests to budget, task and personnel maximisation (Niskanen, 1975), and on the side of principals, to net gains for the self-interest (Abbott and Snidal, 1998). What is also not explored is what enables agent autonomy apart from the inefficiency of existing mechanisms of control. It is essential to specify empirically the interests of both actors because they do not always fit the assumptions (see Katzenstein and others, 1998: 659).

Because preferences are inferred from choices (March, 1994: 188), and assumed to be coincidental with the original contract, it is generally not considered that the observed disjuncture may be due to principal drift. What this means is that classical P-A needs some refinements: whereas in the economics of the firm, from where P-A approaches derive, the incentive of principals to drift may be low, in international relations and in times of intense change in the environment, the changes in the preferences of states are issues that absolutely have to be incorporated and considered in the principal-agent framework.

The rationality assumption

In classical P-A, actors are seen as rational and able to identify priorities and goals consistently and to produce policy outputs on the basis of such instrumental rational calculations. Actors' positions are assessed through the behaviouralist observation of outcomes seen as indicators of preferences. This fact has been pointed out by Wood, who criticises some approaches within P-A analysis for embodying "...a behavioural perspective that posits explicit stimulus-response relationships." and addressing "...covariation, not causal movements.", without exploring adequately the mechanisms of political-bureaucratic control (1989: 974). This is indicative of one of the main problems with this framework: it takes the interests and motivations of both principals

and agents as given and defined *a priori*. It is here admitted that goals are not always passive of rank ordering and that the priorities of different states don't always converge. Such is also seen as having a strong impact on policy outcomes and levels of influence. A brief discussion will follow on the purposiveness of actors' outputs as a means of assessing the rationality dimension.

Purposiveness of actors

In the context of existing principal-agent approaches the purposiveness, instrumental choice and intentionality of the principals has until recently not been considered in detail, and issues of time-inconsistencies and credible commitments have largely remained outside the principal-agent framework (Elgie and Jones, 2000).²⁴ This may disguise the intention of actors and the identification of variation between the preferences of the two actors, and hence the measures of autonomy observed. Apparently autonomous outcomes may derive from leeway that is consciously given by states in the shape of non-decisions, but it may also be the result of the agent's initiative in taking up the opportunity or political space and making decisions despite the preferences of principals.²⁵ Conversely, a certain autonomous output may be the result of anticipation of state preferences or it may be the result of truly independent preference definition by the agent, based on different rank orderings of preferences.²⁶

To compensate this lack of exploration of the purposiveness of actors, the gist of the discussion around agent autonomy turned out to be whether agents were really merely passive or strategic actors (see Wood, 1989: 971), i.e., whether we are in the presence of a mere bureaucracy or a political actor in disguise. Wood questions original P-A assumptions based on the economics of the firm about bureaucrats as passive, lazy actors and calculative only to the extent that they want to avoid work (1989: 971). His findings are challenged by Cook (1989), on the grounds that a degree of independence was implanted on the organisation from the outset and as a design by the principals. Moe points out a criticism to the literature on congressional dominance, that they do not really develop a theory of control. "They never model the goals, strategies, or resources of the bureaucracy itself and have no basis for understanding its capacity to resist or take autonomous

²⁴ On purposiveness of institutional design, see (Koremenos and others, 2001b).

²⁵ On the purposiveness of ambiguity and flexibility in constitutional documents, see (Rodriguez, 1992). For a contestation of the purposiveness in such dynamics, see (Shepsle, 1992).

²⁶ "Both the construction of new regimes and the adjustment of existing arrangements are messy processes. They typically involve hard bargaining, a fact that means that results are apt to take the form of compromises required to allow negotiations to succeed rather than reflecting coherent institutional designs." (Young, 1999: 47).

action." (1997: 465). Ultimately she concedes that there is a double problem in the bureaucratic politics approaches: either they overstate the bureaucratic power by assuming a strategic bureau and a passive legislature, as in Niskanen's theory (Niskanen, 1971), or they overstate legislative power by assuming a strategic legislature and a passive bureau, as in the congressional dominance theorists (Moe, 1997: 466). As will be seen in the present study, organisational goals are not always limited to task expansion and budget maximisation (Dolan, 2002). There are substantive aspects that may curtail an organisation's wishes for further expansion. It is therefore important to establish clearly what it is that the organisation is striving for and how it comes about the definition of such preference.

The theoretical explanations for organisational autonomy should be related to the specific type of principal-agent problem identified and not to a general (traditional P-A problem). As mentioned above it is a framework that requires theoretical specification and different analytical frameworks can be combined in a single theoretical model.

1.4. Theorising on organisational autonomy

Principal-agent analysis is a useful analytical framework to determine the precise nature of a principal's control and an agent's freedom of manoeuvre. However, as Sweet and Caporaso put it, the P-A framework is just a framework, not an explanatory theory that provides precise expectations about specific outcomes (1998: 94). Such expectations have to be derived from the relevant theoretical framework. Because of the academic origins of the P-A approach, much of its specification is predominantly generated in rational-choice terms, whether implicitly or explicitly, but it can be used to provide broader insights if combined with other theoretical propositions. Pierson and Skocpol have argued for the application of the historical institutionalist research objective to P-A analysis (Pierson and Skocpol, 2002). In the present case, rational-choice institutionalism will be complemented with historical institutionalism in order to derive expectations for variation in organisational autonomy. In other words, the analytical model will use theories that provide inputs on both core dimensions of the P-A framework mentioned earlier: changes in hierarchical relations and adjustment to change in the international environment. This combined approach introduces a historical institutionalist research objective in the P-A analysis, aimed at analysing the relations between actors in a macro-context that hypothesises about the combined effects of institutions and processes (Pierson and Skocpol, 2002: 696), agency and

structure.²⁷ The overall goal is to cross the boundary between rational-choice and historical institutionalism as well as joining a static, structural explanation with a more dynamic, process-based justification for variation in organisational autonomy.²⁸

1.4.1. Rational actor model: agent managing multiple principals

As seen in this chapter, principal-agent analysis is mostly framed within a rational-choice context. The rational-choice approach rests on a number of assumptions, which have been outlined and discussed above: the unitary actor with clear, transitive and fixed preferences. According to Snidal, these assumptions may be relaxed as long as it is done in a systematic manner in order to address the problem of change (Snidal, 2002: 74). "Rational choice might seem ineffective for studying change. The concept of equilibrium is inherently static since it is defined as the absence of any tendency to change. [...] The actual dynamic and time path are not described, but bracketed under the assumption that actors adjust to a new equilibrium as it emerges." (Snidal, 2002: 82-83). What arises in this research is how effectively actors readjust their preferences when faced with change. Even if we assume that the actors follow instrumental fixed goals, the change in the environment also introduces conflicting substantive goals. This has implications for actor preference ordering and coordination between actors, in particular in situations of multiple principals with contrasting instrumental and substantive preferences.

Neo-liberal institutionalism explains continued international co-operation and its effects, not lack of it or disagreement among states. The result of co-operation among states is assumed as providing clear policy outputs that give directions to IGOs. Rational-choice institutionalism, in turn, provides a consideration of the effects of principal divergence - or at least non-convergence - on organisational behaviour. However, unlike neo-liberal institutionalism, rational-choice institutionalism attributes a strong value to organisations as purposive actors, embodying their own set of preferences. Hence, organisations are seen as actors with goals, just like individuals (Nicholson, 1998: 82). Rational choice institutionalism has also provided explanations of how institutions matter and where they come from (Miller, 2000: 535).

²⁷ A major difference between historical institutionalism and rational choice institutionalism is on the issue of preference formation: "While rational choice deals with preferences at the level of assumptions, historical institutionalists take the question of how individuals and groups define their self-interest as problematical." (Steinmo and others, 1992: 8).

²⁸ For more on the interaction between static and dynamic elements in understanding world politics, see Sinclair's account of Robert Cox's research programme (Sinclair, 1996: 8).

This research will explore in particular situations where the lack of convergence of states' preferences, or the spread of policy positions among states leads to windows of opportunity for organisational leeway that the leadership of the organisation effectively exploits. The absence of clear policy positions on the part of states opens up this window, which is actively exploited: "It is precisely the inability to formulate interests on the part of policymakers that akes entrepreneurs rationalists in their narrow pursuit of their pet proposal, but meaning suppliers and identity providers in their coupling efforts." (Zahariadis, 2003: 22). Among the mechanisms pointed out by public choice literature for explaining agent autonomy is the multiple principal and multiple complexity of the organisations, in particular international ones. As Scott notes, "complexity and conflict in any situation open up possibilities for discretion and strategic behavior by actors, both individuals and organizations." (Scott, 1994: 75). Complexity and conflict creates circumstances of ill-defined outputs, i.e., the guidelines concerning the preferences of states become blurred and sometimes even conflicting. This explanation relies on the argument of loss of control by states (leeway) but by itself does not say much about what the agent does with such leeway or what happens to it in the long run, since principals don't necessarily disagree on a permanent basis. Leeway reflects a change in the hierarchical relation of control and organisational decisions start being made in areas where delegation has not formally occurred.

Organisations with multiple principals

IGOs typically have a multiplicity of principals, which are those states that have a stake in the particular area of activity of the organisation. In particular foreign aid organisations are characterised by the existence of multiple principals with differing objectives that "...may delegate an unclear or even inconsistent set of instructions to an official aid agency." (Martens, 2002: 12). Many principal-agent approaches treat principals as a unitary actor, but some approaches explicitly explore the impact of multiple-principal arrangements on control (Moe, 1984), and consequently on agent behaviour and leeway, which provides increasingly fertile ground for research.²⁹ As Archer notes, "Once life has been breathed into an intergovernmental organization and once it has started to build up a bureaucracy, a modus operandi, and a role not totally dependent on the acceptance of its every act by all its membership, then it becomes politically more difficult for a member state effectively to stop that IGO's activities [...] This

²⁹ Kassim and Menon (2003: 134) conclude that P-A approaches have so far not explored conveniently the issue of multiple principals and principal drift.

gives organizations with a wide range of members and activities and well-developed central services a certain degree of autonomy in their actions." (Archer, 1992: 150).

The present research will focus on the independent influence of the dynamics among multiple principals as explanatory grounds for organisational leeway. These are in turn related to the nature of the output as being ill-defined, or contrasting, respectively. Both ill-defined and contrasting outputs may have a negative or a positive impact on the agent's performance: while both may enhance agent autonomy, contrasting outputs may also provide contradictory inputs or guidance to such an extent as to render agent performance inefficient and block decisions. That is why it is important to see what the agent does with the leeway that emerges out of such multiplicity and incoherence in the shape of ill-defined outputs and conflicting outputs.

Ill-defined output

Frey points out that international bureaucracies tendentially have more room for discretionary behaviour than national ones due to the distance from voters (Frey, 1997: 119). He calls this *ill-defined output*, from where we can infer a number of implications linked to the existence of unclear or contradictory guidelines (see also DiMaggio and Powell, 1991). Another reason pointed out in the literature for a large leeway granted IGOs is the immeasurableness of their output and therewith efficiency. It is difficult to evaluate the effectiveness of IGOs, many of which undertake different and not very specified activities, such as the pursuit of world peace, the promotion of economic development or the achievement of justice. It is difficult to "consistently define what aggregate output is", particularly so when states have different preferences (Frey, 1997: 119). Hence a condition for evaluation of output is that member state preferences are sufficiently similar both in the instructions provided and in the evaluation criteria. A lack of agreement on what policy direction or instructions to give to the organisation leads to less specific guidelines and more organisational leeway.

Contrasting outputs

The different principals that delegate authority and exercise some sort of oversight over the organisation's activities have also different and often conflicting preferences and priorities. Hence, in situations where multiple principals have multiple preferences, the organisation has to manage the different policy outputs that are provided. This creates difficulties but also creates

opportunities: the fact that there are many principals limits the capacity of such principals to exercise direct oversight. Further, since different or even contrasting outputs are predominantly the result of bilateral situations rather than of multilateral agreement, the implementation of guidelines or expressions of preference in such situations is less exposed to control or sanctions. Several studies have focused on this multiplicity, identifying different groups of principals and different levels of influence. Wood and Waterman (1993) provide insights on the dynamics of political-bureaucratic organisation, incorporating complexity of bureaucracies that are constantly adapting to concurrent, multiple and diverse stimuli provided by states.³⁰ They conclude that the bureaucracy provides a larger and quicker response to those actors whose preferences were closest to its preferences (1993: 524). While these distinctions are not a specific focus of this research they will be present in the description of the evolution and in the analysis of the role of different states' preferences in chapter six.

However, the impact of multiple principals on agent behaviour is not consensual: while some studies conclude that such multiplicity favours increased leeway from the organisation and that the bureaucracy is effectively able to exploit the divergence (Wilson, 1989: 237), others argue the contrary. Cook, for example, argues that the fact that Congress is not a unitary actor is a source of added control over the agency from specific committees (1989: 986). The logic behind Cook's argumentation is that principals should continue to be seen as a unit because it is difficult to separate the independent influences of multiple principals that share means of control over a common agent (Cook, 1989: 968), in the line of the unitary actor assumption already discussed in the context of traditional assumptions present in P-A analyses. However, such difficulty should not be an impediment to effective research and analysis.

A major factor that is proposed in this thesis for explaining organisational leeway is the exploitation of diverging state preferences. However, this applies to long term policy decisions, while for specific decisions a strong preference by one or a limited number of states may represent stronger bilateral pressure that will be very effective if it originated from a donor state.

Purposiveness

³⁰ "Some stimuli are discrete events; some are discrete event processes; and still others are tonal. Responses may be quick, delayed, or distributed through time in a probabilistic fashion. Also, the pattern of bureaucratic response movements offers insight as to the technological, rational, and political factors that throttle bureaucratic responses." (Wood and Waterman, 1993: 523).

The discussion on the purposiveness of the leeway observed results from the instrumentalisation hypothesis in the forced migration literature and organisational anticipation of states' preferences argument in general IGO literature. This line of argumentation claims that autonomy in these conditions is more apparent than real and that lack of state influence does not mean that there is more organisational autonomy. The organisation may anticipate states' preferences: "Agents rationally anticipate the responses of those they represent. The law of anticipated reactions suggests that we cannot infer a lack of political influence from a lack of observed oversight activity." (Martin, 1993: 135). This is linked to another type of argumentation, which is the purposiveness of the lack of policy output. Certain authors identify a purposiveness on the part of states in the unclear policy guidelines and in the discretion given to agents. Discretion "(...) is purposefully granted by politicians to bureaucrats because doing so is the best strategy for achieving desired policy goals. Of course, it is also possible that granting discretion is not a deliberative strategy for achieving policy goals, but rather is an unavoidable consequence of the political and institutional contexts." (Huber and Shipan, 2002: 9). However, these authors do not explore this second possibility in the analytical framework.

One can question whether an ill-defined output is a deliberate non-decision (see Bachrach and Baratz, 1970) in issues of low salience extracting little interest, or the result of an incapacity of states to produce solid policy preferences. Here at stake is the distinction between the rationality assumption, where in some approaches, even ambiguity is taken as instrumental rationality, for example as the outcome of the possible compromise (see Rodriguez, 1992).³¹ These conceptions of non-decisions are grounded on public choice assumptions which are "...based on individuals who are rational and essentially selfish, distinguish clearly between preferences and constraints, attribute changes in behaviour to changes in constraints (rather than unobserved changes in preferences), and consider equilibrium situations." (Frey, 1997). They explain some of our phenomena, but not all. This will be assessed concerning the effect of multiple and contrasting preferences on states' capacity to maintain the same level of control over an organisation and provide clear and assertive guidelines for what it should be doing.³²

³¹ On the purposiveness of ambiguity and flexibility in constitutional documents, see (Rodriguez, 1992). For a contestation of the purposiveness of legislators when devising statutes, see (Shepsle, 1992). For more on the impact of design on organisational autonomy, see (Cortell and Peterson, 2003; Huber and Shipan, 2002). Ferejohn and Weingast take the multiplicity of principals as differing legislatures over time. The courts have to decide which interpretation to follow but it largely depends on the position of internal institutions of Congress (1992: 278).

³² On the importance of non-decisions and outcomes without overt conflict, see (Nagel, 1976).

It is therefore necessary to evaluate to what extent the leeway that the agent enjoys is the result of deliberate strategies devised by states under the expectation that the organisation can be instrumentalised into fulfilling their purposes. It is a sort of second assessment that goes beyond the correlations into the process of preference construction and negotiations. It is also necessary to complement such information by analysing what the agent does with such leeway and how consistent the outcome is with its own preferences. Such analytical structure will be developed in chapter two.

While the existence of multiple principals may entail divergences that are exploited by the organisation (Hammond and Knott, 1996), or mere lack of co-ordination, which may be detrimental to it, the convergence of such preferences into clear policy outputs naturally limits the capacity for autonomous behaviour. Clearer instructions and guidelines, more expressions of common priorities, insistence on specific topics are indications that the preferences of the different principals are converging.

1.4.2. Process and agency: agent drift and path-dependence

Why do organisations drift from their original roles, and why do their arrangements become embedded in the social environment and difficult to change? How much determinism and how much agency is explaining institutional continuity and change? These are some of the questions raised in the historical and sociological institutionalism that this research also tries to address.

The idea that organisations once created gain a life of their own (Ness and Brechin, 1988: 270) is grounded on an implicit path-dependent explanation of the evolution of organisations. This means that their routines and structures become embedded in daily activity and lock-in on a specific development path that is then difficult to change (Hollingsworth, 2000). This provides an interesting clue to explain what happens when an organisation is given leeway.

Theoretical approaches to path-dependence are not strictly historical accounts of the world. They derive from debates in economics concerning the effect of returns on market choices (Arthur, 1994). Path-dependence argues that increasing returns or positive feedback from a particular option at an early moment in time has a significant weight in subsequent decisions and will lead

to systematic reproduction of the initial direction of decision-making (North, 1995).³³ The cost of switching from one alternative to another tends to increase markedly over time (Pierson, 2000a). The calculation of returns and of costs of switching between alternatives presupposes a rational capacity to measure those returns and of rationalising the impact of the alternatives. It often happens that the perception of increasing returns deriving from initial agent drift creates a path-dependent evolution that reproduces and accentuates such drift. While reinforcing the original choice made at a critical moment, this can in time perpetuate or systematically reproduce inefficiencies, an effect that is designated as lock-in (Knight and Sened, 1995). This can be translated into the emergence of conflicting goals deriving from an ambiguous relation between the new activities of the agent and the original ones. If all goals can be enforced, then the agent is likely to perceive increasing returns from the evolution and keep on the same path and even if lock-in occurs it does not necessarily generate inefficiencies (hence, a functional adjustment). If the goals conflict, then the nature of the returns for the agent from the specific chosen path are likely to start decreasing. However, the lock-in itself tends to generate an “attention allocation problem”, reflected in the capacity to buffer inconsistent demands from each other to hide internal inconsistencies (March, 1988: 8).³⁴ This problem will perpetuate lock-in even when it becomes dysfunctional by pitching organisational goals against each other, in particular if there is a measure of ambiguity in the relation between goals. When the agent is able to acknowledge the internal inconsistencies in its development, the nature of returns may be perceived as decreasing. Part of the problem is on how the agent can – in situations where it has autonomy for decision-making – account for the nature of the returns from an initial choice. As seen above, the costs of switching later are enormous, and the tendency to remain on a certain path is reinforced by the difficulties in acknowledging the problem.

The possibility of breaking this path and its effectiveness are now starting to be discussed. This section will take up the exploratory work that has been done by Crouch and Farrell (2002) on path-dependence. Their approach takes up path-dependence as basic model for explaining institutional change but introduces agency in explaining the breaking of a path-dependent process of organisational change, thus combining a dynamic analysis of process and agency. These authors propose a model based on the interaction between the decision-maker and its

³³ The initial factor endowments that set evolution on a specific path have the same effect of reproducing the advantages derived from those initial conditions (Sokoloff and Engerman, 2000).

³⁴ The aid policy area is prone to producing enormous conflicts of objectives and difficulties in task allocation among agencies, not only due to the interplay of instrumental and humanitarian concerns in donors aid policies, but also due to bureaucratic difficulties in the coordination of efforts and multiple task development (see Seabright, 2002).

environment, trying to focus on elements of institutional change rather than continuity and determinism, which is the tendency in path-dependence literature. They suggest three conditions for institutional break from path-dependence as response to changed circumstances, instead of the dysfunctional repetition of inappropriate paths of decision-making. What Crouch and Farrell explore is the possibility of introducing agency in the analysis and modelling the conditions under which the leadership of the organisation will be able to break the path and turn the direction of decision-making ("lock-out"), including the consideration of external constraints: "While power relations do not figure in path dependence as such, they may create external constraints that affect actors' ability to choose between paths." (Crouch and others, 2002: 3). Pierson (2000b) underlines the limitations on functional readjustment in real terms, arguing that the stickiness of a path-dependent historical development is too strong to enable effective reversal of choices.

In this research I will introduce these elements, which implies a combination of agency and structure. The challenge in bridging sociological and historical institutionalism is in the agency problem. Agency theory is rather a rational approach, and difficult to match with the determinism of the historical approaches. An important question to be addressed in the present research is what is the agency or autonomous capacity of the bureaucracy as compared to the determinism of its evolution. This is why I propose the combination of the rational-choice model on agent managing multiple principals and secondly address agent interaction with its own historical development. The rational dimension explains how leeway arises (external constraints) and the historical one shows how the evolution of the preferences and of the choices made determines present and future outcomes. This happens when such choices crystallise the effects of initial choices and repeat them in a scale of increasing or decreasing returns rather independently from states. This pattern can be broken by the choice of a leader in circumstances where the calculus of return of a continuation of the same path leads to decreasing returns and there is leeway or political space for taking such crucial decision to break the path, which in this case was to halt further organisational expansion.

1.5. Conclusion

The overview of the literature on the work of the UNHCR shows that existing approaches provide expectations that are not observed in practice: the organisation would be expected to obtain a full mandate for IDPs according to the assumed preferences of states and according to assumed organisational preferences of functional task expansion. The contrasting empirical observation

poses challenges in theoretical but also in empirical terms since it represents an apparent contradiction of what has been the evolutionary trend of the UNHCR, as will be seen in the second and subsequent chapters. Hence the need for more adequate and sophisticated analytical frameworks that explore in depth the dynamics of the relation between principals and agents as well as the preference formation process of the actors involved. This will enable the establishment of the conditions under which some expectations hold more than others.

It is the goal of the present research to scrutinise in more detail the claims of existing approaches to UNHCR decision-making as well as to assess the conditions under which they hold. In this manner it will also contribute to provide analytical strength to such assessments and complement with other analytical tools to address the unexplained or unclear variation. This complementarity is an explicit goal of historical institutionalist approaches (see Pierson and Skocpol, 2002: 698). Taking different analytical approaches does not mean that the conclusions are ultimately radically contrasting. But they have the advantage of improving analysis and being more specific about the dynamics of influence and locus of responsibility for decision-making within IGOs.

The theoretical interest in this research is to find a way to bridge the different contributions in new-institutionalism in a way that would give it an empirical use consistent with systematic calls for bridging such contributions (Hall and Taylor, 1996). The use of the P-A framework is justified in terms of the possibility of explaining variation in organisational autonomy on the basis of a combination of independent variables that derive from different theoretical traditions.

Where can we find theories that provide specific expectations for this type of case? Within the P-A context there is the argument of multiple principals, which focuses on factors that inhibit states' capacity to control policy directions because of diverging preferences. This is linked to the hierarchical dimension of the P-A relation. This can be seen as a predominant perspective but it is not enough to explain the observed variation in organisational autonomy, or what explains outcomes in situations where states don't have converging preferences and what the organisation does with the leeway. To address this gap, historical institutionalism proposes the path-dependence framework to explain the historical evolution of the organisation, including instances of more and less autonomy for choosing among policy options, created by its own past decisions. It also shapes preference evolution to explain the particular unexpected pattern of choices observed in the context of IDP policy.

This research hopes to go beyond normative perspectives about the work of IGOs in general and the UNHCR in particular and contribute to improve research on the increasing importance of IGOs in a globalising world. It also hopes to provide some insights on the consequences and reversibility or not of such pattern, including issues of legitimacy and relocation of authority.

Chapter 2. Analytical framework: Explaining UNHCR autonomy

Taking inputs from the theoretical discussions outlined in chapter one and retaining the main objective of explaining observed autonomy of the UNHCR in determining its role and mandate, I will in this chapter propose a structure for the analysis of institutional change as reflected in the evolution of the work of the UNHCR. The analysis will be driven by the goal of explaining organisational leeway and by that of understanding the specific circumstances, dynamics and constraints that determine more or less autonomous policy outputs. Since this is a case study that seeks to explain why an international organisation has authority for defining its own mandate in certain issue-areas, the analytical framework will first seek regularities and variation in the chronological analysis of the evolution of the UNHCR's role and mandate, and secondarily explore the cumulative process that contributes in a complementary way to account for the observed outcomes. Together with a clarification of the concept of autonomy and the ways available to assess it, this chapter will frame the scope of the conclusions to be drawn from this research.

I will delimit the object of analysis by providing an overview of the decision-making process in the UNHCR, thus defining the areas where the agreed structure of decision leaves more space for executive staff influence and those where states have more competence. Such overview will be based on a distinction between structural and contextual conditions for decision-making. The structural ones are the formal decision-making mechanisms agreed constitutionally, and the contextual ones are the ways in which formal structures interact to determine policy outputs and the direction of change. These will constitute the explanatory propositions suggested in the analytical model. Two explanatory factors are taken from relevant literature explored in the previous chapter: the spread of states' policy preferences, and organisational adjustment to change in the environment. A framework is proposed for bridging the explanatory variables into one analytical process that combines qualitative bivariate analysis and historical analysis: distribution of state preferences and the cumulative implications of organisational adjustment to change.

I will also propose a third dimension of the analysis that will suggest preliminary exploration around single state preference formation. This will draw attention to some omissions in the

principal-agent framework that should be carefully looked into and refined. This will be an important feature of the research that will raise new questions and suggest some initial explanations for alternative forms of argumentation that can be developed in future research. Finally the chapter will justify the case selection and reflect on the methodologies employed.

2.1. Dimensions of autonomy and control in decision-making

In this research three essential ways of assessing autonomy are considered. One is linked to the hierarchical dimension and framed essentially within the context of the relation between principals and agents, another one is linked to the general capacity of the agent to choose between policy options, finally there are substantive dimensions of the work of the organisation that imply a degree of autonomy.

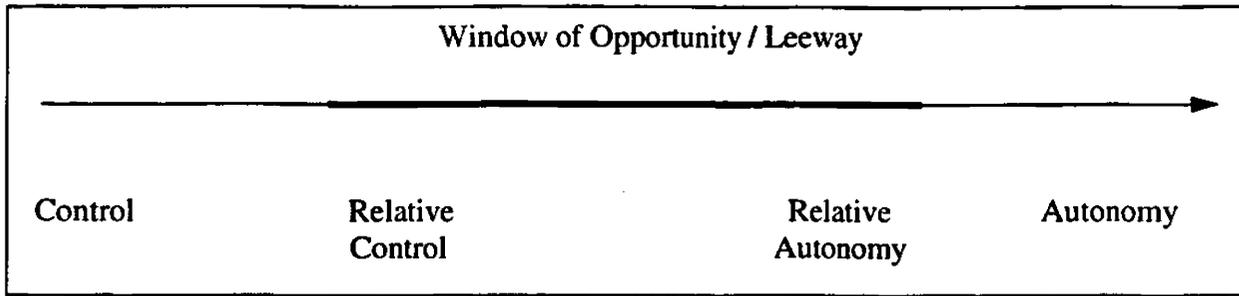
In this section I will follow-up on the discussion about the use of the P-A framework in order to delimit what is understood by the concept of autonomy and its opposite concept, control.³⁵ The discussion on the different types of P-A problem showed how autonomy should not be assessed solely on the basis of observable contrasting preferences between the principal and the agent. There are other forms of autonomy that are less compelling but more deep-rooted and also important to be explained: those that do not depend so directly on the hierarchical relation of power and control but on the normal functioning of the organisation.

2.1.1. Type of P-A problem and nature of conflict of preferences

IGO decision-making is here conceived in terms of a continuum of autonomy that ranges from strong control by states, to relative control, relative autonomy of the organisation and finally strong autonomy (see figure 1). This scale derives from the assessment of the P-A relation, based on the observable disjuncture of preferences between principals and agents, as traditionally assessed in P-A approaches.

³⁵ For a functionalist account of variation in autonomy and control using rational-choice institutionalism and P-A theory, see (Tallberg, 2000).

Figure 1 – IGO decision-making



The points on the edges of the continuum, defined as “strong” control and autonomy, should be analysed within the framework of classical P-A analysis, based on the observation of a clear conflict of preferences with a resulting policy output pending towards the observed preferences of states (strong control), or towards the observed preferences of the organisation (strong autonomy). The points in the middle of the continuum should be analysed in terms of mutual drift of principals and agents, where a clear situation of conflict is not observable because both actors drift in their preferences from the original situation but where the policy output is the result of an underlying preference definition process independent from states (relative autonomy) or with apparent leeway but anticipating states’ preferences (relative control).

Table 2 – Assessments of autonomy

Degree of autonomy/control	Method of assessment	
	Autonomy	Control
Strong	Disjuncture of observable preferences between principal and agent and match between policy output and organisational preferences	Disjuncture of observable preferences between principal and agent and match between policy output and state preferences
Relative	Process-tracing for determination of nature of preference definition. Independent preferences shaped by internal conditions (organisational structure and historical evolution)	Process-tracing for determination of nature of preference definition. Anticipation of preferences of certain principals, contrary to some of the organisation’s preferences, but not formally imposed.

Strong autonomy/control

Strong autonomy is here understood as a situation in which there is a conflict between IGO policies and states' declared policy preferences, and where there is a substantial significance of the concessions made (see Reinalda and Verbeek, 1998). By contrast, situations of control would be observed when in the face of principal preference drift these would force the organisation to change its policy, or conversely, when the organisation would drift and the states would exert control to return it back to the original role, which is the case in much of P-A analysis.

Political science treats control as a decision-making relation of hierarchy and power, assessed in terms of the capacity of one actor to exert determinant pressure over the other in order to make him change its contrary preferences. According to Bachrach and Baratz, "...the successful exercise of power is dependent upon the relative importance of conflicting values *in the mind of the recipient* in the power relationship." (Bachrach and Baratz, 1970: 19). Hence the measure of autonomy or control is the distance between the preferences of the two actors. It involves an element of rationality and the capacity for choosing among alternatives, with reference to some goal (Allison, 1999: 16). However, Bachrach and Baratz identify other measures of the decision-making relation which do not involve clearly contrasting preferences: these authors argue that it is difficult to make such distinction when the actor complying has multiple or confused reasons for doing so and cannot clearly tell whether he is complying due to the fear of threat of sanction or by consideration and deference to the actor seeking compliance (Bachrach and Baratz, 1970: 31). Implicit in this idea is the argument of anticipation of preferences. It is my goal to assess in some detail what are the multiple motivations of the UNHCR and how these interact to form policy outputs.

The main analytical problem in P-A analysis is to determine and explain an agent's leeway. By assessing agent autonomy based on the conflict of interest between principals and agents, the P-A approach requires a priori specification of what IGOs and states want because the principal-agent dynamics are fuelled such disjuncture of preferences (Barnett and Finnemore, 1999). However, it is difficult to analyse a process where positions change and is not made of one or a limited number of specific points in time or observations. Agent and principal may converge and diverge at different points, on different issues and levels, and with differing intensity. This has implications for the broader scope of institutional change. Further, agent activity may itself lead to change in principal preference. Hence, absence of clear contrast of preferences between the two

actors is no reason not to study puzzling and relevant situations where forms of autonomy are observed, although more subtle.

Principal-agent approaches implicitly derive their assessment of autonomy from these conceptions and measure it in terms of the distance between the stated preferences of principals and the preferences of the agents, when available, and the observed output to determine whether it corresponds to the preferences of the agent or of the principals. Very often, however, only the preferences of either agents or principals are analysed, and the output is considered as corresponding to one actor's preferences, without reflecting on the extent to which they may really diverge or not from the preferences of the other actor. Hence, as seen in the previous chapter, preferences are treated by assumption and not adequately problematised. This risks the arrival at artificial conclusions without controlling for the phenomenon of anticipation of preferences, or other independent factors through the analysis of the preference definition process.

Autonomy has been assessed in terms of agent compliance with principals' instructions (Noll and Weingast, 1991; Torenvlied, 1996). The opposite of compliance will be shirking, which is likely to happen in situations where agents' policy preferences diverge from those of their principals – the “goal conflict hypothesis” (Héritier, 2002: 1010). However, in this case what is at stake is not whether the agency complies but whether it chooses its direction without or regardless of states' instructions.

Relative autonomy/control

The importance of the specification of the different dimensions of the P-A problem and the differentiated nature of autonomy lies in the possible explanations to be provided: while it is possible to explain absolute control or autonomy through the assessment of the contrast of preferences between states and organisations alone, it is not possible to explain relative autonomy or control without incorporating the analysis of the process through which preferences are defined or coordinated. It requires the incorporation of other dimensions that help explain the variation between relative control and relative autonomy. This means that assessment is still possible in situations of unclear preferences or inconsistent policy position – ill-defined and contrasting inputs. These two should be combined and interlinked.

As Nicholson puts it, "one does not need to be a deterministic believer in the structural properties of systems to recognize that autonomy is never total. There are constraints on any actor even in flexible systems. The question is how much constraint, and to what degree this is hierarchic (...)" (1998: 87). Sweet and Sandholtz also identify a distinction between relative but meaningful autonomy, which is observed when supranational organisations are the source of successful policy innovation, from substantial autonomy, which is observed when institutions are able to innovate, in policy-relevant ways, at times even in the face of member-state indifference or hostility (Sweet and Sandholtz, 1998: 10). Taking such consideration into account, the present research ultimately will contribute for determining the conditions of relative autonomy, while controlling also for alternative assessments that identify relative control in the relation between UNHCR and states, for example the anticipation of preferences.

Autonomy as choice implies the capacity of the organisation to make decisions regardless of the pressure of states on the areas that are part of its mandate. Because preferences are in the context of this research not assumed as given and fixed, it is necessary to trace the process by which the preference outputs are formed and see how they input into the considerations of both actors in the P-A relation. The present research takes this as a starting point, and complements the identification of autonomy through specific indicators that reflect a longer-term perspective than the isolated decision-making observation. In many policy-making situations within an IGO, the preferences of principals and agents may not be openly conflicting but the outcomes may still hide an important measure of autonomy: this happens when the outcome apparently goes in the same direction of states' preferences and the organisation is assumed to bow to those preferences or anticipate them. This distinction is clarified through the specification of autonomy in terms of absolute and relative autonomy, which very often is disregarded in principal-agent analyses. The traditional P-A assessment of autonomy in terms of the conflict of preferences between the two actors should be complemented by other means and methods. The analytical structure based on the complementary explanations provides added strength to show that states are not the only variable to account for policy outcomes.

2.1.2. Range of policy options

Autonomy can be conceived in terms of the degree of independence of choice, where only the agent is an explanatory factor for decisions or policy options. In that sense it is defined as "...(t)he extent to which the institution can alter its own rules rather than relying entirely on outside agents

to do so." (Keohane, 1989: 5). According to Reinalda and Verbeek, (1998: 3), "...one can speak of an international organization's autonomy if international policy cannot be explained simply as a compromise between its most important member states.". The pursuit on an ongoing basis of a politically relevant agenda is according to Sweet and Sandholtz (1998: 10) another indicator of autonomy.

Bearing in mind the considerations above concerning the definition and assessment of autonomy, I will adopt the following definition: autonomy is measured by the range of policy options that the agent can effectively choose, thus defining the direction of change. Policy options are understood to be areas of systematic decision-making that on occasion may constitute alternative paths of policy direction (seen as a succession of decision instances with distinctive coherence) and overall reflect institutional change or stickiness. The assessment of autonomy is made by the analysis of the number and quality of policy areas where the organisation has decision-making authority available and it can actually implement its own preferences. This formulation is linked to the existence of policy dilemmas on which decisions have to be made and which will be developed below.

At the outset the organisation is given a degree of autonomy in the sense that certain decision-making authority is delegated on it to pursue the functions specified in the constitutional document. With the evolution of the work of the organisation these functions may take on different directions that imply new sorts of decisional acts and more decision-making authority over other issue-areas and hence more policy autonomy. External factors may also determine that such autonomy ebbs. This may be particularly the case when certain decision areas collide with existing ones preventing the organisation from performing its functions in those areas.

Bearing in mind that this organisation has as specific functions a rule-supervisory function that is in principle rather independent from states, it is important to distinguish the original nature of autonomy, i.e., the autonomy that derives from the original competences attributed to it, from the autonomy developed as a consequence of the activities undertaken by the organisation. The goal here is to explain how this range of policy options has expanded or contracted over the years and what was the relative influence of states and organisational process in this development. However, this does not exhaust the analysis of autonomy. The organisation also has to manage substantive dimensions of autonomy, some of which have been enshrined in its constitutional

document, others have developed over throughout its activity and which underlie the organisation's capacity to pursue its goals

2.1.3. Substantive dimensions of autonomy

As an agent, an IGO has an inherent degree of autonomy for decision-making on behalf of the states that have delegated competences on it. However, such autonomy may assume different dimensions that may have contradictory implications for the capacity of the organisation to pursue its goals and its autonomy.

Three main elements are seen as substantive dimensions of UNHCR autonomy: relevance, authority and independence. However, given the specific dilemmas that emerge out of the work of the organisation these can have contrasting effects on autonomy. Hence, organisational relevance – deriving from expertise and capabilities –, is a dimension of the organisation's activities that may provide increased autonomy of the organisation in the sense of giving it more leeway for pursuing policy options to fulfil its goals. At the same time the activities it develops to become or retain relevance may leave it in the hands of its principals and vulnerable to manipulation on their part and lose independence. An important element in understanding the relation between principals and agents is in the leadership's management of these potential or actual contradictions. Such relevance may be in contrast with the organisation's authority as a rule-supervisory entity that has a degree of oversight power over states themselves. The management that the organisation is able to make of these different dimensions of autonomy, is deeply related to the variation in the range of policy options available to the organisation and vary together. Relevance may also lead the organisation to expand and become involved in more issue-areas that may compromise its independence for decision-making regardless of political considerations or pressures.

2.2. *The decision-making process in the UNHCR*

The empirical object of this research is the evolution of the role and mandate of the UNHCR. The process through which both are defined is manifold and in this research these two dimensions are understood as corresponding to two distinct but closely interlinked decision-making structures:

the role is an informal and relatively flexible dimension that refers to the organisation's activities in practice, while the mandate is as a rule defined through a formal process of decision-making and refers to groups of concern to the organisation and formal competencies and responsibilities to pursue the principles in the mandate. I will here briefly address the basic structure of definition of these two central dimensions that characterise the nature of the UNHCR. Within these, specific areas of decision will be singled out as object of compared analysis across chronological clusters. An overview will follow of the types of decisions that are made in the organisation. The different dimensions of influence that form the core structure of decision-making mentioned above will be the object of the last part of this section. This description enables a preliminary characterisation of the functioning and major constraints inherent to the UNHCR that will then be analysed and assessed in view of the explanatory elements for the autonomy and direction of change.

2.2.1. The role and the mandate

It is here convenient to make and justify the distinction between role and mandate of the organisation. While the mandate refers to the categories of populations of concern and functions formally included in the organisation's competences, the role is understood as the range of activities performed in order to achieve the objectives in the mandate, but not formally specified as competencies of the organisation.

Mandate

The UNHCR's mandate defines the categories or groups of persons to whom the agency provides its services. The basic instruments defining the mandate are the Statute of the Office of the UNHCR, and General Assembly resolutions. While the Statute is a fixed instrument that defines the High Commissioner's competence, the General Assembly resolutions are foreseen as a more flexible mechanism that would allow for some degree of adaptation to the reality and to objective needs. In the present case, authority has been delegated on the UNHCR for international protection of refugees and supervision of the 1951 Refugee Convention. Ulterior acts of delegation through GA resolutions have legitimised the organisation's expansion of activities to new areas of increasing material and emergency assistance, reintegration and even development. This will be important in order to analyse the original and subsequent sources of delegation over the years.

In this context, Türk (Tuerk, 1999: 155) refers two types of General Assembly resolutions adopted every year. The first kind is designated "omnibus" resolutions and refers to UNHCR in general, to its reports and to general developments in the area of forced displacement, and the second kind is referred to as the "situational" resolutions, which are country or region-specific. He concludes from the analysis of these resolutions that activities that are originally outside UNHCR's mandate, are later integrated into the omnibus resolution, thus becoming incorporated in the mandated activities. The extent to which the omnibus resolutions of the GA actually change the UNHCR's mandate has been subject of debate since it is not clear whether they are mandatory mechanisms or simply recommendatory. Türk (Tuerk, 1999: 155) and Barutciski (Barutciski, 1996: 55) argue that they are mandatory, while (Gilbert, 1998: 355) argues that although they may reflect international customary law, on their own they have no binding force in international law and are solely recommendatory. According to Holborn, these resolutions must be read together with the Statute if the full breath of the High Commissioner's present authority and the full scope of his responsibilities is to be understood (1975: 91).

The crucial puzzle of this research is that although certain GA resolutions have expressed approval for UNHCR activities with IDPs the issue-area has not been formally incorporated in the mandate, since decision-making is still made on the basis of organisational criteria on a case-by-case basis. Further, it is noted that the organisation itself is defining its policy direction in the area, despite repeated attempts by some states to make it formally responsible for the issue-area. UNHCR activity in the area of IDPs is hence *sui generis*, since the organisation does not have a full responsibility for the assistance and protection of such groups. The nature of the mandate of the UNHCR for IDPs is rather *ad hoc*. This justifies the specific interest in stepping into the black box of organisational decision-making for this issue-area that will be the subject of chapter six. It is also observed that in other areas of the mandate the UNHCR has partly lost authority or capacity for making independent decisions, in particular concerning rule-supervision. The question then is, what explains this variation in the range of the organisation's policy options?

Role

Concerning the role of the organisation, it is characterised by a less formal determination, although some of the decisions emanate from states' guidelines. As in Cox and Jacobson (1973: 3), decision-making is here conceived as a variety of forms of collective action, including not only formal decisions that are determined by states, but also decisions by bureaucratic authorities

and definitions of policies by executive heads. The set of decision-making instances that in everyday practice define the organisation's role also contributed to shaping its policy direction.

In sum, it can be broadly considered that there are policy decisions, based on the role and defined on a more informal level, and there are decisions based on the mandate, more strictly adjusted to the boundaries defined in the constitutional document (more legal and less political dimension as far as the organisation itself is concerned). This includes programming and other decisions.

Areas of decisions and policy-making

For analytical reasons, the role and mandate of the UNHCR will be divided into areas of decisions. Four main areas of decisions have been found that are defined at the level of the role and mandate (note that these are not in themselves decisions, but areas of decision-making, which will then be more or less autonomous):

- **Groups of concern:** an increase in the range of groups of concern means more responsibility and autonomy for decision-making with new populations, as long as it is not contradictory with the work for other populations of concern (in which case involvement would curtail some policy options among the core ones, which weigh more than newly acquired ones)
- **Geographical scope:** more autonomy, relevance and influence with local authorities for decision-making in new regions as long as there are resources to cover operations.
- **Solutions – the dilemma** is which of these is preferred at different moments, which makes a paradigm that dominates the approach to solutions in the UNHCR. There is autonomy when it can freely choose or implement either solution effectively.
 - Voluntary repatriation
 - Local integration
 - Resettlement
- **Activities – concerns** the complementarity and compatibility between international assistance and protection, and the operational versus legal nature of the organisation's activities. The availability of combining the two dyads as appropriate without pressures for emphasising one rather the other is the expression of autonomy.

Each of these categories constitutes indicators of more or less autonomous role and mandate, depending on the performance of the organisation in the different periods.

2.2.2. Types of decisions

Each area of decision implies the existence of different types of decisions, depending on the effects that they produce on the organisation's work. A distinction should first be made concerning the range of implications of the decision process. Hence, I conceive the decisional outputs of the organisation to be divided into specific decisions related to specific case situations, such as programming decisions, decisions on involvement, etc, - corresponding to the issues covered in situational GA resolutions - and on the other hand, longer term decisions related to the definition of the general policy directions of the organisation - corresponding to the issues covered in omnibus GA resolutions. For analytical reasons I will specify a distinction between policy-making and decision-making, whereby policy-making is the sum of different decision-making instances in a given issue-area (Cox and Jacobson, 1973: 1). The different decision-making instances make up the policy in a given issue-area and together can be designated policy-making. Such policy-making process is characterised by more or less stable and changing elements: there are structural decision-making rules and distributions of influence among the actors that determine the expected outcomes of influence for particular types of decisions, which are described in this section. However, those distributions are affected by factors that arise in the course of the multiple decision-making instances that derive from the work of an IGO (internal) and also as a result of changes in the environment where that IGO works (external). These interact in ways that are hypothesised in this chapter and provide the core analytical model that will be assessed in this research.

Cox and Jacobson (1973: 9) propose a taxonomy of seven decisions in IGOs: representational decisions, symbolic decisions, boundary decisions, programmatic decisions, rule-creating, rule-supervisory and operational decisions. Representational decisions refer to decisions on the membership of the organisation, but also the selection of the executive head, where the bureaucracy has little influence. Apart from this, most other decisions involve inputs from state representatives and from the staff and the relative influence of each in the decision process varies. In the case of the UNHCR, typically, symbolic, rule-supervisory and operational decisions are more determined by the organisation (although sometimes states have a strong say in them as

well), while states have tendentially more influence in boundary (with strong inputs also from the Secretary-General); programmatic (related to budgeting and prioritisation according to mandate and guidelines); and rule-creating decisions.

In this case we observe symbolic decisions in the redefinition of goals of the organisation to adjust to changes in the environment and to justify its task expansion including into the IDP issue-area (speeches, notes on international protection...); we observe boundary decisions insofar as the delimitation of competences and co-ordination mechanisms within the humanitarian system are concerned; we observe programmatic decisions insofar as the strategic allocation of resources is decided between the different groups of concern and regions under the UNHCR's mandate; we observe more or less formal rule-creating decisions which articulate widely shared norms of goals with which the organisation is identified (policy papers etc); rule-supervisory decisions are intrinsic part of the work of the UNHCR, as defined in its Statute and can be observed in the IDP area through actions of advocacy for the implementation of the Guiding Principles on Internal Displacement; operational decisions are observed in the case of specific decisions on involvement in new situations, namely IDP crises or complex emergencies.

Although some of these types of decisions may be predominantly associated with specific areas of decision, they are not exclusive. Table 3 summarises the contents of these decisions in the UNHCR:

Table 3 – Dominant aspects of different types of decisions in UNHCR

Type of decision	UNHCR	States Members of ExCom
Representational		Refer to decisions on the membership of the organisation, but also the selection of the executive head.
Symbolic	Designed to test the acceptability of goals or ideologies which may refer to broad issues of international politics or to matters specific to the organisation's field. Don't have immediate effects but may have profound consequences in the long-run for international relations.	Sovereignty concerns; humanitarian intervention; burden-sharing; development aid.
Boundary	Relation with other international and regional structures concerning scopes, co-operation and initiatives from one organisation to provoke activity in another.	Coherence approach among policies of donors vis-à-vis inter-institutional arrangements for humanitarian action

Programmatic	Involves the strategic allocation of the organisation's resources – budgeting process	Funding process within UNHCR and donor priorities
Rule-creating	Define rules or norms bearing upon the substantive scope of the organisation. ExCom conclusions are some, but also the policy papers concerning IDPs where rules are set and criteria defined for determining involvement (which should then be used in operational decisions. Here the distinction with programmatic (it is the organisation that makes the strategic allocation although specific rules may be dictated by excom...elaborate on this)	Definition of international norms (ex. unwillingness to make international agreement on IDPs); re-commitment to fundamental principles (ex. Declaration of States Parties to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, reaffirming support for these two instruments); ExCom Conclusions
Rule-supervisory	Concern the application of international refugee law.	Asylum policies
Operational	Type of resources used; type of material assistance provided; populations targeted; operational partners and implementation of projects	Programmes developed by states' own agencies.

2.2.3. Dimensions of influence

In order to obtain a model for understanding organisational decision-making it is fundamental to consider the internal and external constraints that frame such process. A decision may be constrained by a number of factors, endogenous or exogenous to the agent.³⁶ Although there are diverging positions concerning this assertion, for clarity of argumentation, I will sustain that endogenous factors are related to the internal preference definition process (which includes states and the executive bureaucracy), while external factors are related to the interaction with the other actors involved in a particular decision-making context, as well as with the institutional and historical factors around it. The weight of these external actors will vary and be endogenised in the internal decision-process or be identifiable in the constraint it poses on the enforcement of the chosen option.

The role of states will here be considered in both levels: endogenous and exogenous. Within the same context, Cox and Jacobson (1973) distinguish between the participant sub-system and environmental variables influential in IGO decision-making, placing states both at the internal and external dimension of influence. This specification of dimensions will help delimit the relevance

Moe (1985) distinguishes between exogenous variables and the endogenous core in P-A analysis.

of states as external or internal actors or sources of pressure. There may also be distinctions among the principals.³⁷

2.2.2.1. Internal dimension

At the internal level two main types of actors can be identified in the decision-making process: the UNHCR executive staff structure, including the head of the organisation and the senior management (leadership), and the state representatives that attend the sessions of the governing body, ExCom and other sub-committees of representatives, as part of the participant sub-system.³⁸

According to its Statute, the UNHCR acts under the authority of the GA (§ 1° of the Statute) and follows policy directives given by this organ, in particular the Third Committee and by the Economic and Social Council (ECOSOC) (§ 3° of the Statute).³⁹ An advisory committee composed of states members and non-members of the United Nations was created in 1951, later became UNREF Executive Committee in 1955 and finally became the Executive Committee of the UNHCR (ExCom) in 1959. Starting with 25 member states, it had 64 members in 2004.

The Executive Committee is the governing body of the UNHCR and is supposed to provide policy direction to the organisation. However, the way in which it is organised does not enable significant guidance from the states, which complain that it is not an effective mechanism of control and guidance. Within ExCom several sub-committees have been established over the years to improve the inter-action between states and the bureaucracy. The most recent, the Standing Committee, was created in 1995 and meets three or four times a year.

Besides the official forum of the ExCom there are bilateral meetings between the representatives of the governments and the relevant officers of the organisation that are responsible for the specific areas of concern to the country. There are also contacts at a higher level with the High Commissioner or his representative, the Deputy High Commissioner or the Assistant High

³⁷ This can be translated into the sort of distinction among UNHCR principals between donor countries and countries of origin or even developing host countries (also designated as donors in kind).

³⁸ The organisational structure is complex and has evolved over time to adjust to the increasing needs of the UNHCR. The highest levels of decision-making constitute the Executive Office, comprised by senior staff that works closely with the High Commissioner in defining policies, programming and budgeting, and deciding on specific operations. The Senior Management Committee, composed of the heads of the different departments is also influential.

³⁹ The Fifth Committee also has important oversight functions as part of the general monitoring of the specialised and other bodies of the UN (see for example, Rules of Procedure of the General Assembly of the United Nations (1985) and § 21° of the Statute of the UNHCR).

Commissioner when specific emergencies of concern occur.⁴⁰ In these bilateral meetings specific policy objectives may be pursued more strongly than in the general forum of the Executive Committee or even the Standing Committee. Apart from that there are regular informal briefings to donors on specific operations or programmes, as well as tripartite meetings for the preparation of repatriation operations with the country of origin and the country of asylum.

Insofar as they are a determining feature of the environment of the organisation, states are part of the external dimension of influence on the organisation, and insofar as they contribute to the definition of the organisation's role through guidelines and expressions of preferences, they are part of the internal dimension. Hence we have two types of principals, their status as external or internal principals varying over time depending on their membership of the Executive Committee. External principals have less specific influence but a strong one in general policy decisions that are made in the ECOSOC and GA concerning in particular the mandate and scope of the activities.

Like states, the Secretary-General will also be included in the internal dimension: he constitutionally has the same prerogatives as the GA in the definition of UNHCR policy, and in specific situations may have a determinant position in requesting or refusing UNHCR involvement. His position is normally taken in consultation with the High Commissioner, so he is rather taken as an internal influence along with other parts of the organisation.⁴¹ This research does not focus on the specific influence of the Secretary-General on internal policy-definition, although a few observations will be made concerning the UNHCR's leadership. It should be noted that the Secretary-General may have an important distinct influence in particular in terms of boundary decisions, relevant to the co-ordination of the different specialised agencies working in humanitarian affairs at the UN level. Namely, he has primary role in the structure of the inter-institutional humanitarian system that has in the past years been making significant efforts at improving co-ordination of humanitarian operations (see Newland, 2003).

2.2.2.2. External dimension

⁴⁰ Interview with representative of the government of Portugal (Geneva, 17/11/2000).

⁴¹ See Chapter III of the Statute of the UNHCR.

Within the external context there are several different actors in some way affecting policy definition. Although these may not have a determinant effect as they have no voting powers, or place in the formal structure of decision-making, they do however provide constraints on the process of preference definition and should be considered for their influence capacities, each with their own particular mechanisms, which will be explored in the course of the research, in particular the other major components of the humanitarian system, and UNHCR's main partners, the implementing NGOs. All these actors have a sort of influence in the decision-making process, both at the level of the leadership of the organisation and directly to states, which as seen above are both part of the internal and external environment. As parts of the external environment these actors implement their own policies on forced migration, which affect the work of the UNHCR.

The international environment has an influence in the definition of the preferences of external actors and of those that have a more direct say in UNHCR decision-making processes. It will therefore be used extensively although not explicitly as a variable for assessment but as an element of context.

2.3. Implications of the theories and framework of analysis

Having defined the dimensions of the object of analysis, I will now turn to the search for lines of explanation to the observed variation in UNHCR autonomy based on the theoretical contributions that were outlined in chapter one. As seen in the previous section, two main actors integrate the internal box of decision-making: the organisation's staff, the bureaucracy (agent), and the states members of the Executive Committee, represented through diplomats (principals). This makes these two actors the direct bearers of responsibility for policy outcomes. The question is which has predominance and under what conditions.

This research applies to situations where there is a drift in the preferences of both agent and principal, which means that the analytical strategy is only partially guided by insights from traditional P-A accounts. Proposing a mixed approach to the principal-agent problem, this research suggests two interlinked explanations for autonomy: spread of state policy preferences creating leeway; and the process of agent drift managing such leeway. A third dimension of the analysis will focus specifically on the IDP policy area because it presents the core and most challenging dimension of the puzzle and incorporates unfulfilled expectations both at the empirical and theoretical levels. Such exploration will serve both as evidence of the main

arguments proposed for explaining autonomous behaviour and as substantive explanation for policy options that were not expected according to existing accounts of the work of the UNHCR and to the organisation's pattern of evolution. This is why in chapter six I "zoom in" the analysis into one particular issue-area.⁴² This entailed exploring the issue-area in more detail, using process-tracing techniques for validating the data and generating possibilities for refining future theoretical approaches.

2.3.1. Unfulfilled expectations concerning the evolution of UNHCR's role and mandate

As seen in chapter one, there are several interpretations of the work of the UNHCR that fit specific IR theoretical approaches and which suggest expectations concerning the evolution of the work of the organisation. However, looking at specific issue-areas of the organisation and in particular to the fact that it has been making autonomous decisions over areas of its mandate, some of the expectations in the literature are not fulfilled. What this section does is to identify these different aspects in order to better shape the empirical and theoretical dimensions of the puzzle that was briefly outlined in the introduction to this dissertation.

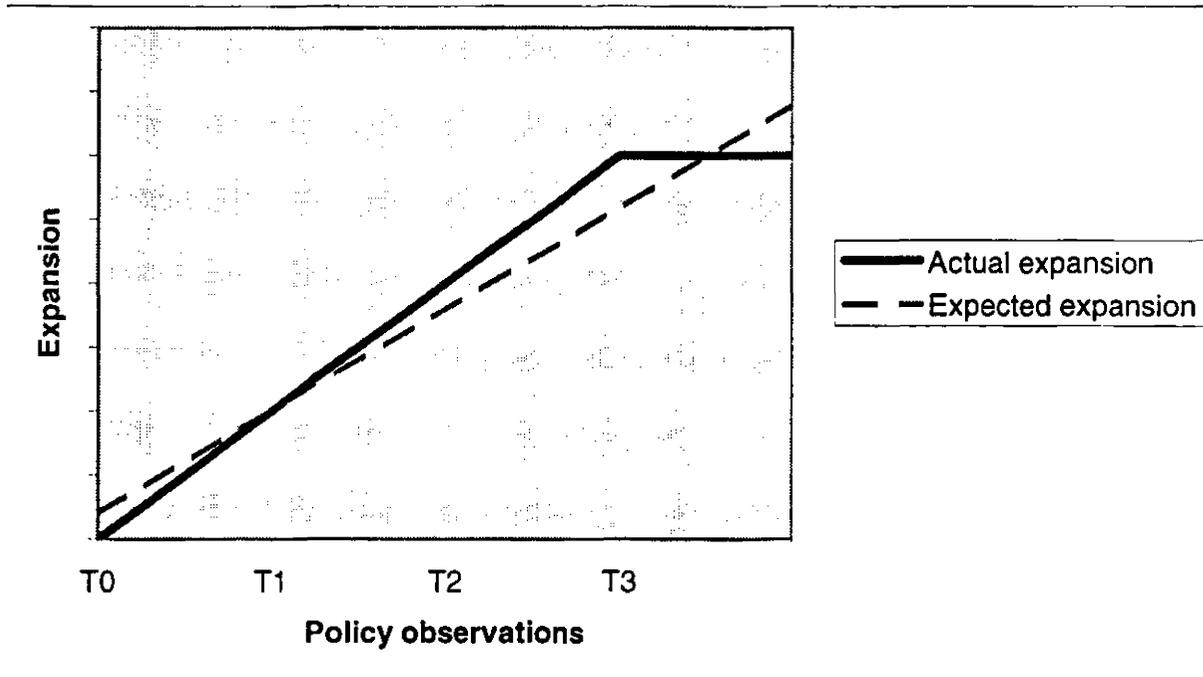
Expectations:

Two major lines of assumptions about the preferences of states and of IGOs would lead us to expect an outcome in the orientation of the UNHCR that was not observed. The instrumentalisation proposition would predict that states would impose a mandate for IDPs on the UNHCR, in line with the argument of a containment strategy. This would enable systematic containment of refugee outflows and legitimise clearly the development of notions of internal flight alternative as systematic alternatives to asylum. Concurrently, the functional expansion proposition leads to the expectation of an organisational preference for further task expansion into the IDP issue-area. This occurs in the context of assumed and observed tendency of the organisation to increase its tasks and improve its capacity to deliver services to the traditional categories due to the functional need to put in place a comprehensive approach to emergencies. Such would entail a mandate or a role for IDPs (see dotted line, "expected expansion" in Figure

⁴² Although the research will be broadly structured around periods, these correspond to specific policy paradigms within which different issue-areas are incorporated. The IDP policy is one of these issue-areas, but of a particular nature, whose process of definition is *sui generis* albeit a part of the broader policy paradigm of the periods over which it has evolved.

2). What is observed is that the UNHCR systematically expands its role and incorporates such expansion in the mandate up to a certain point in time but then stops expanding and incorporating new groups of concern: it does not advance into a mandate and formal responsibility for IDPs at T3 (see continuous line, “actual expansion” in Figure 2).

Figure 2 – Actual and expected tendency for UNHCR expansion



Legend:

T0 – Period from 1948-1950 – (Delegation period)

T1 – Period from 1951-1979 (Initial expansion)

T2 – Period from 1980-1999 (Focus on voluntary repatriation)

T3 – Period from 2000-2002 (IDP policy)

This thesis proposes to explain these anomalies based on the analysis of state preferences and organisational preferences, and their interaction and evolution over time. The hypotheses developed to explain variation in autonomy are linked to states' preference definition but also to organisational drift and goal development. Here the assumption of organisational expansion being equal to increased autonomy is relaxed. However, the decisions observed are not simple isolated points in time, but part of a continuous process of decision-making and of adjustment to the change and to the international environment and form a combined model of rational-choice and historical-institutionalist propositions.

2.3.2. Expectations of the analytical model

Maltzman and Smith (1994: 473) question the capacity of P-A to explain variation unless it is extended into a larger developmental theory. Here I will propose a model that applies principal-agent relations over time to assess both the external conditions that open up the possibility for the exercise of autonomy (leeway/window of opportunity) but also the internal conditions, inherent to the historical development and internal structure of the agent (autonomy).

This framework is based on a double structure of conditions for autonomy:

- Existence of a window of opportunity or leeway from states – explained by rational choice multiple principals argument
- Organisation/ leadership managing leeway – What does it do with the leeway obtained and how autonomous from other factors are its decisions?

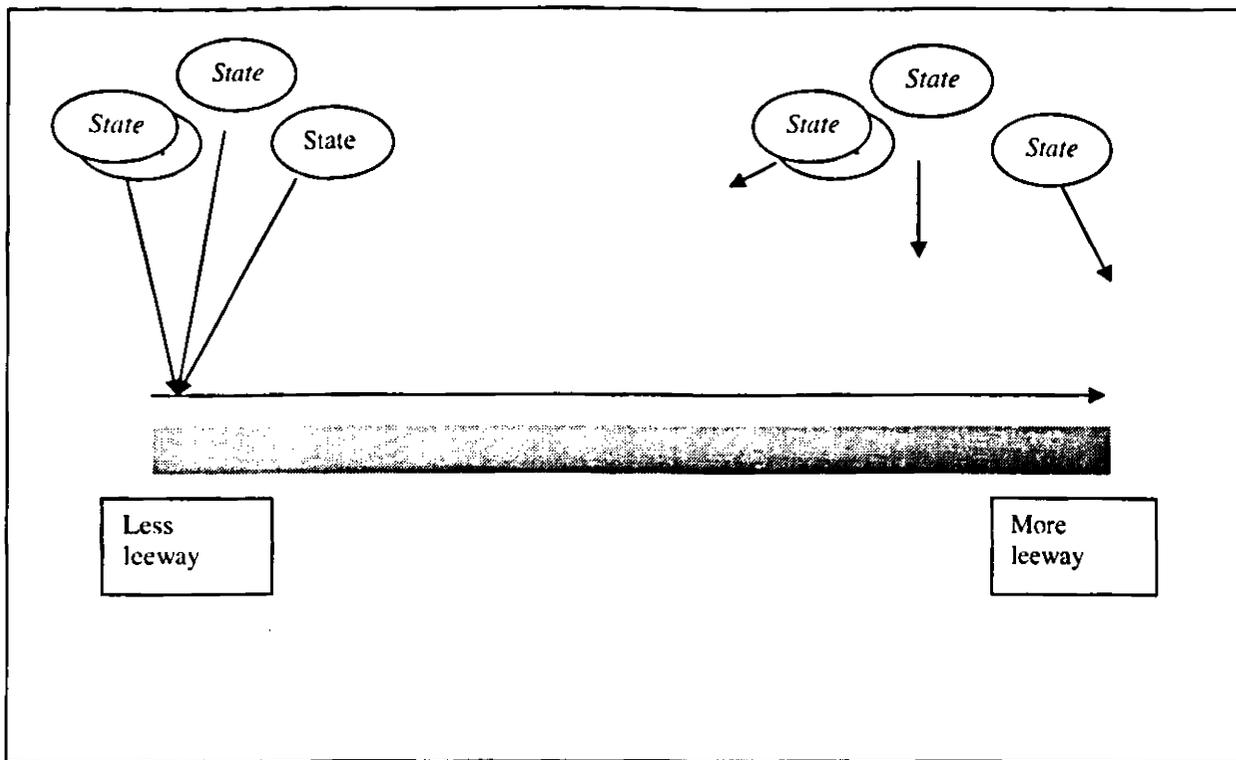
2.3.2.1. Spread of states' policy positions

Bearing in mind P-A contributions on the effect of multiple principals on agent autonomy, it is suggested that:

1.a) Hypothesis: *Divergence of principal preferences (policy utterances) regarding areas of the role and mandate lead to more leeway of the agent to retain and enlarge its range of policy options.*

1.b) Variation: *Convergence of principal preferences (policy utterances) regarding areas of the role and mandate lead to less leeway of the agent to retain and enlarge its range of policy options.*

Figure 3 – Relation between principals' aggregation of preferences and agent autonomy



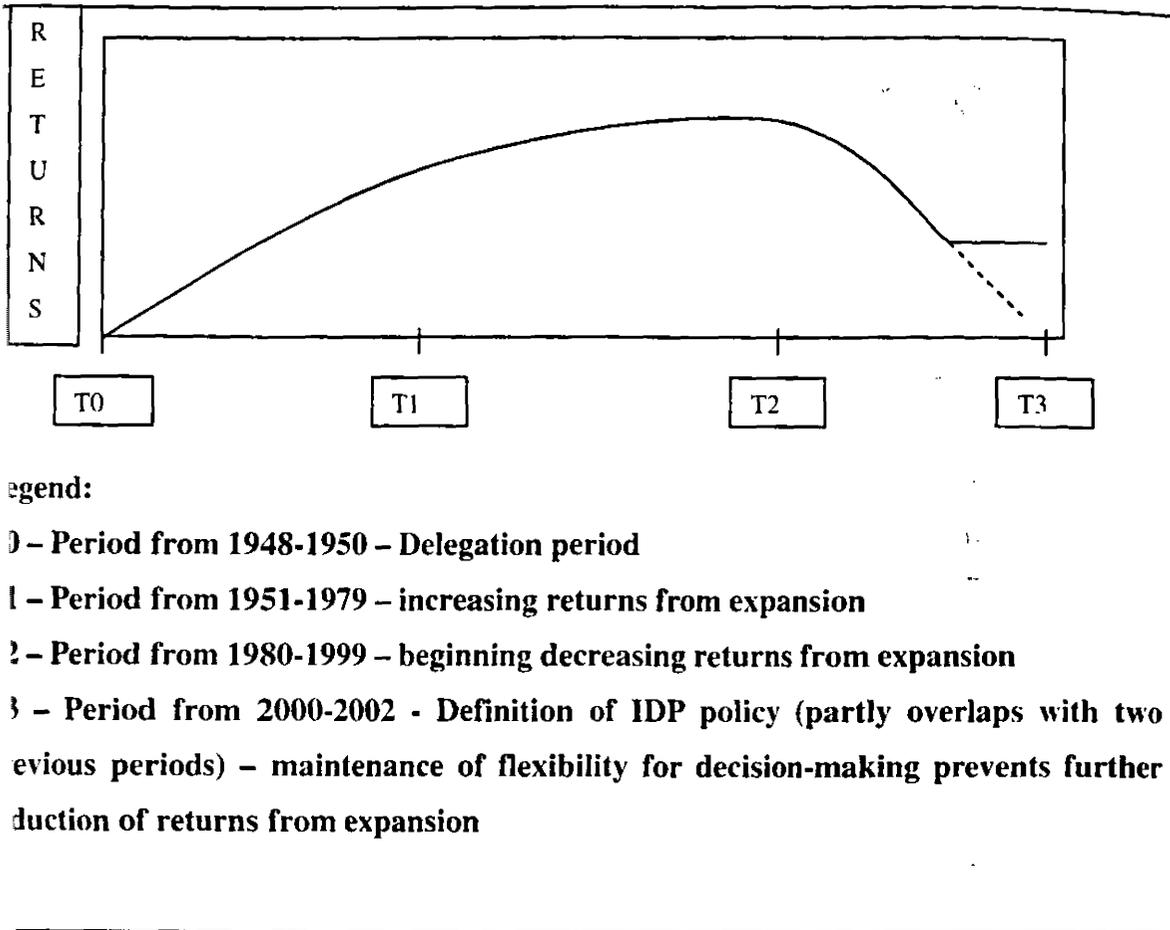
2.3.2.2. Agent drift

Bearing in mind historical institutionalist accounts of process-driven policy making changes, it is suggested that:

Hypothesis 2: Agent's decision to expand leads initially to more autonomy but to a lock-in that sets a pattern of choice. Such pattern limits the range of policy options and creates potential inconsistencies with original mandate.

Given certain conditions the agent may be able to lock out of the path-dependent process: the leadership takes the window of opportunity left by states' diverging preferences after a process of calculation of returns expected from a particular line of choice.

Figure 4 - Organisational returns from task expansion in terms of autonomy



fact that I analyse the evolution of an IGO over fifty years provides grounds for assessing the importance of path-dependence: crucial choices for expansion made by the organisation at certain points (autonomously) have then led it on a path-dependent way that entailed a tendential reduction of particular choices towards expansion and operational policy direction. This corresponds to a characterisation of UNHCR autonomy in a historical institutionalist way. The autonomy and returns in terms of range of policy options of the organisation has increased over years through the expansion of its tasks and its increasing relevance in world politics (T0-T1). However, such autonomy is balanced after a certain point with a loss of authority in some of its areas of activities and an increasing dependence of funds for the new activities, which make the organisation more vulnerable to external pressures and hence reduces the range of policy options it can effectively choose, thus decreasing the returns for retaining the same policy direction. When it has leeway it will see it in its best interest to break the tendency for more

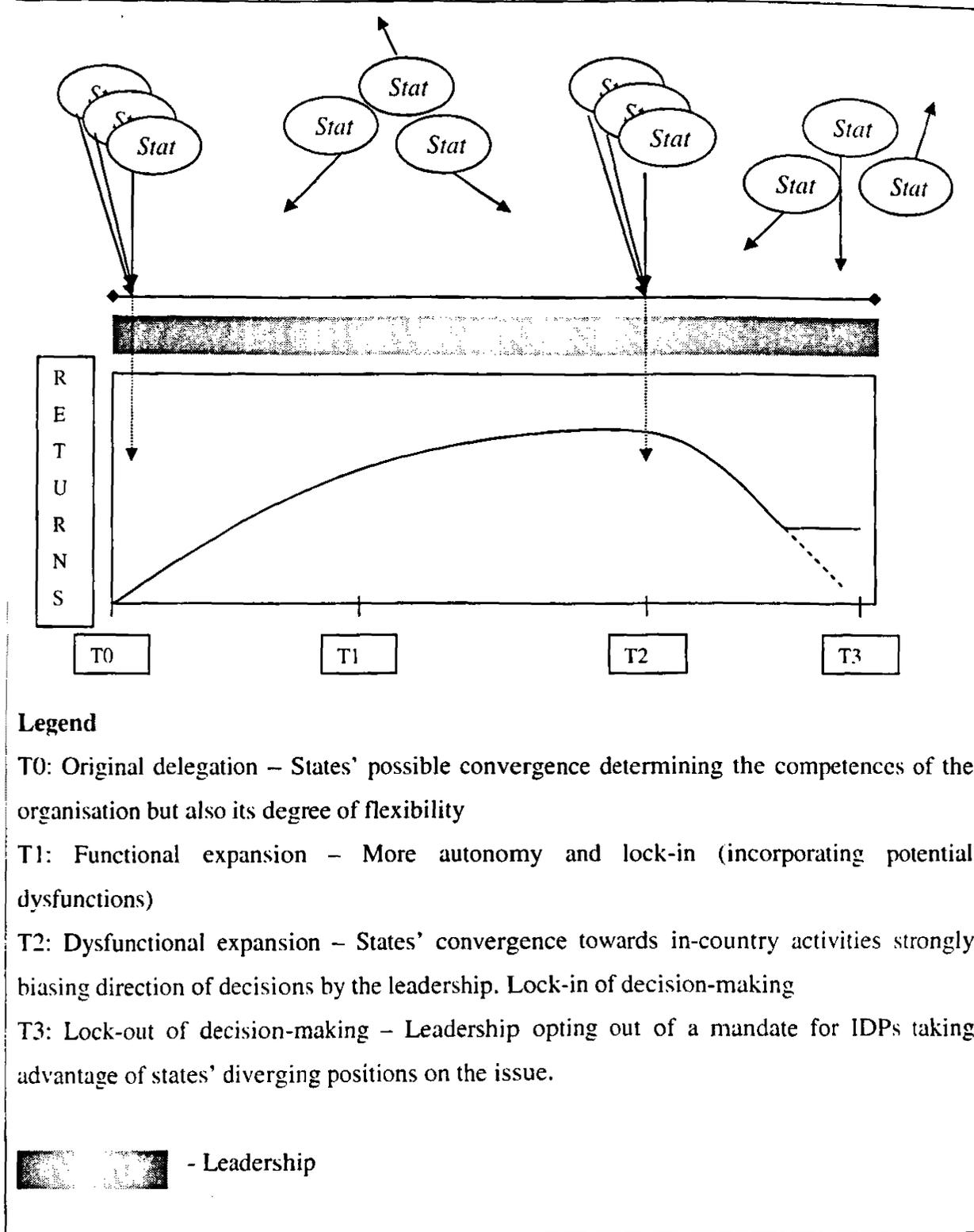
expansion, thus halting the tendential loss in returns and autonomy (T3). Walkup points out the dysfunctional effects of the existence of multiple ambitions in humanitarian organisations, trying to balance the tension between the contradictory characteristics of benevolence and selflessness with those of competitiveness and interest-maximisation (see Walkup, 1997: 51).

2.3.2.3. Combined proposition

These two types of hypotheses will provide the grounds for suggesting that: *when in situations of divergence of principals' preferences the agent decides to expand, agent autonomy is enhanced by its exploitation of such diverging preferences. The systematic repetition of the trend to expansion sets decisional patterns that limit agent's autonomy in certain areas of its mandate. This leaves it vulnerable to principals' pressures in situations where these converge towards a certain policy direction. The organisation is only able to lock itself out of this process by exploiting eventual breaches in principals' preference convergence and as a result of its own calculations of returns on the options available and mobilisation of leadership.*⁴³

⁴³ Although important consideration will be given to the role of the leadership in decision-making in the case under analysis, this study does not involve a systematic assessment of its weight in explanatory terms for the autonomy argument. The research takes up but does not test as explanatory elements the conclusions reached by Reinalda (1998) that leadership can be the determinant element in bridging internal and external constraints on the organisation, and in particular in exploiting a certain margin of permissiveness that depends on states.

Figure 5 - Combined analytical framework



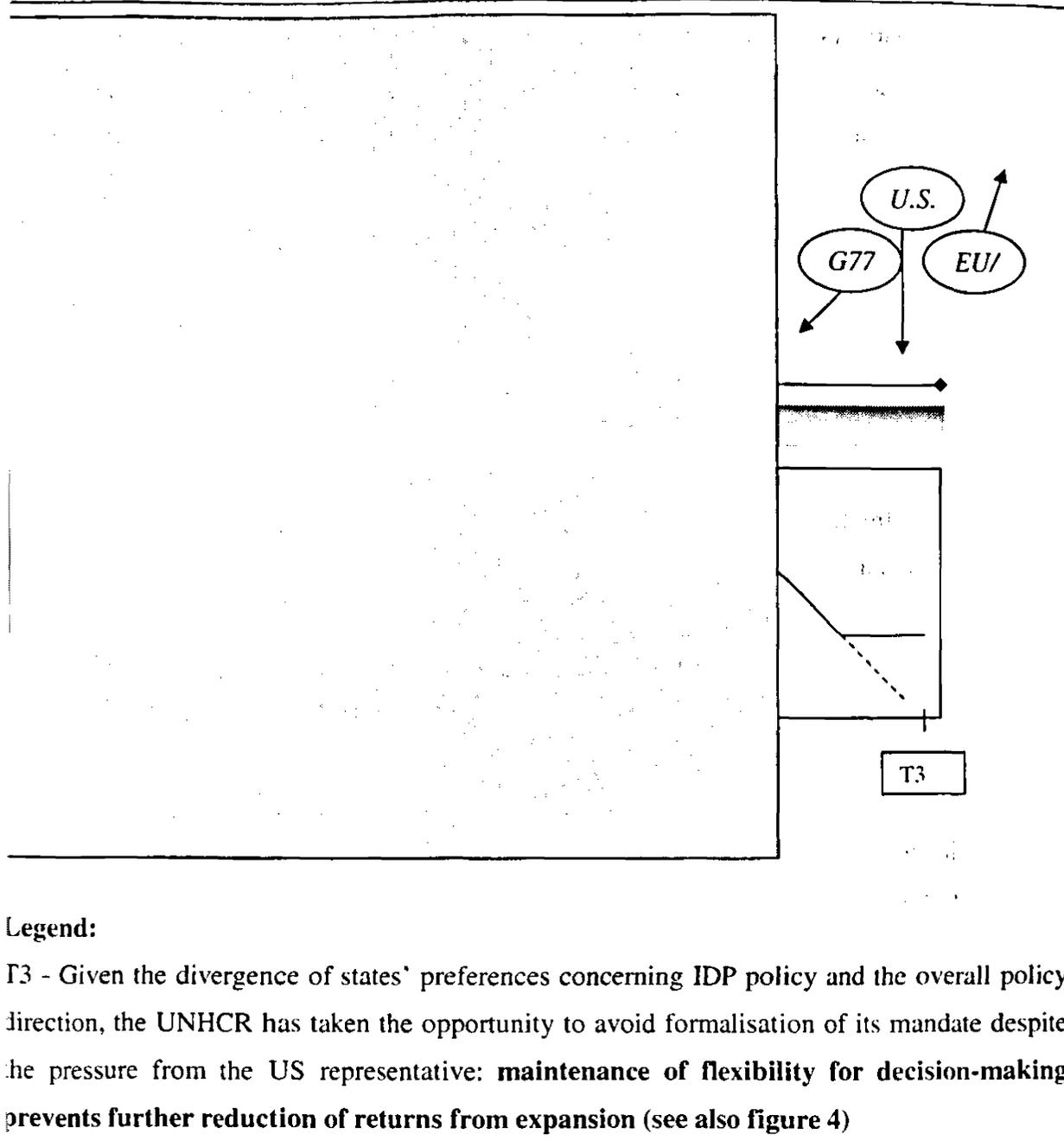
2.3.3. A third analytical dimension – the apparent P-A problem

Following the simple scheme of the P-A framework, the fact that the UNHCR has resisted full incorporation of IDP competencies in its mandate would apparently be assessed as an example of strong autonomy since the organisation refused a mandate that some of the most powerful principals tried to impose. Although the argument of diverging preferences among principals explains the leeway for refusing the mandate, a closer look at the case shows that the disjuncture of preferences between those principals and agent was more apparent than real. The suggestion inherent to this is that the effects of internally inconsistent policy positions by principals explain such leverage for the organisation.

Policy utterances of state preferences constrain the organisation to different levels. Much of such constraint is dependent on the consistency with which such policy utterances are proclaimed, where they derive from, how they are pursued. In the specific situation of the IDP issue-area the U.S. seems to have a clear and forceful position of imposing the mandate on the organisation. Chapter six analyses U.S. policy in more detail and concludes that it had neither the institutional structures for decision-making in the specific issue-area, nor a clear position concerning the issue. What played a determinant role in the pressure was the strong convictions and mobilisation capacity of the representative Mr. Holbrooke.

This third dimension represents a deeper exploration of the positions of states and of the organisation to provide a process-based understanding of the dynamics of preferences at principal level; inter-principal level and agent level.

Figure 6 – A third dimension of the analysis: involvement with IDPs



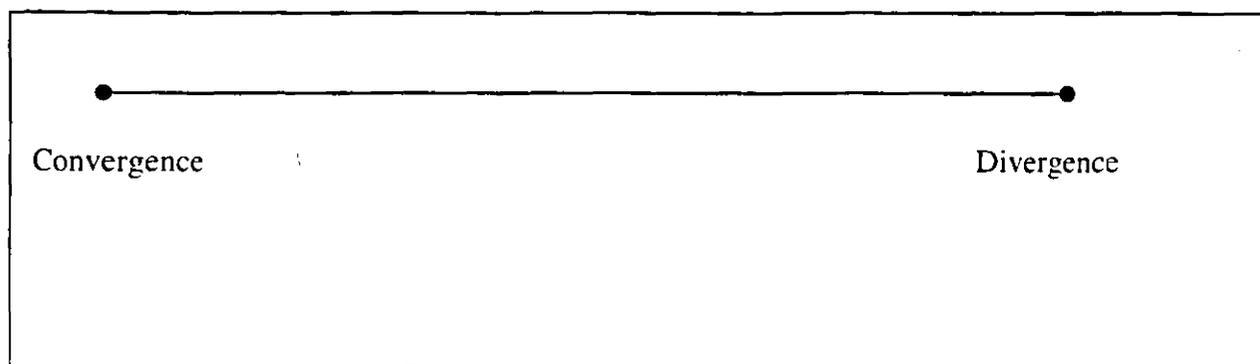
2.4. Specification of concepts:

Two main concepts will be used throughout the research that will now be clarified: distribution of policy preferences and agent drift.

2.4.1. Distribution of policy preferences

States' guidelines to the UNHCR are based predominantly on individual states' considerations over national foreign policy, asylum policy and humanitarian/development policy that are then transmitted to the diplomats representing them in the appropriate forum. Therefore, the spread of policy preferences among different states can be assessed in terms of the simple distance of positions between states on particular aspects of the work of the organisation, which range from convergence to divergence. This is the basic scheme that will here be used for assessment:

Figure 7 – Spread of states' policy preferences



These measures are applied to the four identified areas of UNHCR decision-making outlined above: positions of states on which groups of concern UNHCR should be involved with, whether the organisation should expand geographically, which were the preferred solutions and finally the direction of the tasks performed.

The higher the divergence, the less clear the guidelines given to the organisation, to the point of inexistence, in situations of extreme divergence (ill-defined or non-existent outputs). Indicators of preference convergence are agreements reached between states that impinge on the work of the organisation; GA resolutions; official documents. The mentioned agreements may be more or less formal, in the context of the activities of the organisation, such as parallel forums to enhance specific policies, or in wider forums of co-operation on concerns related to the issue-area at large, such as for example current donor efforts towards the improvement of the co-ordination of funding in the context of the OECD. National asylum policies and the commitment of states to asylum principles are also indicators of policy direction towards convergence or divergence.

Other forms of control of states representatives in the decision-making process occur mainly through funding, and in particular earmarking of funds, which is a way of ensuring that states' specific interests are taken into account in the organisational priorities. There may be a convergence of funding towards specific activities that illustrates state pressures and leaves the organisation less choice. Other mechanisms of influence are bilateral diplomatic contacts or specific forms of pressure from the Security Council or particular donor countries at times of emergencies.

Convergence of preferences is identifiable through:

- Specificity of the policy guidelines (statute, others)
- Timing of subsequent guidelines: requesting or recognising policy outputs
- Number of policy guidelines directing on a certain policy option
- Funding co-ordination
- Debates and policy positions concerning resolutions or substantial guidelines to the work of the organisation – policy utterances

It is here conceived that states' delegates produce policy utterances, which are the most proximate sources of pressure on the organisation. These can range from simple statements in informal and even bilateral meetings, to official statements at the ExCom.

2.4.2. Agent drift

Although part of a process, this line of explanation for variation in autonomy – seen as the range of policy options that the agent can effectively choose – can be conceived in terms of a variation based on a fundamental dimension: nature of expansion of activities.

Expansion of tasks is not automatically equivalent of increased autonomy, although it may lead to more autonomy as conceived in this research. Agent drift can take the form of functional expansion, whereby the organisation broadens the scope of its activities without endangering the pursuit of its original functions, or it can be dysfunctional expansion, whereby the organisation's new activities entail contradictions with the original functions. This impinges on the organisation's consideration of returns in the sense of its ability to be relevant and effective, while

retaining authority and independence with new expansion. This will in turn determine its predisposition to remain locked into an expansion path or to lock out of that trend. It has been suggested that such dysfunctions combined with specific sets of convergence of states' preferences may lead to decreasing returns to the organisation in the sense that it may reduce its autonomy for making policy decisions in a structural way, thus conditioning its preferences.

Three dimensions will be taken as indicators of the shifting implications of drift for agent autonomy:

- Mission interpretation – nature of returns in terms of autonomy for pursuing policy options and hence fulfil the mandate. Is expansion perceived as beneficial to the pursuit of the original goals? Does it enable a balance between different sources of autonomy?
- Organisational structure – lock in and path dependence. Does the organisational structure condition the pattern of decision-making concerning expansion and direction of institutional change?
- Funding mechanisms and patterns – lock in and path dependence. Do funding mechanisms determine the pattern of decision-making and direction of institutional change?

These three dimensions encompass a given set of dilemmas related to models of humanitarian aid; the relation of humanitarian aid and development; the relation of asylum and migration; conflict or complementarity between rule-supervisory functions and more operational functions.

2.5. Methodological considerations

This research draws its conclusions from a case study of the work of one organisation, the UNHCR. The decision-making in the UNHCR over its role and mandate presents a difficult case that I seek to explore in detail to understand the underlying dynamics of decision-making beyond the apparent inputs and outputs of the system. While for most of the research I largely stay outside the black box, establishing conditions of scope and of process for variation in autonomy, in chapter six the goal is to understand the internal dynamics of the organisation and suggest how these help structure the outcomes observed, combining rationalistic and interpretivist methodologies.

I mitigate the small-n problem by looking across time and introducing one sub-policy area. While the object of research is a broad process of policy-making and institutional change, certain explanatory tendencies are identified between the degree of convergence of preferences among the organisation's principals and the exploitation that the organisation does of situations where such agreement does not exist or where outright disagreement is found among its multiple principals. I also assess the plausibility of the hypotheses proposed across different types of decision areas and address different dimensions of autonomy: the relational (P-A framework), discrete (range of policy options) and substantive dimensions of autonomy (relevance, authority, independence).

Theoretically the research also has three levels of aims: to make systematic use of a rational-choice explanation based on principal-agent propositions for the study of the UNHCR, to provide evidence on how to complement such explanation with process-based analysis linked to historical institutionalism (Pollack, 1998: 223) and finally to consider unquestioned assumptions (see King and others, 1994: 16-17) in principal-agent literature. Empirically it aims at providing a systematic analysis of the workings of UNHCR policy definition in order to correct existing unfulfilled expectations and to suggest implications for the future policy. It should be noted that this research is concerned with analysing general lines in a process of institutional change. Although its conclusions are passive of generalisation, they constitute initial claims to be further assessed in subsequent research and also function much in relation to one another in an attempt not only to find regularities but also and in particular to explain the variation in autonomy in this specific case. Hence, the research has two major goals in terms of inference: explanatory and descriptive inference.

2.5.1. Strategy of analysis

Pollack (1998: 223) suggests three research strategies for assessing autonomy because quantitative methods cannot adequately assess the nuances of agency autonomy from and influence on member governments: 1. case-studies and process-tracing to establish the respective preferences of the member governments and supranational organizations, and the subtle influences that these actors may exert upon each other; 2. Counterfactual analysis for the study of informal agenda-setting; 3. examine open conflict between supranational organizations and one or more member governments. However, as Barnett points out, in order to examine open conflict it is necessary to determine the goals of both actors and suggests an inductive approach to determine

goals through intensive case analysis through interviews and documents that overcome the problem of the aprioristic definition of interests that characterises many P-A approaches (Barnett and Finnemore, 2002). The present research will use a combination of these methods.

Because the object of analysis is the UNHCR's role and mandate, it is a long-term process and cannot be analysed by simple isolated cuts. It has to consider the evolution of the organisation as a process and the impact of previous decisions on outcomes. This justifies the structure of the research, articulated as an "analytic narrative" (Pierson, 2000c). None of the situations selected produces an immediate output in terms of the autonomy of the organisation, but combined they produce trends.⁴⁴ The assessment of the propositions outlined in this chapter will proceed through the analysis of "policy clusters", which may be associated with but are not equal to specific time-periods. The analytical framework is the same for all observations in this assessment: for each policy cluster an analysis is made of the preferences of states and of those of the organisation, and these are contrasted in each of the four policy areas.⁴⁵ The outcome is analysed in terms of the organisation's policy options, balance between substantive dimensions of autonomy and eventual situations of conflict of preferences.

The specific tools used for obtaining data were participant observation in two phases, an exploratory one concerning the policy environment and a second one devoted to the specific analysis of IDP policy. Other tools used were interviews with staff and representatives of states, NGOs and other IGOs, policy and document analysis. The data used in this analysis is based on direct data collection particularly concerning the third policy cluster and the IDP policy cluster. Other areas of analysis are based on secondary sources and official UN documents, as well as the collection of the United Nations Yearbooks (1946-2001).⁴⁶

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⁴⁴ See (Young, 2002) for some insights on causation and interactive clusters of variables that do not give ultimate causation but "...a satisfactory and satisfying understanding of the reasons why collective outcomes in international society take specific forms." (Young, 2002: 189).

⁴⁵ Although the action of the leadership is considered important in the analytical structure of the research, the goal of the research is to identify the broad enabling and constraining factors of organisational autonomy and that is what it is geared to control for. The leadership's choices are important in how they manage such factors but no systematic control was made of the impact of different leaders. For a most comprehensive analysis that highlights the differences in leadership of the UNHCR for its evolution, see (Loescher, 2001b).

⁴⁶ Given the magnitude of the study in chronological terms, and variety of issues to be addressed, considerable information was taken from secondary sources, taking advantage of an extremely rich and developed body of existing research in the area of forced migration.

2.5.2. Selection of observations

Because the aim here is to determine the influence of two different explanatory factors, I have opted for selecting the observations on the basis of the dependent variable. The observations are divided into the four clusters of policy-making: original delegation; initial period of expansion; second period of paradigm definition; IDP issue-area. However, it should be noted that these clusters are not hermetically isolated periods because different issue-areas may overlap, while being distinctive of different emerging trends in decision-making. The units of analysis are the four decision-areas: groups of concern; geographical scope; solutions promoted; activities implemented. Within each, the preferences of states and the organisation as well as the historical evolution are analysed.

When assessing autonomy, it is important to note also on which aspects the analysis is focused, since the relevance of the conclusions both on theoretical and on empirical terms will be dependent on such specification. Hence, significant elements of autonomy are observed in the UNHCR's day-to-day decisions and even in significant programming decisions. However, in theoretical terms, these are not very significant because they represent isolated cases of decision-making, not broader policy-making. Rarely are states in absolute disagreement with specific decisions, except in extreme cases. This justifies the analytical focus on processes rather than on specific instances of decisions – of these there are many examples both of manipulation and of deviance, but they do not tell us much in terms of the real influence or autonomy of the organisation. Even in circumstances where there is disagreement, the relative autonomy that the organisation enjoys prevents states from exercising immediate sanctions based on their national preferences. What is more significant is the longer-term policy options of the organisation in the context of the international humanitarian environment – boundary and mandate decisions. The analysis of these situations hence produces more significant conclusions for the analysis of the relation between states and IGOs and for the explanation of the observed real autonomy, and in empirical terms produces more relevant insights concerning the implications of the relation between these two actors for defining the evolution of the UNHCR's role and mandate in the context of a humanitarian system that is in the process of taking shape.

2.5.3. Structure of analysis

The international environment is the context in which preferences are shaped and changed and also in which the relation between states and IGOs oscillate. It provides a context of change itself that sets these alterations in motion, indirectly opening up the possibility for new situations of autonomous behaviour through the emergence of new issue-areas of international concern. Some practical implications of change in the environment for the work of the UNHCR are, for example, changing opportunities for humanitarian involvement and its justifications at the symbolic level; changing conceptions of sovereignty; development of a normative framework for IDPs; increasing co-ordination in the humanitarian system. While these have an important bearing on the context, the goal of this research is not to assess the direct impact of the environment on organisational autonomy. Information concerning the international environment will be provided strictly as historical information that contextualises the process in which preferences vary and adjustment occurs.

The analysis will start with the original delegation act (chapter three) as reflected in the negotiations for the Statute of the UNHCR and in the negotiations for the 1951 Convention on the Status of Refugees. Principal-agent approaches explore the conditions for wider or narrower delegation and the purposiveness of flexibility attributed to agents in the constitutional documents: they explore institutional creation, delegation and design (Olsen, 1998; Kahler, 1998). In the analytical framework I will analyse the original delegation, the nature of control and autonomy inscribed in the Statute, other mechanisms of control, the flexibility introduced and the intention behind it, as it was seen that it is not enough to obtain a merely functionalist account whereby the outcome corresponds to the preferences of states.

The UNHCR, such as any other implementing agency is assumed to be a mere executor of policy directives provided by the competent organs. However, at the outset it should be borne in mind that the organisation was already endowed with a degree of flexibility and has acquired over the years a considerable degree of decision-making autonomy, in particular in the areas of expanded activities. Therefore, consideration should be made of the flow of policy directives from the principals to the agent. This means that for some types of decisions the UNHCR will have more natural leeway than for others (substantive dimensions of autonomy). This distinction will be controlled for, as well as the mutual influence between these two dimensions in the process

evolution. The policy period corresponds to the definition of the role and mandate of the organisation, in which there should be a match between minimum convergence of the member states' preferences and the definition of competencies of the organisation. If both actors pursue the commitments set out in such documents there is no P-A problem and a vital role of the organisation, its rule-supervisory role, would be intact, together with the original supervisory authority conferred on the organisation. This corresponds to a situation of no-agency drift and a degree of convergence of state preferences (point 0 of variation).

A second policy cluster coincides with the initial expansion period (chapter four) that ranges from early 1950s to end of 1970s where state preference divergence is the defining trait, along with crucial decisions made by the organisation to expand activities in all areas and define autonomously which solutions to promote.

The third policy cluster coincides with the decade of the 1980s and 1990s (chapter five), where a consolidation of state preferences around the policy direction of the organisation occurred and where the autonomy for choice as well as the authority of the UNHCR have been undermined (not only due to a solidification of states' preferences but also due to the introduction of ambiguities and internal inconsistencies within the organisation itself), despite increasing relevance at the initial stage.

The policy cluster that focuses on IDP policy addresses the years 1999-2002 although much of the analysis also covers earlier periods. This particular issue-area has existed from early 1970s although it only emerged as a political issue-area since the 1990s and the most urgent policy debates occurred in 2000. It will focus on a specific issue-area within the mandate which reinforces the findings of the previous chapters: in a general context where states had stabilised their preferences around the issue of repatriation and a containment focus, the organisation's role on IDPs remained open and target of much debate during the final decade under analysis and in the early XXI century generated divergences that had implications on the overall policy direction of the UNHCR. The explanation again is dependent on the degree of state preference aggregation, including an assessment of internal state preferences (to reinforce the assessment of the theoretical propositions on bureaucratic politics).

2.6. Conclusion

In order to explain variation in autonomous behaviour in the UNHCR, this research aims at understanding the process of preference definition of different actors and exploring the internal processes that occur within the organisation. The consideration of the international environment serves this purpose of understanding in depth the context in which the two explanatory variables are embedded. This research is designed to meet the need to assess the interplay of the actors and exploring propositions for the assessment of what independent role principals have in the variation of agent autonomy and the independent role of agent behaviour itself in explaining such variation. Namely, this is a situation of agent drift that has an impact on its own autonomy (and it will be analysed in the course of the research).

Autonomy will be assessed not specifically by the analysis of the open conflict of preferences (strong autonomy) but by the range of policy options available to the organisation (relative autonomy). The explanations proposed for the variation in the range of policy options are stronger or weaker convergence of state preferences, together with the historical path of evolution of the organisation, at times chosen by itself in a relatively autonomous way. Substantive dimensions of autonomy will also be analysed to shed light on the ways the organisation shapes its preferences towards autonomy.

Concerning substantive implications of findings, ultimately at stake is the issue of where to locate responsibility for the enactment of particular types of policies once the organisation starts expanding its functions and mandate beyond the strict conditions set out in its constitutional document, thus becoming in many respects a political actor rather than a mere bureaucracy.

Chapter 3. The original delegation: a Europe-centred refugee regime

The constitutional document of an organisation establishes its original framework and is the text of reference for the bureaucracy in its mission interpretation. It is crucial for the definition of expectations concerning the scope of activities and of the boundaries of competence with other actors. Although mandates may be subsequently changed, such changes should in principle be consistent with the original dispositions defined at the time of the creation of the organisation or otherwise risk undermining the goals for which it was created. The mandate of the UNHCR is defined in its Statute approved in December 1950, and has subsequently been complemented through several General Assembly resolutions that were issued over the years.⁴⁷ Much of the empirical discussion around the current role and mandate of the UNHCR revolves around the subsequent mandate adjustments concerning the work of the organisation and the direction its activities have taken *vis-à-vis* its core functions. In this chapter the focus will be on the original delegation process that established the general setup of the UNHCR and defined the boundaries of its functions and competences, its hierarchical relation with states and their control mechanisms, and the conditions for adjustment to the environment.

Since the initial delegation process marks institutional creation, it represents point zero in the autonomy variation, as there is yet no institutional change. At this point, the nature of the organisation's functions is the result of deliberate design and of compromises among states and not the result of autonomous preferences developed by the organisation. However, this does not mean that there is no autonomy. A degree of flexibility and leeway is built into the organisation through delegation, which ascribes the bureaucracy a certain range of policy options that it is able to manage by structural definition in the implementation of its competences. This may lead to subsequent autonomous development that is unintended at the origin, during the negotiation process that resulted in compromises among the principals, and which was not necessarily equivalent to clear preferences on the part of any of them. Besides this initial range of policy options, a qualitative dimension of structural autonomy is also attributed to the new entity, thus

⁴⁷ Statute of the Office of the United Nations High Commissioner for Refugees. Annex to GA Resolution 428 (V), of 14 December 1950.

establishing the substantive nature of delegation, some examples of this being the type of authority ascribed to the organisation, the qualifications of independence, impartiality and neutrality vis-à-vis states and other actors concerned, and the relevance of the services it provides to the international community.

The present chapter will assess such embedded leeway and its purposiveness, through the analysis of the negotiations process for the establishment of the UNHCR, that took place between 1949 and 1950. The main sources for such analysis are the preparatory debates that preceded the approval of the Statute, as reported in the United Nations Yearbook (UNY) and direct documents presented at the negotiations, such as draft resolutions. Four main dimensions of the organisation's role and mandate will be analysed in order to determine the spread of states' policy preferences at the time: groups of concern, geographical scope, solutions to be promoted and activities to be performed. For the assessment of positions concerning the first two dimensions I will also take the negotiations for the 1951 Convention on the Status of Refugees, approved one year later. Although the 1951 Convention is not a part of the UNHCR's Statute, it is closely linked to the mandate of the UNHCR. It is observed that these two documents delimit two levels of responsibility that shape the refugee regime and have strong bearing on the UNHCR's scope of activities: the national and international level of responsibility. These are linked to the emergence of these two distinct legal frameworks and two levels of oversight – the GA/ECOSOC level and the Advisory Committee/ExCom level.⁴⁸ The separate nature of the national and international level of responsibility can also be seen with the external and internal dimension of states as principals within the UNHCR. This justifies including the analysis of the debates for the Convention as a means of assessing states' preferences concerning the delimitation of responsibilities and consequently the scope for delegation and for leeway.

3.1. The rational for a new international organisation and the 1951 Convention

In the immediate post-World War II there was a pressing need at the international level to solve the problem of millions of refugees and displaced persons that were outside their countries of origin as a direct or indirect consequence of the conflict. While the initial solution found was the

⁴⁸ Initially the Advisory Committee of the Programme of the UNHCR, that was in later enlarged and renamed into Executive Committee of the UNHCR (ExCom).

creation in 1946 of the International Refugee Organisation (IRO) – a temporary arrangement outside but related to the UN framework –, it soon became clear that a new organisation and new commitments from states would have to be agreed upon in order to bring the remaining refugee problem to a close.⁴⁹ This functional need for a new international organisation within the UN framework emerged in the context of a complex international political system, hardly restored from a world war that divided the countries, followed by the configuration of a bipolar system between rival Western and Eastern blocs. It was in this context that talks were initiated in 1949 to create a new organisation to replace the IRO, the United Nations High Commissioner for Refugees.⁵⁰ Almost simultaneously, negotiations were initiated for the drafting of the 1951 Convention on the Status of Refugees and a new refugee regime emerged that was closely linked but not fully integrated in the United Nations context since there was no consensus around the regime.

3.1.1. The international political system

The international context after World War II was dominated by two types of cleavages: the East/West confrontation and the gap between developed and developing countries that was emerging and was closely linked to the decolonisation movement. The whole set-up of the United Nations was marked by these divisions and represented what agreement was possible among countries that had fought a common enemy but whose preferences on most aspects of international concern and foreign policy were radically different. It was in the framework of the ideological and material divisions that the UNHCR emerged (Cunliffe, 1995: 281). These cleavages played an essential role in shaping the positions of states concerning refugee policy from the outset.

In the context of the bipolar confrontation, refugee policy was during the Cold War intensively used as an instrument of foreign policy (Teitelbaum and Weiner, 1995). Sjöberg (1991), for example, argues that burden-sharing has often been used as a means of assisting allies in the maintenance of stability of host countries when threatened by massive influxes from neighbouring states. The denial of refugee status to nationals from friendly states constitutes another example of

⁴⁹ See report by the General Council of the IRO A/C.3/528 of 20 October 1949, issued at the time of termination of IRO operations.

⁵⁰ See GA Resolution A/971, of 7 September 1949.

such politicised use of refugee policy, as did the generous and open asylum policies towards citizens fleeing the Eastern bloc during the Cold War (Loescher, 1993). Nonetheless, even in this climate of ideological and political confrontation there was a first awareness of the need for international co-operation that would help states with substantial refugee caseloads to deal with the problem.

The creation of the UNHCR also corresponded to a period when the decolonisation process was taking off and the number of states from the southern hemisphere represented in the UN was still relatively reduced and lacked strength. These states were later to form a distinctive group from the Eastern and Western blocs – the Non-Aligned Movement and the G77 -, which enabled a convergence of positions of these countries around their distinct preferences and made a stronger voice at the UN level. This accentuated the preference divergence along the lines of the developed/developing countries, with implications on many issues, including refugee policy that represented significantly different challenges for the two groups. Forced displacement severely affected the newly decolonised countries, particularly in Africa from the 1960s. Although still not a loud voice in the UN, their views were already represented at this point and proved to be significantly different from those of the countries affected by the European refugee problem. Such cleavages with countries that already existed at the time were partly reflected in the discussions for the creation of the new refugee regime, in particular concerning the geographical and temporal limitations of international protection. The fact that more developing countries participated in the discussions for the creation of the UNHCR, since it was to be part of the UN framework, partly explains why the Statute of the UNHCR was not so limiting in time and geographical scope as the 1951 Convention. The latter was negotiated by a handful of concerned states and outside the scope of the UN framework in a Conference of Plenipotentiaries convened by the UNGA.⁵¹

3.1.2. The situation of the refugees and international co-operation

Two main implications of the refugee situation that remained from World War II determined the need for international co-operation: the scale and permanence of the problem and the sensitive nature of the issues it raised. These two dimensions generated divergences among states that dictated the need for solving problems in the context of a multilateral framework.

⁵¹ GA Resolution 429 (V) Draft Convention relating to the Status of Refugees, of 14 December 1950.

In 1945 around 65 million people were estimated to be displaced in Europe, and at the end of the IRO's tenure in 1952, the continent still had around 400.000 displaced persons (UNHCR, 2000).⁵² Many of these were living in camps in zones of Germany and Austria, waiting for a solution to be identified for their case, while the continuous influx of new refugees mainly from the East, made the prospects of a quick solution very dim. The magnitude and scale of the problem in post-war Europe was such that the issue of refugees was one of the first and most focused on at the first session of the UN General Assembly in 1946 (Salomon, 1991).

The remaining refugee problem in Europe in the 1950's had also markedly sensitive political implications because it involved not only matters related to sovereignty but also related to the return of populations living in camps in Central/Western Europe to countries now under communist rule.

The creation of an international refugee regime that assigned national responsibilities and competences to countries hosting refugee populations inherently questioned the sovereign capacity and duty of the state of origin to provide for the protection of its own nationals. Indeed, the concept of international responsibility for the individual, which evolved with the development of human rights concerns, brought about the idea that if not the state of origin, then some other state or the international community had to be responsible for the protection of people who were persecuted at home, be it by their state of origin or by other groups within that state (Gordenker, 1987: 26; Druke, 1990: 223). The possibility of the international community receiving and protecting nationals from certain countries presented a theoretical challenge to internal policies of countries of origin. This was inextricably linked to the ideological and political options that divided the world into two blocs.

The voluntary nature of return of refugees from the Eastern countries that were still living in camps in Central/Western Europe was also issue of considerable debate. Charges and counter-charges were systematically exchanged, and efforts from either side to prevent or promote repatriation were often questioned in their underlying intentions. For example, the presence of criminals in refugee camps managed by the West was in the immediate post-World War II, among the most important issues of concern. The Special Committee on Refugees and Displaced Persons

⁵² Numbers include 13 million ethnic Germans that had been expelled from east European countries and 11.3 million forced labourers and displaced persons found by the Allies to be working on the territory of the former German Reich (UNHCR, 2000: 13).

in its report found that "the presence of war criminals, quislings and traitors among refugees and displaced persons in their countries of present sojourn represents an obstacle to the free and unhampered exercise on the part of those persons of their right of option between returning and not returning to their countries of origin in full knowledge and appreciation of all relevant facts" (UNY, 1946-1947: 169). The countries of the Eastern bloc later took up these conclusions as an argument that voluntary repatriation was not being enforced rigorously enough, arguing that the refugees were influenced not to return by foreign propaganda infiltrated through these groups and destined to dissuade refugees from opting for returning to the Eastern countries.⁵³

These two implications of the refugee problem, managed on a bilateral level, constituted breeding grounds for tension between the countries of origin and host countries and thus, an international organisation was necessary to ensure continued mediation and promotion of co-operation, and in particular to ensure the voluntary character of refugee return. There was the awareness that the refugee problem was an eminently inter-national matter that could at times raise very sensitive issues. Such issues could raise to the point of threatening international peace and security if solutions kept being devised on a bilateral basis. This characteristic has been explicitly acknowledged since World War II, through for example the resolution adopted by the General Assembly on the 12th February 1946, the first to consider the problem as "...international in scope and nature...".⁵⁴ This implied the need to deal with the problem of refugees in a framework of multilateral co-operation between states, thus prompting the development of new international legal instruments to address refugee issues. The introduction of a neutral and impartial agent in the management of the refugee problem was tantamount to minimising the effect of the political divergences among states and at a functional level would also contribute to the co-ordination and effectiveness of the efforts to address the problem. Despite the divergences of substantive preferences among states, there was a strong need to extend the scope of existing instruments for refugee assistance and protection by means of a new agreement.⁵⁵ This is indicative of an

⁵³ For example, in 1947, the representative of the USSR submitted a draft resolution charging "...that the UK and the U.S. authorities in charge of these camps had not only failed to co-operate with the countries of origin with a view to the repatriation of refugees, but had even taken steps to discourage and impede such repatriation." The draft resolution further accused these countries of intimidation and false propaganda concerning conditions in Eastern Europe and that they hoped to derive financial and economic advantages from the immigration of foreign labour. (UNY, 1947-48: 127).

⁵⁴ GA Resolution A/45, of 12 February 1946.

⁵⁵ See Preamble of the 1951 Convention.

awareness of the need for co-operation in finding solutions to what was a UN-recognized international problem that required international co-operation.⁵⁶

3.2.3. The UN framework for the new refugee regime

The post-World War II refugee regime was set up under conditions of tensions among states and uncertainties concerning the future evolution of the refugee problem. While initially the problem was framed within a European context, it became universalised within the UN context, although the status of the new agency within the organisation was subject of considerable debate. Nevertheless, the acknowledgement of the sensitive nature of the problem created an awareness of the need to converge into a form of multilateral co-operation among the majority in the GA. Interestingly, the negotiations led to a double framework that was partly within the UN system and partly outside the UN system with a negotiated Convention to which only those states who so wished would become part but to which both the Secretariat of the UN and the High Commissioner himself provided inputs. This shows the limits to international co-operation that are established by diverging preferences among actors and the mechanisms that can be developed to overcome those obstacles. Inter-state divergences determined the shape of the refugee regime.

The preceding organisation – an integrated regime

The UNHCR's predecessor, the International Refugee Organisation (IRO) was created in 1946 as a temporary specialised agency. It was created outside the framework of the UN due to divergences among the states that composed the world organisation, but a co-operation agreement was foreseen in its Constitution to bring the IRO into close relation to the UN.⁵⁷ This enabled a restriction of mechanisms of control to those states that signed the organisation's Constitution, which also involved the commitment of certain responsibilities at the national level.

The divergences of opinion between the Eastern bloc and Western countries concerning the refugee regime to be established at the time were evident and centred on three major issues: the

⁵⁶ See Preamble of the 1951 Convention and Chapter VI, Art. 35°.

⁵⁷ "The relationship between the Organization and the United Nations shall be established in an agreement between the Organization and the United Nations as provided in Articles 57 and 63 of the Charter of the United Nations." IRO Constitution, Art. 3°.

definition of refugees; the appropriate institutional setup for addressing the problem; and the specific functions to be performed by a new organization.

Concerning the definition of refugees, the major problem was the distinction and categorisation of the different groups of forcibly displaced populations present in camps in European territory, which included stateless, displaced persons and refugees. The distinction between political reasons for displacement and humanitarian ones was of crucial importance for the shaping of the international refugee regime around the IRO. The Eastern countries considered that many of its citizens were merely displaced persons that had been unwillingly removed from their homes and taken to camps during the Nazi regime and therefore should return immediately to their countries of origin (Jacobmeyer, 1990). Their view of refugee designation was a very restricted one, which curiously coincided with the U.S. perspective on the refugee definition.

Concerning the institutional set-up to deal with the problem, the Eastern countries, which were the countries of origin of most refugees, preferred bilateral co-operation alone and opposed the existence of the IRO. For example, during the life-time of the IRO, negotiations were proposed in the context of the Economic and Social Council for the creation of a new organisation. The USSR and Byelorussia rejected such proposed recommendation, on the grounds that the Council should not enter into relationships with a temporary organisation and criticised its activities (UNY, 1947/48: 667).⁵⁸ When it became obvious that some kind of international institution would have to be created, the Eastern European countries sided with the U.S. in the fight for an organ – a specialised agency - outside the UN framework but with a negotiated agreement, along their explicit preferences to “weaken the new refugee body as far as possible.” (Salomon, 1991: 172). Against this backdrop, other delegations from outside the East/West divide – Egypt, Iraq and Lebanon - that were concerned with the ongoing lack of action to solve the refugee problem, introduced draft resolutions designed to overcome the problem of the numerous self-appointed committees and organisations which promoted and encouraged immigration “likely to disturb friendly relations between nations” (UNY, 1946/47: 126). Here lie the seeds of the subsequent effect of the divergence of preferences of principals affecting not only the design of these institutions but also the shape of their mechanisms of control: it was more important for certain states to have the GA be accorded less mechanisms of control over a new organisation in order to try to make their own preferences prevail or to prevent others from having an influence in the

⁵⁸ For example, the five Eastern countries of origin voted negative to the draft Constitution of the IRO (UNY 1946/47: 165).

policy process. Hence, the large operational budget of the IRO was not to be subject to review by the UN (Salomon, 1991: 173). It eventually turned into a separate organisation with its constitutional document, integrating national and international levels of responsibility with commitments by host countries and those of the functions of the organisation integrated in the same document.

Finally there were the debates concerning the IRO's functions and in particular what permanent solutions it was to promote with the debate focusing on repatriation or resettlement. The main difference of opinion was between the countries of origin of the majority of refugees and displaced persons (the Byelorussian S.S.R., Poland, the Ukrainian S.S.R., the U.S.S.R. and Yugoslavia) on the one hand, and the countries administering refugee and displaced persons' camps in the occupied zones of Germany and Austria (the U.S., the U.K., and France) as well as other countries interested in the resettlement of refugees, like Canada (UNY, 1946/47: 164). During the discussions for the IRO the USSR tried several times to introduce some of its own views on specific issues but they were all rejected by the GA. These countries subsequently expressed significant criticisms to the work of the organisation, namely its greatest emphasis on resettlement than on repatriation as well as the poor conditions in the camps (UNY 1948-1949: 585).

The UNHCR – a double framework

Both the UNHCR and the 1951 Convention came about because the IRO mandate was expiring and there was a need for a future international arrangement to deal with the residual refugees in Europe (Kourula, 1997: 53). In this context, it was decided to have a separate Statute for the Office of the High Commissioner (from here on, Statute) and a Convention on the Status of Refugees (from here on, 1951 Convention), unlike the previous regime that centred around the IRO, without a specific distinction between the national and international level of responsibility. The IRO's Constitution had served as both the directives for the functioning of the organisation and the principles and commitments taken up directly by the states, thus joining the international and national levels of responsibility.

The new double framework devised to replace the IRO broadened the degree of responsibility to deal with the problem of refugees at the national level, beyond the scope of the international

organisation. It distributed some responsibility and obligations for international refugee protection directly to the States parties to the Convention. Hence, while the Statute of the UNHCR specified the international level of responsibility and competencies of the new organisation, the 1951 Convention specified responsibilities accepted by host countries and others concerned with the scale of the refugee problem in protecting asylum-seekers and refugees in their territory. International protection was clearly set as complementary to the protection afforded by Governments. This double framework delimited the whole structure of delegation because it represented the boundaries between those competences that states wished to retain and those they wanted to delegate to the international level. The views of where such border lied were however, not identical among the different states because they depended on the nature of refugee flows being received and on political considerations.

Even concerning the framework in which to create the new organisation there was lack of consensus during the preliminary debates, and some countries like India and Pakistan favoured the continuation of the IRO, which was still in exercise, instead creating a new organisation and placing it under the UN framework (UNY, 1948-1949). Among the Eastern countries there was continued generalised scepticism concerning all forms of international co-operation for the solution of the refugee problem. Yugoslavia was among the communist countries the most cooperative, and the only communist state participating in the drafting of the 1951 Convention (Salomon, 1991: 222), but also considered that the framework for dealing with the problem should be centred around bilateral inter-state co-operation and on a convention, and that a new organisation was unnecessary (UNY, 1948-1949: 593).

While the UNHCR was set up as a subsidiary organ of the UN, the 1951 Convention was negotiated outside the UN framework, to enable states non-members of the UN to participate, such as the major countries of first asylum in Europe, Federal Republic of Germany; Austria and Italy. In effect it also served to steer away from negotiations the five countries of origin that systematically presented obstacles to multilateral co-operation on these matters and to the idea that other states might have responsibility over the protection of the populations in question. It was agreed that the future organisation would come under the aegis of the UN since it was a problem that concerned a wide number of states and therefore the legitimacy of the organisation dealing with the refugee problem would be enhanced if placed under the guidance of the General

Assembly, and hence of all members of the United Nations.⁵⁹ Other disagreements emerged concerning the specific link to the UN.

The Office's status within the UN: two options for the new organisation

Two options for the future institution were considered on which strong divergences also emerged among states. The first of these was to place the Office of the High Commissioner under the control of the UN General Assembly and reporting to it through the ECOSOC. The second was to entrust the services of protection of refugees to a service within the Secretariat of the UN. The distinction between these two options implies a delicate balance between autonomy within the bureaucratic hierarchy of the UN and state involvement, which is one of the dilemmas that characterises this and other international organisations: while on the one hand closer and more direct mechanisms of control are useful to engage states in providing more support to the organisation, on the other hand it may entail a political proximity that undermines some of its core features of autonomy such as independence and neutrality.

The position of the Secretary-General

The Secretary-General favoured the establishment of an independent office, with the goal of obtaining an entity with a degree of autonomy from the Secretariat, based on the precedent of the ones established under the League of Nations (UNY, 1948-1949: 592). The High Commissioner should according to the Secretary-General's position:⁶⁰

- a) Enjoy a special status within the UN, with a degree of independence and prestige necessary for the effective performance of his functions;
- b) Have the sole responsibility and authority for programme decisions and actions within the directives he received from the GA and Council (ESC);
- c) Keep the Secretary-General informed of his activities and consult him to the greatest possible extent

⁵⁹ See for example the statement of the representative of Sweden at the fourth session of the Third Committee, A/C.3/SR.256, of 5 November 1949.

⁶⁰ See Report of the Secretary-General on Refugees and Stateless Persons, A/C.3/527 of 26 October 1949, pursuant to GA resolution 248 (IX) A, of 6 August 1949.

The alternative was the establishment of a service within the Secretariat, which had the advantage of administrative simplicity and economy and centralization of responsibility for all United Nations programmes in the Secretary-General.⁶¹ However, the Secretary-General was not in favour of this alternative since the precedent of a similar situation was a purely temporary arrangement, which indicates his goal of creating an institution with more grounds for permanence. Clearly bargaining for all the competencies he could summon for the new organisation, in his report the Secretary-General already suggested the possibility of large-scale operations, although the organisation's action would be limited to a coordinating role of distributing funds through governments and voluntary organisations, as opposed to an operational and direct role.⁶² Such large role was not endorsed by ACABQ – Advisory Committee on Administrative and Budgetary Questions, a body within the GA's Fifth Committee, composed of a combination of sixteen members from different countries, including financial experts. The report of this committee concerning the options for the structure of the new organisation endorsed the preference of the Secretary-General on a High Commissioner's Office but was of the opinion that the proposed structure was too elaborate and that too many resources were allocated to it under the Secretary-General's proposal (UNY 1948-1949: 592).⁶³ ACABQ's concern for the financial implications of the new organisation was shared by many states in the GA, in particular the UK.⁶⁴ The U.S. also argued that the HC should be able to provide protection on a low budget since it was "not to maintain the large-scale operations of the IRO".⁶⁵ Countries like Brazil showed the same concern for the financial implications of membership of the new organisation⁶⁶, while countries like The Netherlands showed disappointment at the restriction of the scope of the new organisation by ACABQ's report.⁶⁷ The structure that emerged from the inter-governmental negotiations did not contemplate such a broad role as the Secretary-General had argued for.

The position of the countries with a stake

⁶¹ *Idem*

⁶² *Idem*

⁶³ See ACABQ report A/1059 (1949).

⁶⁴ The UK representative, concerned with the financial implications of the range of competences to be assigned to the new organisation, supported the suggestion present in ACABQ's report that a small planning unit should be set up to examine aspects of the project in light of GA decisions (UNY 1948-1949: 593).

⁶⁵ Provisional Summary Record of the 257th Meeting held at Lake Success, New York on 08/11/1949. A/C.3/SR.257 of 09/11/1949.

⁶⁶ Provisional Summary Record of the 256th Meeting held at Lake Success, New York on 04/11/1949. A/C.3/SR.256 of 05/11/1949.

⁶⁷ Provisional Summary Record of the 257th Meeting held at Lake Success, New York on 08/11/1949. A/C.3/SR.257 of 09/11/1949.

The distribution of the preferences of the different countries involved in the initial steps for the set up of the UNHCR reveals the same general dividing lines that can be identified concerning the whole structure of the emerging refugee regime, in particular concerning two dimensions: the East/West divide and the relationship between international and national levels of responsibility.

The Eastern bloc countries favoured exclusively the national responsibility at country of origin level and as seen above were opposed to multilateral mechanisms of co-operation to address the problem of refugees. The Soviet Union was in general opposed to the inclusion of responsibilities in the framework of the UN in the economic and social area and considered that the world organisation should be restricted to peace and security issues, while countries like Sweden considered that the High Commissioner's "powers should not be confined to legal protection, as the question of refugees also raised problems of a material and social nature".⁶⁸ It also opposed both options for the creation of the new Office for Refugees for considering that the only solution for the problem was repatriation (UNY, 1948-1949: 590). The Eastern bloc countries therefore remained opposed to all international co-operation on the refugee issue aside from repatriation, including the creation of the UNHCR (Salomon, 1991: 227).⁶⁹

The divergences of positions were also strong within the Western sphere, largely linked to each country's perception of the dimension of the refugee problem, of its permanence and geographical scope. The division is drawn along the contention over a broad vision of the refugee problem and of the powers of the international community to address it, against a narrow vision that assigned more national responsibility at host state level to the protection of refugees. Countries like France and Belgium, which had a broad vision of the refugee problem and wanted the new organisation to have a stronger capacity and powers than its predecessor, shared the Secretary-General's preference for an organisation under the aegis of the GA.⁷⁰ The argument presented for this preference by France and Belgium was that with this framework, countries that were not members of the UN, but who so wished, could be associated with the work of the new organisation (UNY, 1948-1949: 589-590).

⁶⁸ Provisional Summary Record of the 256th Meeting held at Lake Success, New York on 04/11/1949, A/C.3/SR.256 of 05/11/1949.

⁶⁹ The Soviet Union participated in the debate in the GA but not in the final drafting of the 1951 Convention.

⁷⁰ A first proposition for the creation of a new organisation was put forward jointly by Belgium and France (E/1447 and Rev. 1).

3.2. Negotiations of the Statute of the UNHCR

This section will provide the results of the analysis of the documents related to the establishment of the UNHCR⁷¹ and in particular the discussions in the Third Committee of the GA concerning this issue.⁷² The analysis identified points of contention where diverging preferences emerged and points of consensus that led to the approval of the Statute of the Office of the High Commissioner for Refugees in 1950 and original characteristics of the new organisation. It represents the position of the states at the time of delegation. Four important dimensions of the work of the UNHCR are the focus of attention concerning these discussions: groups of concern; geographical scope; solutions; activities.

3.2.1. Groups of concern – the 1950/1951 refugee definitions

The mandates of the different organisations of refugee protection have been delimited on the basis of the agreed definition of the concept of refugee. Such concept has varied according to the nature of the different refugee populations that have posed significant challenges to the international community. It is an eminently political concept, and by no means universal.⁷³ Over the years we have witnessed the proliferation of specific conceptions of refugees and of “groups of concern”: currently there are internally displaced persons (IDPs), persons in refugee-like situations, returnees, persons at risk of displacement. Not all these groups have been formally accepted by the international community. The flexibility introduced by the expression “groups of concern” has proven quite useful to the UNHCR, enabling the organisation to go beyond the strict definition agreed by a limited number of states at a specific point in time.

⁷¹ The sources used are UN Yearbooks from 1948-1949 and 1950 reporting on the discussions held in the Third Committee of the GA, as well as relevant historical documents relating to the establishment of the UNHCR, as listed under Documental References.

⁷² The Third Committee is responsible for deliberations concerning social, humanitarian and cultural issues.

⁷³ For example, regarding displaced persons, the definitions that came out of the post-World War II refugee regime were so narrow that this group was only considered within the IRO Constitution's definition, and even so, in a completely different sense from the one that it takes currently. In the IRO, displaced persons were distinguished from refugees because they had been deported and the aim was to repatriate them (UNY, 1955: 201). On the grounds that this group “...enjoyed the same rights and privileges as nationals in their countries and were not in need of international protection” (UNY, 1948-1949: 577), they were excluded from consideration for the 1950/1951 definitions.

At the time of the discussions for the creation of the UNHCR there were four main points of cleavage among states concerning the definition of refugee that was to be included in the Statute of the UNHCR: whether to keep the IRO definition; the relation between the different possible definitions being considered; the more or less flexible interpretation of the definition agreed upon; and the forms of refugee status determination: individual or group approach.

Definition

Chapter II of the Statute of the UNHCR, refers to the range of competence of the High Commissioner, which extends not only to those who had been considered refugees under previous arrangements for the protection of refugees in Europe, but also to "*(a)ny person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.*"⁷⁴

The next sub-article extends this protection to any other person in the same conditions, without the time limitation that will be found in the 1951 Convention and extending the scope of activity of the High Commissioner beyond the immediate consequences of World War II: "*Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.*"⁷⁵

A first point of discussion was the issue of whether the IRO definition should be maintained. The IRO General Council in a report made clear that certain sections of the definition were no longer applicable with respect to the furnishing of protection.⁷⁶ France argued that the problem of

⁷⁴ Statute of the Office of the UNHCR, annex to General Assembly Resolution 428 (V) of 14 December 1950. Art. 6. A. (ii).

⁷⁵ Idem. Art. 6. B.

⁷⁶ IRO General Council, (E/1668).

refugees was much broader than what was covered under the IRO definition and was interested in attributing the High Commissioner sufficient leeway for the interpretation of the IRO definitions. The Netherlands supported a more restricted definition that would be limited to the one present in the IRO constitution, although it recognised the need for support to other categories. This shows the perception of the refugee problem as going beyond the consequences of World War II. Such notion was acute in the case of France and in the case of the UK. Finally it was agreed to transfer the definition and add the remaining responsibility to the competences of the new organisation.⁷⁷

According to the Constitution of the IRO, the term "refugee" applied to "*a person who has left, or who is outside of, his country of nationality, or of former habitual residence, and who, whether or not he had retained his nationality, belongs to one of the following categories...*".⁷⁸ In these categories one could identify two groups: those who were recognised as refugees before the outbreak of World War II, for reasons of race, nationality or political opinion; and those who, whether enjoying international status as refugees or not, were either victims of nazi or fascist regimes - including persons who had resided in Germany and Austria, of Jewish origin, foreigners or stateless -, or victims of the Falangist regime in Spain. Further, the situation of those who, owing to the events of World War II could not avail themselves of the protection of the country of nationality was included in the definition.⁷⁹ The IRO definition was thus limited to certain categories of people who had fled specific situations, which made it a very narrow definition, contextualised within the events that marked European politics in the first half of the twentieth century. Indeed the refugee definition and the conditions for being of concern to the IRO were designed to address one of the most striking instances of international mass exodus, which occurred during, and as a result of, the Second World War II and was thought to be temporary and unique. It was also designed to address certain political situations in Europe, such as the cruelty exercised by some repressive regimes. The limited nature of refugee status or of the categories eligible for status is further illustrated by the fact that, apart from the victims of the Falangist regime, which were of concern to the international community while the regime lasted, the other groups were of concern to the Organisation for repatriation effects only. Other solutions were considered only if the refugees showed valid objections to returning.⁸⁰ This was a characteristic of the international refugee regime since its inception in the context of the League of Nations, where

⁷⁷ Statute of the Office of the UNHCR, annex to General Assembly Resolution 428 (V) of 14 December 1950, Art. 6. A. (i).

⁷⁸ See Annex 1 - Part 1, Section A, Constitution of the IRO, General Assembly Resolution 62 (I), 15 December 1946.

⁷⁹ Children under sixteen were also within the scope. *Idem*, *ibidem*.

⁸⁰ *Idem*, Section C and D.

there was the clear underlying assumption that the set up was temporary (Holborn, 1975: 36) and repatriation the absolute priority. Therefore, one can say that the IRO definition, as well as the ones developed before and immediately after World War II were essentially pragmatic and solution oriented ones (Kourula, 1997: 52; Jackson, 1999: 78).

Difference between the Convention and the Statute

A second point of discussion was the similarity of the refugee definition present in the UNHCR Statute and the one present in the 1951 Convention. The lack of agreement among states concerning these two, and the different frameworks within which they were being negotiated led to slight differences related to the political preferences of the states involved, as will be seen further on. During discussions for the creation of the UNHCR, most members of ECOSOC thought that the definition in the Statute should be the same as the one in the Convention. However, some delegations, among them Belgium, Canada, Pakistan and the UK were in favour of a broad definition and insisted on a distinct definition in the two instruments (UNY 1950: 581).

An early interesting demonstration of the flexibility introduced by the proliferation of concepts and lack of agreement on a common ground is the existence of small but relevant discrepancies between the definition present in the Statute of the UNHCR and the one in the 1951 Convention, negotiated within a one year distance of each other, but in different political contexts. The differing elements of the concept in these two documents also reflect the difference between the national and the international level of responsibility for the protection of these populations, with the former more restricted in terms of the range of populations for which states are willing to assume a responsibility for national protection, while the latter assumes a broader range.

The U.S. also argued for the inclusion of a particular expression in the Statute only: "for reasons other than personal convenience". This expression was introduced by the U.S. delegation, drawing attention to the position of refugees who were not afraid of actual persecution in their home countries, but who were unwilling for psychological reasons to return, in order to encompass those who did not want to go back to communist countries. This waters down the condition that was present in the IRO Constitution's definition for the refugee to show legitimate reasons or valid objections for fearing return and which the countries of origin wished to maintain.

Since the drafting of the 1951 Convention was already under way, the second round of discussions for the Statute of the UNHCR took into account the preliminary conclusions achieved in the Convention negotiations. The Secretary-General was of the view that in the face of a discrepancy between the definition in the IRO constitution and the one in the draft Convention relating to the status of refugees prepared by the Ad Hoc Committee on Statelessness and Related Problems, the definition adopted for the competence of the High Commissioner should be consistent with the one present in the draft Convention (YB1950: 580).⁸¹ While most members agreed with this position, those who had fought for a broader definition in the Convention (Belgium, Canada, Pakistan and the UK) insisted that such a broad definition was even more necessary in the Statute: since the expenses of the Office would be borne by all members of the UN, it should extend protection to all groups of refugees. At this point France and the U.S. justified the preference for a restriction of application of the definition to the European context with the argument that the High Commissioner's Office was designed to protect those refugees who were in need of international protection because they did not have a legal status. While acknowledging that there were many refugees all over the world in urgent need of relief, such refugees enjoyed the protection of Governments and were outside the scope of the present arrangements. Here is visible the clear distinction that is made between the national and the international level of protection that is to be accorded as a competence of the High Commissioner. France and the U.S. therefore supported a definition by categories close to the one that was to be included in the Convention. The U.S. pretension prevailed of having a strict definition in the Statute and Convention, with the possibility of adding other groups as the GA subsequently determined. A subsequent proposal by the UK to have a broader definition was rejected by roll-call vote of 6 to 5, with 3 abstentions. At the 414th plenary meeting on 16 August 1950, the representatives of Belgium, Canada, China, Denmark, Pakistan and the UK reserved the right either to support any move to enlarge the definition of a "refugee" or to raise the issue in the GA. This shows a concern for retaining the flexibility for the interpretation of the definition in the future, tailoring it to the needs as they arise. Although this possibility of subsequent broadening of the groups of concern was not included in the Statute, it did in practice occur over the years.

The analysis of the preparatory debates for the creation of the UNHCR indicates that the definition in the Statute is the result of the possible consensus among states with disparate preferences and concerns. There is a degree of ambiguity that serves as a pragmatic device to

⁸¹ Report of the Ad Hoc Committee on Statelessness and Related Problems (E/AC.32/5 - E/1618), 17 February 1950.

indicate that the work of the High Commissioner is to address the international level of responsibility regarding influxes with which individual states will have difficulty in coping alone since it is such a sensitive and at times overwhelming problem. However, as Kourula (Kourula, 1997: 56) notes, the spirit of the draft may have been liberal, but most of the liberal proposals calling for flexibility in accepting other categories of refugees with a determination by the General Assembly were not approved, rather such measures were initially left to the discretion of the states. Actually there were some reservations in that sense presented by states, many of which referred to matters of interpretation of the scope of the definition.

Negotiation of the 1951 Convention

The negotiations of the 1951 Convention on the Status of Refugees represent the national level of responsibility and enumerate the commitments that states are willing to endorse in order to ensure the protection of refugees in their territory. These negotiations are important for assessing the autonomy of the UNHCR insofar as they represent the definition of the boundary between the national and the international level of refugee protection: by taking up national responsibilities for refugees, states also defined what the UNHCR would be responsible for supervising since one of its major functions was the supervision of the enforcement of the dispositions set out in the Convention. This corresponds to the authority dimension of the work of the organisation and is indicative of the capacity of the organisation to exercise some of its core competences, which have been operationalised under inherent policy options of the organisation.⁸²

The refugee definition

The basis of current international refugee law are the definitions present in the Statute of the Office of the UNHCR, approved in 1950 and the 1951 Convention relating to the Status of Refugees. These instruments incorporated the definition of refugee present in a previous international instrument, which was the Constitution of the International Refugee Organisation (IRO)⁸³. The Statute definition has few differences from that of the 1951 Convention, adopted six months later: the former definition doesn't have the geographical or time limitations of the latter and there is no mention of membership of a particular social group as a ground for persecution

⁸² Not all states signed the 1951 Convention, including the U.S., but such was not an impediment to becoming a member of the UNHCR's later Executive Committee.

⁸³ General Assembly Resolution 62 (I), 15 December 1946.

(Kourula, 1997: 176). Indeed, the 1951 Convention definition emphasises even more strongly the time and space limitation that was present in the refugee definition of the IRO Constitution: it applies only to events occurring before 1 January 1951, in Europe.⁸⁴

During the third round of discussions at the Fifth session of the General Assembly there was the following division among states: countries supporting a precise definition: France, Venezuela, Israel, U.S. among others; countries supporting a broad definition: Belgium, Canada, the Netherlands, Turkey, UK, Yugoslavia, among others. Some countries, like Australia, favoured a general definition for the Statute, and others favoured a limited definition for the Statute and a general one for the Convention.

The importance of the distinction between the definition in the Statute and in the 1951 Convention derives from the obligations that each of these instruments impose at the two levels mentioned before: while in the case of the Statute the definition has the purpose of determining what is currently designated as persons of concern to the UNHCR, implying only a responsibility at the international level, the 1951 Convention definition determines those who the individual states commit themselves to consider as eligible for refugee status and thus assume an obligation to ensure directly their protection. The emphasis on these two levels has strong implications for explaining not only the shape of the system of refugee protection under analysis, but also the division of competences between states and the UNHCR and hence the nature of organisational embedded autonomy that will be characterised in this chapter. The first and universalised definitions were the result of the interplay of these two levels, adjusted to the specific European post-World War II context.

The refugee definition in the Convention is as follows: *For the purposes of the present Convention, the term "refugee" shall apply to any person who: (...) (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the*

⁸⁴ However, it is left to the States to decide at the time of ratification whether they wish to extend the scope of the Convention beyond Europe. Convention Relating to the Status of Refugees of 28 July 1951, Chapter I, Article I. B (1).

country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."⁸⁵

This definition also removes the expression "for reasons other than personal convenience" that was present in the Statute. Such removal is a response to accusations that many refugees were staying for other reasons than persecution, such as motivated by propaganda against return. Countries like Byelorussia and Poland systematically made accusations to the "occupying powers" of France UK and U.S., of dissuading refugees from returning with propaganda against return or even recruiting refugees for forced labour.

As it was not in the interests of Western states to promote repatriation to Eastern countries, and considering USSR pressure for an emphasis on repatriation, those who had wanted to return were considered displaced persons, falling out of the scope of the 1950/1951 definitions. Again, as a result of the possible consensus, the definitions that were created in the post-World War II incorporate a "group" criteria, but the mechanism used for status determination is based on individual procedures. There was a widespread agreement among states negotiating the Convention that this was to apply to single cases and not to massive border crossings. When discussing the approval of the draft Convention, the representative of The Netherlands, for example, "... saw a solution in a possible interpretation of the Convention: the Convention was not meant to be applied to great masses of refugees, but to individual cases. The Swiss representative had suggested this solution, and Belgium, Germany and Italy did not reject that interpretation." (Goudoever, 1998: 276). Involved in the discussion was the issue of whether the new instruments would remain instruments of restricted application whose adequacy and usefulness for a lasting international arrangement on refugees would be questionable (UNY, 1950: 571).

Interpretation: narrow vs. broad approach

The divisions among countries' preferences in the negotiation for the Statute were also positioned around the issue of the flexibility of the new organisation: should it be guided by a narrow interpretation of refugee, by a broad one, or by a definition that left scope for subsequent decision-making? Different countries had different positions on this, as it impinged on the nature

⁸⁵ 1951 Convention Relating to the Status of Refugees, Art. 1° A (2) .

of activities to be performed at the international level, as will be seen further on. Divisions were thus based on the perception of the problem and on how interested the different governments were in framing the refugee problem as temporary, leaving aside obvious permanent needs deriving from the continued outpouring of refugees, namely from the countries of Eastern Europe.

The perception of the scope of the problem was important to establish the degree of flexibility intended for the interpretation of the definition.⁸⁶ Countries that perceived the problem as temporary in general supported a more restricted definition with little leeway for interpretation, whereas countries that perceived the problem as a more general issue of concern overall tended to support more room for ulterior interpretation of the agreed-upon definitions. This is where more differences emerged between the Western and the Eastern countries, but also within the Western camp. Whereas, for example, in the British foreign office there was an early awareness that the problem was not temporary, the Eastern countries of origin placed a strong emphasis on the temporary nature of the problem. Since the British foreign office perceived that the refugee flow from the East would continue, there was an interest in framing the IRO - and later the UNHCR - in such a way as to enable it to grow and expand. However, most members of the UN were not interested in shaping the problem as a permanent one (Salomon, 1991). The UK position was that the IRO definition was sufficient but that the UNHCR should act as an adviser for questions covering those who might become stateless either the jure or de facto. This shows the concern for a new category that emerged in large numbers as a direct consequence of the movements of people and reshaping of borders in the new European context.⁸⁷

Concerning the flexibility for interpreting the definition, France had a broad perspective and considered that the High Commissioner should be free to interpret the definition and intervene in any emergency before a decision taken by the GA. However, as will be seen further on, this perspective is also linked to the nature of the activities supported by France, which were basically of international legal protection and a supervisory role instead of material assistance activities. On the other hand the U.S. considered that the GA should decide specifically for what particular groups it was willing to accept responsibility, which the High Commissioner would then take over. In an opposite view from France, the U.S. favoured a more narrow international level of

⁸⁶ Perception is here understood as the stated view from which an official position is derived. This does not necessarily correspond to the actual perception among key officials.

⁸⁷ I will not address the issue of UNHCR's activities concerning the stateless, although over the years the organisation has increased its concerns over such groups, but mainly at the level of legal and advocacy functions, much in tune with its core mandate.

responsibility and a stronger national responsibility, which is in line with the use that was made of refugee policy as an instrument of foreign policy (UNY, 1950). These divergences illustrate not only the fundamentally different positions of states vis-à-vis the refugee problem but also the complex nature of the issue, to the extent that such contrasting approaches arise.

Status determination: Group and individual definition

Unlike the case of the IRO, the definition in the High Commissioner's Statute uses an individualised approach, which doesn't take membership of specific groups of persons as criteria for status determination. However, in the period when both organisations were active, arrangements were made for the UNHCR to take over the general work of protection relating as a rule to groups and categories of refugees, while the IRO kept on with the protection of individual refugees within its mandate (UNY, 1952: 497).

This task, together with the statement that the High Commissioner's work "...shall relate as a rule to groups and categories of refugees", creates some ambiguity regarding the scope of the High Commissioner's functions, as it seems to establish an incongruity between the refugee definition and the actual work.⁸⁸ It could almost be said to contain an interpretation of the functions in the constitutional document. Authors diverge regarding the interpretation of this ambiguity: while some suggest that the individualistic thrust of the UNHCR's Statute and of the 1951 Convention makes the work of the UNHCR with groups and categories contradictory as a definition (Kourula, 1997: 175), other authors see this as an expression of the liberal and flexible approach taken by states in their consideration of refugee issues, in particular in the aftermath of the horrors of World War II, when human rights considerations were at the forefront of the concerns (Jackson, 1999: 80). The analysis presented above concerning the different views of the problem indicates that there was indeed a postponement of the decisions concerning the specification of international responsibilities for refugees, be it at the individual or group level. Further, the individual/group dichotomy will later match the national/international dichotomy discussed above, where the national level tends to be responsible for individual screening and the international organisation useful in assisting with larger groups and massive displacement. However, this was not clear at the time of the creation of the UNHCR.

⁸⁸ *Idem*. Chapter 1. § 2. This fact is explained by the need to keep the work of the UNHCR limited in its administrative activities of status determination and material assistance to individual refugees.

3.2.2. Geographical and temporal scope – the focus on Europe and the limited duration of the UNHCR

The discussion around the broad or narrow definition of refugee is reflected also in the geographical scope of activity foreseen for the new organisation. While countries from outside the Western sphere, such as Mexico and Brazil, argued that as a UN organ the UNHCR should be universally responsible for refugees, France and the U.S. argued that only the European refugees faced the uncertainty of absence of a legal status, which made them merit international protection that was not provided by any state (UNY 1950). The latter two countries led the support for the restrictive version limited to the European context, while UK and the others desired a broad definition concerning the places of origin of refugee groups. Most of the non-European countries wanted the broad definition, so that international protection could cover refugees on their soil, like Pakistan, China and Egypt. India, which was in the same position as Pakistan favoured an exact definition, since a broad definition would, according to its delegation, generate too many difficulties (UNY 1950). The option followed was a middle course, leaving choice to the states (Salomon, 1991). Salomon (1991: 228) argues that the West was divided on this issue among countries of first asylum (Western Europe) and countries of overseas resettlement. Other Western countries, such as Belgium, Canada and the UK, who had favoured a broad definition, stated that as the expenses of the Office would be borne by all Members of the United Nations, it should extend protection to all groups of refugees (UNY 1950).

The definition present in the Convention is much narrower in terms of the geographical and temporal limitations for refugee status than the one in the Statute, and some leeway is left to the High Commissioner to interpret its geographical scope of activity. This is an indicator of the need to ensure that the responsibilities assumed directly at the national level, through the commitments taken up by states in the Convention remained restricted to the immediate narrow interests of the states that in practice dominated the negotiations. On the other hand, the international level of responsibility, as embodied by the UNHCR, was allowed more flexibility.

The temporary nature of the organisation shows that a wide task expansion had not been foreseen at the time of creation, which would be difficult without a strong budget, an existence set for a limited period of time, and an organisational structure that did not leave margin for much

operational activity that required strong fixed structures.⁸⁹ The time limit of the Office of the UNHCR was another topic of disagreement among states: while the U.S. wanted it to end after three years, the majority of the UN supported a longer term and a provision was included for the assessment of the continued need for the organisation by decision of the GA after the initial three years (Salomon, 1991: 221). Initially the institution was to last three years, after which the GA was to review the arrangements and determine whether it should be continued beyond December 1953.⁹⁰ The UNHCR's predecessor, the IRO also had the status of non-permanent organisation and at its termination affirmed the permanent nature of the problem and implicitly the need for more permanent structures to deal with the problems.⁹¹ ..., This limited duration was thought to provide little scope for expansion since the organisation did not have any funds of its own and had a limited time of existence, hence curtailing the ambitions of effective universality of the new organisation.

3.2.3. Permanent Solutions – the debate

According to Chapter 1 § 1 of the Statute, seeking permanent solutions is one of the main functions of the UNHCR. The perception of the refugee problem in terms of its permanent or temporary dimension largely influenced the solutions that were to be enshrined in the constitutional document. While a natural solution to the refugee problem would be voluntary repatriation, and was always pointed out in the first place in draft resolutions, it was always associated with other options until conditions in the country of origin returned to normal. Such possibility was at the time of the Cold War ruled out for political reasons concerning refugees escaping the Eastern bloc countries or those that were left from World War II. Hence, other solutions had to be found, such as assimilation in new communities and in practice over the years the refugee status came to be perceived as a permanent rather than as a temporary situation in the refugee-receiving countries.

⁸⁹ See Chapter I, § 5 of the Statute, where a deadline is set for reviewing the continuation of the Office beyond 31 December 1953. By subsequent resolutions the deadline set down in this paragraph has been superseded as the Assembly extended the life of the Office for successive five year periods: 1954-58 (Res. 727 (VIII) of 23 October 1953; 1959-63, Res. 1165 (XII) of 26 November 1957; 1964-68, Res. 1783 (XVII) of 7 December 1962; 1969-73, Res. 2294 (XXII) of 11 December 1967; and 1974-78, Res. (XXVII) of 12 December 1972." (Holborn, 1975: 92).

⁹⁰ See Statute of the UNHCR, § 5°.

⁹¹ See report by the General Council of the IRO A/C.3/528 of 20 October 1949.

The solutions to the refugee problem to be promoted by the UNHCR were the object of the most heated discussions and accusations in meetings of the General Assembly for the creation of the Office. Among the possible solutions available to refugees were the integration in the country to which they had escaped (local integration), the integration in a third country willing to receive them (resettlement), and finally the return of the refugees (voluntary repatriation).

At the time of the negotiations for the Statute, the preferences of host states or others affected by the magnitude of the problem were different from today: voluntary repatriation was placed at the same level as assimilation in new national communities (i.e., local integration or resettlement), and not the clearly preferred solution.⁹² In these discussions only the five Eastern countries of origin had a clear preference for voluntary repatriation, while the others were more focused on promoting resettlement and local integration. Indeed, it is in the field of the solutions to be promoted by the new organisation that the highest controversies emerged between the Eastern bloc and the rest of the members of the UN GA. While it was consensual that voluntary repatriation should be a major function of the new organisation and the final solution to be pursued, its application was not so consensual. Western countries placed also a strong emphasis in the assimilation of refugees in new communities of resettlement, in cases where local integration was not possible. This was highly contested by countries of the Eastern bloc but was carried through for two main reasons: it was in the West's interest to provide for the speedy resolution of the problem of refugees still living in camps who were not willing to go back, and the presence of so many people unwilling to return became a useful tool of criticism of the Eastern countries concerning their human rights policy.

The Eastern countries retorted that repatriation agreements were being violated, that war criminals and quislings were being used in positions of authority in displaced persons camps in Western Europe, that propaganda was being used to achieve a cheap labour market, and that repatriation officers were being barred from the camps (UNY 1948-1949: 593). This was an on-going discussion that was taking place since the establishment of the IRO and went on into UNHCR's tenure, with accusations from the countries of origin towards the western administration of refugee camps in Austria and Germany. This led to Poland's draft resolution on the problem of refugees and displaced persons, containing specific recommendations to the member states on measures to avoid some of these problems: it emphasised the need to focus on refugee return to

⁹² See for example, France's draft proposal for a resolution, A/C.3/529, of 2 November 1949.

the countries of origin and recommended members of the UN not to permit in camps for refugees and displaced persons any activities of propaganda that advised against return to the country of origin, and which hindered the solution to those problems.⁹³ This information is corroborated by the findings of Rystad (1990), and Salomon (1991) points to obstacles to repatriation such as information conditions in the refugee camps; anti-repatriation elements in the camps; liaison officers designated by the Polish government in exile discouraged voluntary repatriation.

By keeping open the three types of solutions, the countries that negotiated the Statute of the UNHCR largely turned the choice of permanent solution to be promoted into a political decision process to be made by the GA. There was no policy line established beforehand to guide the organisation and the solution to be privileged would be largely dependent on the evolution of the international environment and agreement among states concerning specific additional activities. Again this is the effect of the flexibility that was generated by the lack of consensus among states at the time of the negotiations.

3.2.4. Scope of activities

The functions and procedures attributed originally to the UNHCR are, according to the Statute, "...providing international protection..." and "...seeking permanent solutions [...] by assisting governments and, [...] private organizations to facilitate the voluntary repatriation of refugees, or their assimilation within new national communities."⁹⁴ Further, a number of specific functions related to international protection are outlined in Chapter II § 8, which stipulate the organisation's rule-creating and rule-supervisory functions as well as its co-ordination functions among different aid organisations.⁹⁵ Many of the functions enumerated in the paragraph correspond to the functions of international protection in the context of efforts for local integration. As stated in § 9^o, "The High Commissioner shall engage in such additional activities, including repatriation and

⁹³ UN document A/C.3/513, of 11 May 1949.

⁹⁴ Chapter I, § 1 of the Statute of the UNHCR.

⁹⁵ The functions enumerated in Chapter II § 8 of the Statute of the UNHCR are: 1. *Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;* 2. *Promoting measures to improve the situation of refugees and to reduce the number requiring protection;* 3. *Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;* 4. *Promoting the admission of refugees to the territories of States;* 5. *Help in obtaining permission for refugees to transfer their assets;* 6. *Obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;* 7. *Keeping in close touch with governments and inter-governmental organisations, as well as private organisations concerned;* 8. *Co-ordination of the efforts of private organisations.*

resettlement, as the General Assembly may determine". The decision on the solution to be adopted in different situations was not left originally to the discretion of the High Commissioner, but to the deliberation of the members of the General Assembly. Again the limit of the resources at its disposal were an important criteria.

There are two main dimensions of activities of the UNHCR that reflect the different views of states at the time of negotiations: international protection and material assistance. The distinction between these two types of activities is crucial not only in the debates for the creation of the UNHCR but also in subsequent decisions made by the organisation and its mission interpretation. This is because the nature of the activities to be performed differs substantially depending on whether they centre on the provision of material assistance or international protection and the degree to which they are seen to be interconnected has helped determine the direction of evolution of the organisation in subsequent stages.

International protection and material assistance

Material assistance to refugees is according to § 10⁹⁶ dependent on the availability of funds and was not to be performed directly by the organisation, rather distributed by it to the relevant public or private entities in the state in question.⁹⁶ Hence, when compared with material assistance, the function of international protection conferred the organisation a lot more leeway, authority and autonomy since it did not depend so much on funds and could be enforced or at least promoted directly by the organisation.

During the preparatory debates for the creation of the UNHCR there was wide disagreement among states concerning the scope of activities of the organisation and many countries were not in favour of an operational or even remotely welfare role for the UNHCR. The position of France asserted that because of the nature and vastness of the problem, the UNHCR could not take the place of the competent governmental services as the IRO had. Hence, according to a French draft resolution submitted to the Third Committee of the GA in 1950, the High Commissioner should

⁹⁶ *The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance. The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized. The High Commissioner shall not appeal to Governments for funds or make a general appeal, without the prior approval of the General Assembly. The High Commissioner shall include in his annual report a statement of his activities in this field.* Chapter II, § 10 of the Statute of the UNHCR

have no executive competences save under exceptional circumstances. He should rather have competences of higher direction, liaison and control.⁹⁷ Further, according to the French representative, other specialised agencies should assist the High Commissioner in assisting refugees in need and the work should be of a strict non-political nature. He stated that international protection was only the corollary of national protection.⁹⁸ In a contrasting position that called for more flexibility in the work of the organisation, the Netherlands, Sweden, Greece, Australia and Canada considered that the High Commissioner's powers should not be confined to legal protection but should be sufficiently supple to meet all requirements including those of a material and social nature.⁹⁹

Again there were divergences with the U.S., that didn't support the High Commissioner's Office since it would make it more difficult to limit the functions of the office (Salomon, 1991: 219). The U.S. had a restrictive view: "They did not favor the "fire engine" type of High Commissioner who would be given responsibility and power of recommendation with regard to refugee situations everywhere which presently existed or might arise in the future." (Salomon, 1991: 220). Hence, material assistance functions within a broader refugee definition would basically set the organisation off limits of control.

Whereas international protection confers a strong degree of authority to the organisation in the sense that it retains independence to supervise and credibility to advise, material assistance is more dependent on specific preferences of certain states that have a particular foreign policy concern for a specific area or a preference for a specific type of solution. However, while some countries were in favour of a clear separation between the function of international protection and material assistance, other countries constructed an integrated view of the functions of the High Commissioner whereby material assistance was an integral part of international protection since legal rights were of no use if the refugees did not have access to basic standards of living. That explains the divisions on the issue of whether the new agency would have the authority to handle

⁹⁷ "In view of the large numbers of refugees, their dispersion throughout the countries of the world, the nature and complexity of the problems requiring solution and the responsibility in this regard of the countries of reception or immigration, the High Commissioner's functions shall not, save under special arrangements necessitated by exceptional circumstances and based on agreements concluded between the High Commissioner and the Governments concerned, be exercised in the form of executive service. They shall therefore as a rule concern groups and categories of refugees." Refugees and displaced persons: France draft resolution, UN document A/C.3/529, 2 November 1949.

⁹⁸ Provisional Summary Record of the 256th Meeting held at Lake Success, New York on 04/11/1949, A/C.3/SR.256 of 05/11/1949.

⁹⁹ Provisional Summary Record Meetings 256th to 264th held at Lake Success, New York between 4 and 14 November 1949, A/C.3/SR.256 to A/C.3/SR.264.

funds for material assistance and a permanent international fund for material assistance should be set up: France and Belgium and most other Western countries did not separate protection from assistance and argued that both should be provided and funds supplied, while the U.S. supported a small administration as part of the regular UN budget, with functions limited to legal and political protection and excluding large-scale operational funds. Because there was no agreement on the handling of such funds, the issue was left open (Salomon, 1991: 221).

3.3. Control mechanisms

3.3.1. Oversight and guidance

Formally, according to Chapter 1 of the Statute, the UNHCR acts under the authority of the General Assembly and receives the policy directives from that organ and from the Economic and Social Council (ECOSOC).¹⁰⁰ The fact that the ECOSOC and the GA provide broad policy guidelines to the organisation and that the High Commissioner acts under the authority of the GA, together with the financial limitations, obviously limits its autonomy in terms of capacity to influence the organisation's decisions. The Secretary-General has an intervening role in promoting arrangements for liaison and consultation on matters of mutual interest between Secretary-General and High Commissioner.¹⁰¹

An advisory committee was foreseen since the inception of the UNHCR but not immediately established, for providing opinion to the High Commissioner when difficulties arise, for instance "...with regard to any controversy concerning the international status of these persons...".¹⁰² In 1951 the High Commissioner recommended that the Council appoint such a committee to advise the High Commissioner, consisting of representatives of States, both Members and non-members of the UN, within whose territories considerable numbers of refugees under his mandate were resident, and which had shown particular devotion to the cause of refugees. He further recommended that the committee should be empowered: (1) to co-opt as a member with equal status a representative of any State which had signed or acceded to the Convention and had expressed a desire to collaborate; and (2) to invite to its meetings the representative of any other

¹⁰⁰ Statute of the UNHCR Chapter I § 3°.

¹⁰¹ Statute of the UNHCR Chapter III § 17°.

¹⁰² Statute of the UNHCR, Chapter I § 1°.

state if matters particularly affecting its interests were discussed.¹⁰³ The Council decided that the advisory committee should be created “to advise the High Commissioner at his request in the exercise of his functions”¹⁰⁴ and that it should be composed of fifteen states, members and non-members of the UN, “selected on the basis of their demonstrated interest in and devotion to the solution of the refugee problem” (UNY 1951: 527). A double decision structure then emerged (largely out of the divergences among states), with the UNHCR being controlled by the GA’s Third Committee and ECOSOC, and the possibility of the creation of an advisory committee to direct the organisation in more specific issues.

The pattern of division of responsibilities between the international and national levels of protection of refugees is very clear in the analysis of the creation and development of the UNHCR. The broad policy directions were to be made by the General Assembly and the Economic and Social Council, through directives to the High Commissioner, who would have responsibility and authority for contingent programme decisions and actions.

While the institutions that preceded the UNHCR had focused on providing an international framework to address situations that did not concern any state in particular but affected several, the creation of the UNHCR, soon followed by the signature of the 1951 Convention, meant the clear distinction between the national level of responsibility for protection to which obligations the states signatory subscribed, and the international level of responsibility, which was initially meant mainly to supervise the observation of these obligations by a central institution.¹⁰⁵ As this framework was designed to address the European refugee problem, the more direct functions relating to refugee issues were relatively marginal and empirically consisted mainly of finishing the work of the IRO.

To address states’ concerns for the financial implications of the new organisation, the Secretary-General suggested the creation of an inter-governmental committee for the budgetary allocation of any funds that may be provided to the organisation.

Material assistance and funding

¹⁰³ E/2036 and E/2036/Add.1.

¹⁰⁴ ECOSOC Resolution 393 (XIII), of 10 September 1951.

¹⁰⁵ Because it is an issue of recognised international dimension, the basic instruments that codify refugee issues are international, leaving to the states the discretion of developing national legislation that corresponds to the principles established (Gordenker, 1987: 30) and (UNY, 1950: 580).

The discussion on activities related to material assistance raised the debate on funding. The management of funds by the organisation entailed in principle an increased capacity for autonomous action that could run counter to the interests of certain states, as feared by the U.S. This explains the lack of interest of the U.S. delegation in having the UNHCR managing funds for material assistance, as seen above. However, this was not a position shared by all states and since there was no specific agreement among states on the policy orientation of the organisation the issue of material assistance was also framed in broad terms, but put under a strict control by the General Assembly to scrutinise the areas for which the organisation would be allowed to request funds. According to art. 10^o, the High Commissioner was not to appeal to Governments for such funds without the approval of the GA. Hence, states' lack of agreement at the same time gave the flexibility for eventual future appeals for funds while initially keeping such activities under control and oversight.

In a joint effort to produce an agreement on the constitutional document for the new organisation, the U.S. and France submitted a joint draft resolution where they proposed a framework based on the points on which they were able to agree, while retaining the aspects of dissent.¹⁰⁶ The main points of divergence between the two delegations concerned the definition of refugee, the appointment of the High Commissioner and the authority of the High Commissioner for the allocation of funds. Adding to their proposal, some proposed amendments to the draft suggest more flexibility, such as the one proposed by Australia, while others, such as the UK proposal, insists more on reporting and mechanisms of control.¹⁰⁷ Other countries tried to push for their own particular circumstances, such as Israel, whose proposal tries to introduce categories not covered by the IRO constitution.¹⁰⁸

Initially there was a clear emphasis on the need to keep the UNHCR small: "During the discussion on the estimates, the need for a definition of administrative and operational expenses in the field of assistance to refugees was emphasized in view of the attitude of some governments

¹⁰⁶ "Refugees and stateless persons. Draft resolution of France and the U.S.", UN Document A/C.3/L.29 of 13 November 1949.

¹⁰⁷ "Refugees and stateless persons. Australia: amendment to the draft resolution of France and the U.S. (A/C.3/L.29)", UN Document A/C.3/L.31 of 15 November 1949; "Refugees and stateless persons. United Kingdom: amendment to the draft resolution of France and the U.S. (A/C.3/L.29)", UN Document A/C.3/L.32 of 15 November 1949.

¹⁰⁸ "Refugees and stateless persons. Israel: amendment to the draft resolution of France and the U.S. (A/C.3/L.29)", UN Document A/C.3/L.33 of 15 November 1949.

that activities of an operational nature should be financed solely on the basis of voluntary contributions." (UNY51: 534). The need to ensure that the activities of branch offices did not extend beyond what was permitted in the Statute was underlined. This reflects the debate between operational and indirect functions and the goal of keeping the limited action: The modest role planned originally for the High Commissioner underlines the formal subordination of international officials to the decisional committees made up of governmental representatives (Gordenker, 1987: 43).

In 1950, a proposal by Belgium which would have the Assembly allocate special funds to the High Commissioner for the purpose of granting material aid on a temporary basis to refugees in dire need was rejected by ten votes to one, with four abstentions (YB50: 582). However, in 1951 the General Assembly authorised the High Commissioner to make an appeal for voluntary contributions for a fund to cope with temporary emergency situations (YB51: 529).

3.3.2. Funding structure

Although the IRO's focus on material assistance entailed a large operational budget, this was not to be subject to review by the UN since the organisation enjoyed an independent status, unlike what was to happen to the UNHCR. The aspect of the administration of any funds that the GA would put at the disposal of the UN for the benefit of specific classes of refugees also became one of the issues of contention among states and determined the nature of funding mechanisms and orientation of the organisation initially less to material assistance than to legal protection.

The High Commissioner's administrative funds are drawn from the UN budget and any direct operations were always to be funded through voluntary contributions.¹⁰⁹ This in part reflects the divergences of preferences among states: not all members of the UN wished to have this organisation address the situation in ways often contrary to its interests, with common UN funds. Concerning the material assistance provided and the funds attributed to the new organisation, France considered that the High Commissioner should be given authority to allocate funds received from Governments or private sources, to Governments in need or other private organisations on the ground. The U.S. in turn considered that there was little scope for the High Commissioner to receive funds from Governments or private sources and invoke past situations

¹⁰⁹ See Chapter II § 10 and Chapter III of the Statute of the UNHCR.

when funds were raised in the case of the High Commissioner of the League of Nations too many problems arouse.

3.3.2. State preferences: why delegate and commit?

International protection for refugees was developed over the course of the twentieth century when Europe's conflictuality gave rise to unprecedented mass displacements (Holborn, 1975: 154) and is an example of the emergence of a new issue-area of international concern that was created by the configuration and definition of an international system made up of several independent units, the states. These carried different expectations and positions concerning the best way to address the existing legal gap and those predispositions shaped the nature of commitments as well as the views on the international responsibility for addressing the problem.

In the debates in the UN leading to the 1950/1951 international legal framework for the protection of refugees, one can identify two approaches: the one taken by France, that defended a broad definition of refugees, present and future, and the one taken by the U.S., according to which the General Assembly should decide specifically for which particular groups of refugees it was willing to accept responsibility. This is a clear step to avoid removing the decision-making from the state sphere into the international sphere in the form of an international institution, where a broad definition would legitimise an immediate broadening of the scope of activities of the organisation and of the protection provided. In the same context, the primacy of national responsibility over international responsibility is also mentioned.

Concerning the universality of the application of the dispositions of the Convention, there was wide discussion and dissention among the states negotiating the Convention. France and the United States had objections to extension to the whole world, and the UK and Belgium were proponents of a more extensive application in order to promote universal efficacy. The Dutch delegation was also positive regarding this. The draft Convention also contained a formula of 'right to asylum', which was criticised by the Committee as well. Preference was given to the description of the Universal Declaration of Human Rights of 1948, with the formula 'right to seek and enjoy asylum'. The Committee gave this provision the interpretation of the right of the State and not of individuals to determine the acceptance of a refugee.' (Goudoever, 1998: 274).

Thus, although from the debates it is clear that there is an awareness of the increasing scale of the problem, no permanent measures are taken, what is done in the proposal of the U.S. is merely to include in those of concern "such persons as the General Assembly may from time to time determine...".¹¹⁰ This deliberation wasn't even the one that prevailed either in the Convention or in the Statute: in the Convention there is no reference to the broadening of the scope by case by case action defined by the General Assembly, and in the Statute the High Commissioner is allowed to "... engage in such additional activities, (...), as the General Assembly may determine"¹¹¹. In this manner was defined the whole basis of broadening of the High Commissioner's role, which is still today invoked for new broadenings. The strategy was to ensure that occasionally the UNHCR would be able to have a role with new groups, without including them automatically in its mandate nor admitting permanent international commitments to new groups in the state sphere of responsibility. The broad definition was thus postponed and the issue was taken on a case by case basis, without even a clear legal provision for that, which would then legitimise an institutionalisation of the broadening of the refugee definition.

Holborn notes that "... the specific list of activities given in par. 8 of the Statute as examples of the international protection function of the UNHCR, have as their corollary the list given in par. 1 [...], which is directed toward states and what they are requested to do in order to cooperate with the UNHCR. (...) In this way the drafters sought to connect as closely as possible the obligations of states to the rights and powers of the High Commissioner." (Holborn, 1975: 110).

At the time of the creation of the UNHCR states were unsure of what level of commitment to undertake and this implanted flexibility on the organisation. At the same time it was designed to remain in function for a limited period, and such flexibility could be necessary in undertaking special measures to permanently solve the existing refugee problem in Europe.

3.4. Nature of autonomy agreed for the new organisation

This section refers to the qualifications of autonomy, in the sense that the different activities performed by the organisation are linked to different elements of substantive autonomy such as independence and its correlated, authority and relevance.

¹¹⁰ A/C.3/L.29. Refugees and Stateless Persons: France, USA: Draft resolution, of 13 November 1949.

¹¹¹ Statute of the UNHCR. Chapter II § 9.

3.4.1. Independence, neutrality and impartiality

The second provision of the Statute of the UNHCR is that the work of the organisation is of an entirely non-political nature, and thus not subject to specific pressures by particular states.¹¹² This provision was inserted because one of the scopes of its creation was the possibility of overcoming political divergences generated by the very sensitive nature of the issue-area.

Considering the Cold War context, the need for political neutrality and impartiality is easy to understand. In the post-Cold War the question arises as to the degree to which the organisation can/should have an increased autonomy to make policy decisions that will attend to humanitarian considerations rather than political interests. This was a source of many debates among states during the negotiations for the Statute and insistence was placed by all parties that the organisation was to remain an independent, neutral and impartial element, devoted only to the international protection of refugees and maintaining the necessary distance from the political sensitivities that refugee flows generate.

This characteristic is part of the autonomy in that it gives the organisation a detachment from instrumental concerns and authority to choose regardless of eventual external pressures. This was very much emphasised during the negotiations of the Statute because the refugee problem was such a sensitive issue that the different states could not agree on solutions for the refugee problem. By giving the organisation a wide range of choice at the level of international protection, some states expected to be able to avoid having to make politically difficult decisions that would create more problems to inter-state relations. Hence the debate on the role of the UNHCR in refugee status determination, with some countries favouring a broader role than others.

3.4.2. Authority

The initial authority of the Office of the UNHCR resided in its supervisory functions as well as in the initiatory role for the development of international measures to address the problems that states could not solve in isolation. It had the initiatory role in practice and despite the fact that the broad guidelines are provided by states: "It should be noted that while power ultimately rests with

¹¹² This feature is outlined in the Statute, Chapter I, §2: "The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees."

the states, the initiatory role in international protection belongs to the High Commissioner. The High Commissioner's function has always been to establish the goal and to indicate the steps necessary to achieve it: to bring situations to the attention of governments, to urge them to alter conditions and to change laws and administrative procedures, to call their attention inequities in their legal systems, and so forth. He oversees and seeks to gain their compliance with the standards that they and he have agreed are appropriate for refugees. The High Commissioner's policy has had to be an elastic one taking into account every facet of the problem." (Holborn, 1975: 110).

3.4.3. Relevance

Pitterman (1985) argues that the main source of relevance of the UNHCR was as a catalyst of international co-operation (as outlined in the preamble). This was a particularly important source of autonomy in a time of so many divergences of states' preferences. However, as will be seen this type of role also had its pitfalls for the organisation.

Another important source of relevance was the co-ordination role. A central entity to coordinate the efforts of both states and private voluntary organisations (currently designated as NGOs) was essential to enable the effectiveness of the solutions promoted to the refugee problem. As spelled out in paragraph 8 of the Statute, the High Commissioner's work is placed in a four-part framework, thus having to co-ordinate his work with other actors, namely: governments; international and inter-governmental organisations and voluntary agencies (NGOs). All these bodies have different interests and views regarding where the emphasis should be placed in refugee work (Holborn, 1975: 108).

It can be said that the specific nature of relevance of the UNHCR depended much on the actual work it came to perform, however, by the debates concerning the definition of the Statute it is visible that there was limited consensus on the relevance desired for the new organisation.

3.5. Conclusions

At the end of World War II the international community was faced with two difficulties: the remaining problem of displaced persons and refugees from the conflict and the situation in

Eastern Europe continued generating new refugees in the 1950s. Although these two aspects, by their sensitive nature, generated divergences among states, the majority in the GA agreed on the need for international co-operation to solve the problem. Such was the minimum convergence necessary to setup a new refugee regime but divergences determined the nature of the commitments of states in the 1951 Convention and the nature of the institutional setup. The GA convened a Conference of Plenipotentiaries but negotiations took place outside the UN framework and a two-tiered system was developed with the creation of an independent entity with authority to supervise the application of the 1951 Convention and other norms to be developed.

The original mandate defined for the UNHCR was the result of the possible agreement among states and the flexibility introduced in the Statute reflects this state of affairs. Hence, it was not part of a deliberate strategy intended by states at the outset to promote the expansion of the organisation. The functions assigned to the organisation in the different areas analysed are a reflection of such lack of agreement and divergence of preferences. Delegation resulted from the commonly felt need to have an independent actor to mediate international co-operation in the sensitive issue of refugee policy in the Cold War era. This observation fits in with neo-liberal institutionalist arguments on the creation and functions of international organisations as mere facilitators of international co-operation. However, it should be noted that states also introduced a degree of authority for supervising and promoting international co-operation that effectively gave the organisation a degree of autonomy for initiating and deciding on refugee issues independently from particular pressures of states. Originally the UNHCR's functions were of a non-operational nature, which derives from a shared concern for having an organisation that did not require many funds. The non-operational nature of the organisation also derives from the problems that funding implied given the diverse preferences of states concerning the new organisation: with many states not very supportive of the UNHCR, including not only the Eastern European countries but also the U.S, there were problems in obtaining significant funds from the UN budget. Hence, contributions would have to be made on a voluntary basis and there was a perception that such voluntary nature of funding could contribute to the politicisation of the organisation. Therefore the design of the organisation was initially restricted to co-ordination and supervision activities.

On the groups of concern and regional scope of the organisation, the range of application of the UNHCR's services are coincident with the European centred refugee regime that was meant to tackle the existing refugee problems in Europe, as embodied in the 1951 Convention. However, since the UNHCR was created within the UN framework, the Statute of the organisation

encompassed a refugee definition that was originally broader in order to apply to categories of refugees irrespective of the geographical context, although also significantly restricted to the European-focused definition contained in the 1951 Convention. Concerning the types of solutions that the organisation was able to promote for the populations in need, these included all possible permanent solutions: voluntary repatriation, local integration and resettlement. Given the serious divergences in the preferences of the different states involved concerning the best option, none of these was emphasised as the most desirable in the UNHCR Statute. Finally, the functions to achieve the goal of assistance and international protection of refugees were largely defined through a strict separation between the national and international level of competencies, and a full respect for the notion of sovereignty both for the acceptance of refugee influxes and for their management. Further, the functions of the High Commissioner were to be predominantly of a legal nature and assistance was limited to the most needy and extreme cases. Hence, it had predominantly an indirect role of international protection, largely geared to assist states in the implementation of their international commitments to the 1951 Convention and not directly to the refugees themselves. Occasional legal assistance was to be provided to refugees but not significant. This was meant to preserve the political neutrality of the organisation in what was at the time an extremely sensitive political issue, as well as the prevalence of the states' sovereign prerogatives in managing refugee problems.

The UNHCR was initially to act more as a facilitator of international co-operation to solve problems than as a problem-solver itself. However, this detachment also gave it a considerable degree of leeway, since most of its activities were defined in a rather loose way, given the awareness during the negotiations that the scale of the problem would not be limited to the European case and that there would be stronger needs than was possible to acknowledge at the time. It also gave it the authority of being an independent and neutral entity that enabled international co-operation. The organisation was created within a European centred refugee regime, which means that it is mostly focused on the needs or preferences of European states rather than on the preferences of other states from outside the Western power struggle. The differences of refugee needs defining states' preferences at the regional level opened the possibility for subsequent expansion of the organisation's activities – discrete autonomy -, as will be analysed in the next chapter. This chapter has analysed the conditions of what was designated substantive organisational autonomy and its different dimensions and the structurally embedded range of activities, which as seen was not rigid. As foreseen by the propositions suggested in chapter two, the scope of initial autonomy of the organisation was delimited by the divergences

among the negotiators. At the same time the establishment of a P-A relation delimited by parameters of action derived from what convergence was possible. The following chapter will start the research's focus on the autonomy developed subsequently as a result of the organisation's work and will introduce also the relational dimension of autonomy.

Chapter 4. Initial expansion: crucial choices and functional evolution

The Statute of the UNHCR defined the organisation's basic lines of action but, as seen in the previous chapter, has left some ground for the organisation to make certain decisions over areas of its competence. In the initial decades of its work occurs a considerable appropriation of such leeway and the organisation takes advantage of a situation where states' preferences concerning refugee policy remain largely irreconcilable. Hence, an expansion of the organisation is observed in its four crucial areas, which is accompanied by increasing autonomy both in substantive terms and in terms of its range of policy areas, evidencing little friction with states, apart from the problems raised by the Eastern European countries. The chapter traces the expansion of the UNHCR's role and mandate and evaluates the dimensions of such increased autonomy. UNHCR's initial autonomy was based on the competencies delegated on the organisation by its principals and was subsequently extended through the aggregation of new competencies and scope of functions that broadened the range of policy choices effectively available to the bureaucracy for decision-making. At the same time the authority and relevance of the organisation increased while retaining much of its political independence.

I will start by exploring the context and characteristics of this initial phase of organisational performance that runs from the first activities of the UNHCR in the early 1950s to the end of the 1970s. In line with the research strategy outlined in the beginning of the thesis, the analysis of the four central policy areas in this period will illustrate the impact of organisational drift on organisational autonomy in circumstances of contrasting state preferences. The analysis of the positions of states concerning these different policy areas will show that there was no unity among states, both at the level of the General Assembly and at the level of its advisory bodies such as ExCom itself. Such lack of consensus is translated in the negotiations concerning the expansion of the existing normative framework for the international protection and assistance of refugees as well as the national preferences in terms of refugee and foreign policy. This chapter will also assess the organisational preferences that configure a predisposition for autonomous policy-making and pursuit of independent organisational goals, through the analysis of the mission interpretation contained in speeches of the High Commissioners that managed the UNHCR during this period: G. J. van Heuven Goedhart; Auguste R. Lindt; Felix Schnyder; Aga

Khan; and the initial years of Paul Hartling's leadership (1977-1985), that already represented the transition to the next period.

Through the good offices function and the decision for involvement in the Algerian refugee crisis, the leadership of the UNHCR autonomously made the decision on the organisation's policy direction towards expansion of activities, in the shape of an increase of groups of concern, geographical expansion, more influence on the choice of permanent solutions and more operational and direct relief activities. This would broaden the range of policy options and hence the autonomy of the organisation to make other choices in issue-areas where states were not very active. Subsequent functional expansion and spill-over of activities produced long-term changes in the orientation of the organisation's work in the period between the start of functions of the UNHCR and the end of the 1970s. Such expansion was marked by the High Commissioner's initial decision to broaden the groups of concern for which it was responsible and geographical scope of activities, to promote solutions adjusted to such expansion such as local integration and resettlement in detriment to repatriation, which it did not find suitable despite contrary preferences of some of its principals, and to implement more operational activities that would address the changing nature and growing importance of refugee needs. Such decisions were later sanctioned by states through GA resolutions, but stemmed from the good offices function of the High Commissioner, which means that decisions were taken autonomously. This means that High Commissioner Schnyder took the initiative of embarking on such operations, based on a specific interpretation of its mandate. This set the organisation on a track of expansion that was enhanced by both the evolution of the international environment in the area of activity of the UNHCR and the spill-over of the activities it had decided to embark on from a certain point on.

Although this progress increased the organisation's decision-making capacity over a growing number of policy areas, the flip side of the coin for this autonomous trend was that these initial decisions and the functional expansion implemented, ended up locking-in the organisation on a specific decisional-path and a specific paradigm of refugee protection started taking shape. This decisional-path was dominated by an increasingly operational activity that included physical protection, substantial emergency assistance for relief of populations and a more direct role and involvement in the implementation of activities destined to address the material needs of refugees. By systematically reproducing the pattern of decision, tilting it towards operational and direct engagement, this expansion at the same time narrowed the policy areas that would tendentially be chosen by the organisation in the future, but did not reduce its autonomy, as understood in this

research, since all policies – those defined as original orientation or core functions and the ones that derived from the new functions performed – remained effective options that the organisation could implement. Although a potential contradiction in the organisation's role and mandate is generated by this decision to embrace expansion, such was not at this point dysfunctional, and represented increasing returns for an organisation that aimed at being relevant for states and effective for refugees.

4.1. The international environment and state preferences concerning refugee policy

As seen in the previous chapter, the UNHCR's creation was the product of a functional need to address the remaining problem of refugees in Europe and the result of the possible agreement among states in a very polarised international system. This system provided the context in which states' policies were defined and aggregated or disaggregated.

Such period corresponded to the onset of the Cold War, where the Eastern and Western blocs rivalled for the control of different parts of the world. Their competing ideologies affected the world in its entirety. The 1960s witnessed the emergence of mechanisms for the co-ordination of policies of developing countries, in an attempt to escape this dominance, such as the Non-Aligned Movement (NAM) and the Group of 77 (G-77). Both emerged with specific agendas, the former with an explicit criticism of the arms race and Western colonialism, and the latter with the goal of promoting economic and social conditions for the development of the Third World. The growing numbers of participant states in these mechanisms soon gave the positions of such movements a significant weight in UN decision-making processes. The different type of concerns that guided these countries' positions compared to developed countries was also reflected in the work of the UNHCR and on its capacity to develop autonomously, playing on contrasting agendas. These cleavages even enabled the High Commissioner to on occasion go against the interests of some of its principals, in particular the countries of origin from the Eastern bloc.

Besides shaping the political direction of the international system, the Cold War and Decolonisation also determined much of the pattern of forced displacement during the period under review in this chapter. The same factors are also largely accountable for the pattern of diverging state policies on refugee issues that emerged and developed in this period.

4.1.1. Refugees between the two Cold War blocs

The deterioration of the political situation in the countries of the Eastern bloc in the early 1950s led to the occurrence of new refugee flows that were not directly related to the effects of World War II. These new flows resulted from the repression in the Soviet bloc. Hence, during the 1950s and 1960s, refugee numbers in Europe were still a mixture of the old refugee caseload from World War II, with new refugees that were escaping to Western countries from the Eastern bloc. The 1956 Hungarian refugee crisis was particularly dramatic in increasing refugee outpour into Western Europe. In the U.S. and Canada refugees arrived mostly through resettlement quota. Over the decades of the 1950s through to the 1970s, a largely liberal asylum policy was maintained in Western, developed countries, not only in terms of the admission of asylum-seekers but also in terms of the solutions and benefits offered refugees either for local integration or resettlement.¹¹³ Although generous, this liberal policy was to a great extent enacted as a political tool to challenge the Eastern bloc, from where most refugees in Europe were arriving and which aimed at showing the repressive character of the regimes in that part of the world. Despite this context, no direct American interests were involved in the UNHCR and it created alternative institutions to support its particular interests in the case of the Palestinian refugees (UNRWA) and the Korean refugees (UNKRA). Further the U.S. gave UNHCR no financial support until 1955 (Rystad, 1990: 207-208).

4.1.2. Decolonisation: forced displacement and the emergence of new states

During the 1960s occurred major changes in the geo-political context of the international system. The decolonisation movement gave rise to a proliferation of new states, but also led to the outbreak of many conflicts and ensuing mass displacement (Zolberg, 1985). With the progress of the decolonisation process, the insistence on independence and sovereignty of the new states became a major aspect of international politics. Non-interference became a key principle geared to remove colonialism and ensure the equality of sovereign states and favour self-determination (Graefrath, 1994: 17). This notion was a new normative idea that expressed an absolute and

¹¹³ Example: Concerning the asylum policies, in 1965 the Consultative Assembly of the CoE adopted a recommendation for liberal asylum policies and there were improvements in national legislations (UNY 1965: 413).

unqualified right to self-government and displaced an old normative idea that made a right to interference contingent on a demonstrated capacity for self-government (Jackson, 1993: 124).¹¹⁴

The wars in Africa and in other regions led many millions into displacement within or outside the new borders that emerged in the continent. From the 1960s and into the 1970s the decolonisation and emergence of wars in great part of the African continent, but also in other areas of the world, such as South and South-East Asia - some of them later infested with the bipolar dynamics -, created massive situations of forced displacement, to which the recently independent countries did not have the capacity to respond. Hence the continued need for strong international mechanisms that would assist the new countries in addressing the growing refugee problem that sometimes affected entire regions already plagued with significant instability and social problems. Initially African states showed considerable generosity in receiving refugee influxes, linked to the support of liberation movements and anti-racist regimes, but soon the burden became overwhelming.

This type of massive displacement generated different needs and goals from the ones that prevailed in the context of the European-based refugee regime, to which the existing institutional structure would have to respond. Significantly different interests emerged between the West and the new states, namely concerning their security concerns as well as the approach to refugees: "In many cases, refugee situations directly involved either the political interests of the Western colonial powers who were also among the founding members of the international refugee regime, or the security concerns of newly independent states who were the newest members of the United Nations." (Loescher, 2001b: 92). This also created different views on how to address the problems arising from mass displacement.

It is in this international context that the rising numbers of population in need and the difficulty in providing effective responses at the national level gave the UNHCR an important role of "fire-engine" which the U.S. had rejected for the agency, as was seen in chapter three.

¹¹⁴ During the 1990s this idea returned to the international discourse although being promoted not so much by states with "imperialistic" motivations, but by international civil society concerned with the protection of human rights. Subsequent political use or misuse of such concerns revealed the need for caution when balancing these two sometimes conflicting norms of non-interference and universal protection of human rights through interference.

4.2. New groups of concern and geographical expansion of the UNHCR

This section will show how the organisation made the first steps towards expanding its focus from the original configuration of role and mandate that resulted from the 1950 negotiations and how states were not determinant in the decisions for such moves. Rather, they played a post-hoc role of sanctioning decisions that had previously been taken. These steps were grounded on the good offices function, a legal mechanism of flexibility that allows space for initiative to agents by taking the synergies of their regular work into related areas where the existing structures may be beneficial. Much of the adjustment of the organisation's scope was initially caused by the changing nature of the refugee problem and the need to adjust responses from the specificity of the situation in Europe to the rest of the world. As was seen, the international community opted for developing a relatively restricted definition of refugees, aiming at solving the problem of the remaining refugees in Europe resulting from World War II, and end international responsibility at that point, or closely there. The reactions of states outside Europe fostered a larger degree of openness, in particular the positions of countries like Pakistan and India that were very critical of the European-centred regime that had been negotiated. Immediately after the signing of the 1951 Convention there were the first indications that there was a pressing gap between what was defined in the international instruments and the reality to be tackled. In this vacuum the UNHCR started developing its activities with the old refugees resulting from World War II and the new refugees arriving in Western Europe, fleeing the communist regimes. These groups were determined largely on an individual basis, grounded on direct persecution and did not arrive in large numbers. In contrast, another sort of "new" caseload started being assisted with the massive refugee influxes that happened in the African and other contexts. This was massive displacement resulting from group persecution, violence and generalised disruption resulting from the breakdown or simple inexistence of states' apparatus, and large numbers causing instability to already vulnerable populations in neighbouring countries.¹¹⁵

¹¹⁵ Although not a direct focus of this research, activities with Stateless persons were also an important addition to the work of the UNHCR from this period on.

4.2.1. The continuing refugee problem: a widening gap

Two sources of gaps stem from the evolution of the international environment in this period: the mixed nature of refugee flows in the European context, with old and new refugee caseloads, and the mass displacement in the African context in particular, but also in other regions in the world. Regional specificities mark the fundamentally distinct nature of problem and of the responses to it, highlighting the difficulties in creating a universal response that would address the different nature of needs and of political contexts.

The European context

As the international refugee regime had been created to solve the specific post-World War II European refugee problem and was to be a temporary arrangement, the need for international assistance in Europe declined in particular during the 1960s, after the Major Aid programmes concluded and when most of the refugees had been socially and economically integrated. However the refugee problem in Europe was proving to be of a more permanent nature than most states were willing to admit even during the discussions for the setup of the UNHCR. Already in 1951 the IRO estimated that each month 1.000 to 1.500 refugees were entering Germany, Austria, Turkey, Greece, Trieste and Italy from Eastern European countries.¹¹⁶ This continuous influx, in the opinion of IRO, emphasised the permanent character of the refugee problem. These new people did not fall under the mandate of the IRO and rendered its work with the refugees under its mandate more difficult because it reduced considerably the opportunities of housing and employment available to refugees under the protection of the organisation (UNY, 1951: 528). At the start of its activity, the UNHCR was continuing IRO's work of settling the rest of European refugees by taking over the camp clearance programme; working to solve the problem of European refugees from China; and with those in Shanghai. An important problem that the UNHCR inherited was that the residuals that the IRO left were basically the most difficult situations, which had to be handled on a case by case basis, such as action concerning old people or handicapped (UNY, 1951: 526). It also inherited the problems of separating categories of displaced persons under and outside the mandate but with common needs.¹¹⁷

¹¹⁶ Report of the IRO to the UNGA (A/1948) (UNY 1951: 528). The IRO continued its operations until 1952, in parallel with the UNHCR.

¹¹⁷ See further on the example of the situation in West Berlin.

There were also heated discussions between East and West, with the USSR claiming that western countries were interested in exploiting cheap labour from the refugee camps and were not giving asylum out of truly humanitarian considerations (UNY, 1951). The difficulties that refugee agencies have had in providing a solution for these "hard-cases" shows to what extent the goodwill of countries is conditioned by their interests. The refugee as a source of manpower was in the beginning exploited as a form of persuading countries to take in more refugees through resettlement quota, but that implied that the less able were left without an easy solution. The question was whether there was a deliberate strategy of exploiting this circumstance, as the USSR argued.

In 1956, the Hungarian revolution led around 180.000 Hungarian refugees to cross the border into Austria (UNHCR, 2000: 26), increasing the problems that this country was still having with many World War II refugees in camps. Plans were made for the establishment of permanent solutions, and scholarships given to young refugees (Holborn, 1975: 391). Legally, these refugees were within the mandate of the UNHCR but not covered by the 1951 Convention, as the crisis happened after the time limit of 1951 that had been stipulated as the temporal range of application of the Convention's provisions. Although one delegation at the General Assembly doubted whether the Hungarian refugees fell within the mandate of the High Commissioner, many other delegations disagreed and considered that the High Commissioner's Office was well qualified to deal with this matter (UNY 1956: 246). Many delegations believed that concerted action and efforts for the relief of these refugees should be channelled through the High Commissioner's Office (UNY, 1956: 246). This position shows the growing relevance of the organisation due to its expertise and how operational rather than normative criteria dominated the position of some states in the GA. However, these positions were not without contestation: the Eastern bloc strongly opposed the UNHCR intervention in favour of Hungarian refugees for the promotion of other solutions than voluntary repatriation. Czechoslovakia submitted a draft resolution for information to refugees in camps on conditions for return but such proposal was opposed by many delegations because it presented repatriation as the only solution. Finally, a joint draft resolution was approved requesting the High Commissioner to develop a comprehensive assessment of needs in the Hungarian refugee crisis, to be submitted to its Executive Committee for its approval at the earliest possible date.¹¹⁸

¹¹⁸ Adopted as GA Resolution 1039 A and B (XI), of 23 January 1957.

Apart from the Hungarian refugee crisis, the situation of refugees in Europe deriving from the events of World War II remained a strong concern until the end of the 1950s. In 1957, the High Commissioner's annual report referred to a continuing need for international protection of refugees, roughly a million of whom came within his mandate in Europe alone (UNY, 1957: 236). Thus he continued his work with unsettled people living outside camps; Chinese refugees in Macao and new refugees in Greece and North Africa, besides the new caseload of the Hungarian refugees.

Other groups that clearly stood outside the mandate were not assisted, like the Bulgarian refugees of Turkish origin in Turkey, while other refugee situations were particularly problematic as it was not clear whether they fitted the definitions and consequently whether they came under the mandate of the High Commissioner (UNY, 1952: 494). Another example of these difficulties was the situation of the Chinese refugees in Hong Kong: in 1952 the UNHCR was not in charge of the Chinese refugees in Hong Kong, as they were not within the mandate. In 1955 a report on a survey on Chinese political refugees in Hong Kong was elaborated where the need to help this group was recognised. In 1957, because it was recognised that their plight was of international concern and due to requests received from non-governmental organisations directly concerned with this problem, it was suggested that the General Assembly examine the question and for that reason, in 1958 a resolution authorising the good offices for these refugees was issued despite the fact that the refugees did not fall within the mandate of the High Commissioner.¹¹⁹ Nevertheless, in 1958 there were still doubts about whether Chinese refugees in Hong Kong were eligible for assistance.

These were some of the first problems and dilemmas in UNHCR's activity, trying to cope with a reality that was becoming overwhelming to the existing framework designed to deal with the problem of refugees.

Response to the European gap: the 1967 Protocol

The Protocol relating to the Status of Refugees of 31 January 1967 (1967 Protocol) emerges out of an awareness of the existence of new refugee situations, where the refugees concerned did not

¹¹⁹ GA Resolution 1167 (XII), of 26 November 1957.

fall strictly within the scope of the 1951 Convention.¹²⁰ The main aim of this arrangement seems to have been to grant equal status to refugees irrespective of the dateline of 1 January 1951 and removing the possibility of new geographical limitations by individual states acceding to the Convention, thus making it more open in scope. However, it does not extend the refugee definition to new categories of forcibly displaced as they emerged in Africa and other continents, nor does it incorporate any more responsibilities to the states. The development of this Protocol is an example of the UNHCR exercising its rule-creation functions, since it proposed the first draft for discussions, which was then altered according to the negotiations.¹²¹ There was a recognised need to address the gap in the definitions between the Convention and the UNHCR Statute and also the gap between those definitions and the specificity of the needs in Europe.¹²² Despite this awareness, not much progress was achieved in extending refugee rights according to existing needs at the international level of responsibility.

Given the requests by many delegations at ExCom to address this gap, two possible solutions were identified: the revision of the Convention or the creation of a Protocol extending the scope of the Convention. The existence of this Protocol is proof of the lack of agreement among states concerning the refugee regime at the level of the GA: although the Convention itself provides for its own revision (Art. 45^o), certain drawbacks were identified, in particular the fact that such discussion would have to take place in the context of the GA, where some of the members were firmly opposed to the 1951 Convention.¹²³ These were mainly the Eastern countries, or the five countries of origin of most refugees in Europe, but were joined in the criticism by countries like India and Pakistan that saw in the Convention a Western instrument to serve foreign policy goals. Such revision could also exclude some of the parties to the Convention who were not members of the UN. Instead, a Protocol extending the scope of the Convention could be adopted directly by States Parties without having the interference of other states represented in the GA. This would also keep open the possibility that at least some new states would sign the Protocol, with others having the possibility of joining later. It should also be noted that some states only signed the

¹²⁰ See Preamble of the 1967 Protocol, and General Assembly Resolution 2198 (XXI), of 16 December 1966.

¹²¹ The discussions were based on a memorandum produced by the High Commissioner in 13 September 1965 (HCR/RS/31) and then altered according to the discussions.

¹²² Colloquium on the Development in the Law of Refugees With Particular Reference to the 1951 Convention and the Statute of the Office of the United Nations High Commissioner for Refugees, held at Villa Serbelloni Bellagio (Italy) in 21-28 April 1965.

¹²³ "Article 45: Revision

(1) Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

(2) The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request." 1951 Convention on the Status of Refugees.

Protocol and not the Convention, such as the U.S., which illustrates the discrepancies of visions for the refugee regime, even among the Western countries at this stage.

The reluctance to accept any future unforeseen obligations dominated the considerations of delegations from Western countries during the negotiations for the Protocol and therefore they tended to adopt the more limited approach: a compromise was sought between universality and effectiveness. A logic of the minimum common denominator dominated, which could secure the acceptance of the largest possible number of states. The outcome in terms of actual changes to the Convention was the mere removal of the time and geographical limitation.

Curiously, the first countries to ratify the 1967 Protocol, which came into force in October 1967, were mainly African countries (UNY 1967: 477). This shows the interest of these countries in broadening the scope of the existing international mechanisms of refugee protection. Still, the Protocol did not imply many improvements to the needs of refugees in the African context. Interestingly many of these African countries introduced a particular reservation to the Protocol, linked to the intervention of the International Court of Justice in settlement of any disputes that may occur as a result of one country harbouring refugees from another country (art. 38° of the 1951 Convention on the Status of Refugees). This illustrates the sensitive nature of the issue-area not just in terms of the bipolar confrontation but also in terms of the different implications of refugee flows in different geo-political contexts.

African context

Since the 1960s, civil wars and human rights abuses, together with the negative effects of poverty and natural disasters, created unprecedented level of hardship and suffering in many parts of the African continent and millions of people were uprooted from their homes (UNY, 1994: 1225). These groups were outside the formal scope of the 1950/1951 definitions and required new and specific instruments to address their needs.

The conflicts that emerged in the African continent particularly since the 1960s can be divided into two types: conflicts between liberation movements and the authorities of colonial powers on the one hand, and on the other hand, conflicts between or within recently formed countries that struggled for territorial definition due to arbitrary delimitation of borders. The first often cut across territories of specific ethnic groups and required the destruction of old solidarities as well

as the fostering of new ones (Zolberg, 1985: 40). The ensuing conflictuality included instances of foreign invasion - which sometimes was aggravated by influxes of refugees from the invading country (UNY, 1978: 238) - and genocide affected many people, who often had to flee situations of widespread conflict and civil strife as well as the disintegration of institutions.

Other causes of mass displacements besides competitive state formation were belated modernisation; ethnic conflict with the explosion of ethnic hierarchies; development of communal conflict; separatism (Zolberg Aristide R and others, 1989). Many displacements were caused by deliberate persecution, leading to mass expulsion, in particular of ethnic groups and internal strife of a persecutory character (Rizvi, 1988: 109). Very often there was deliberate expulsion of whole populations from a territory for political purposes, as in the case of Somalia in the 1960s, when it was charged by the French Somaliland authorities of expulsion of inhabitants of the territory for the purpose of influencing a referendum regarding the future status of this non-self-governing territory (UNY, 1967: 133). Indeed, many of the displacements were caused by repressive regimes that persecuted opposition activists, causing several thousands of people to flee, although sometimes it would not produce a clear mass displacement situation but several individual refugees that looked for shelter elsewhere. These would be typical Convention refugees as they were singled out for persecution, but were a minority in the African context.

The first continent where the inadequacy of the refugee regime was noted was in Africa, with extensive decolonisation movements and ethnic rivalries. Further, the characteristics of the refugee population were specific, which also conditioned the type of solutions to be found: the vast majority of African refugees lived in rural areas, with few infrastructure and deficient living conditions. Another evolution in the nature of forced displacement during the 1970s led to the increase in refugees coming from or arriving in urban or semi-urban areas, with specific needs regarding education, housing and employment (UNY, 1970: 485). Further, the main groups of refugees in Africa were women and children (UNY, 1984: 941). The expansion of the UNHCR's activities occurred in a context where there was an increasing need for international support for situations where the recent decolonisation movements had created particularly serious humanitarian crises and where new governments were not solid enough.

The High Commissioner had to intervene in several situations that were outside the scope of the 1951 Convention and only partly within the scope of its Statute. Such interventions were marked by an ad hoc decision process and an uneven response of a system still in development: while, for

example, there is no reference to UNHCR involvement in the relief of Congolese displaced persons, where an estimated 200 people a week were dying of famine in 1960, the UNHCR participated in appealing and channelling funds for the displaced population in the border areas of Algeria (UNY62: 356). At the time of the 1965 Colloquium for the Development of Refugee Law that was to revise the 1951 Convention and adopt the 1967 Protocol, the High Commissioner drew attention to other legal regional instruments that might affect refugees.¹²⁴

One of the characteristics of the regional refugee regime outside Europe has been the recourse to "group eligibility" or "*prima facie*" eligibility. This was necessary due to the large-scale nature of the displacements, that was aggravated by the lack of administrative infrastructures in those countries and regions to determine eligibility (Rizvi, 1988: 107). Some authors have questioned whether the refugee regime should be universal or regionalised, and point to the risk of balkanisation if the last option is taken (Winter, 1988: 41).

Nevertheless, as mentioned in a UNHCR study on displacement in Africa, "[f]rom the 1960s to the 1980s, Africa established a largely well-deserved reputation as a continent which treated refugees in a relatively generous manner" (Crisp, 2000: 4). The general trend, that started reversing in the early 1980s was one of generous asylum policies both in terms of admissions and in terms of rights allowed.

OAU Convention

In accordance with point 6 of the Resolution on the Problems of Refugees in Africa, adopted by the Assembly of Heads of State and Government of the OAU in July 1964 (CM/Res. 36 III), the ad hoc Commission for the Problem of Refugees in Africa prepared a draft Convention relating to the Status of Refugees in Africa. At the invitation of the Secretariat of the OAU, the Office of UNHCR commented on this draft. This possibility was seen by the High Commissioner as an opportunity to bring together the disparate existing national interests: "In this way it will be possible to fulfil one of the basic aims of such co-operation, which is to harmonise government

¹²⁴ Colloquium on the Development in the Law of Refugees With Particular Reference to the 1951 Convention and the Statute of the Office of the United Nations High Commissioner for Refugees, held at Villa Serbelloni Bellagio (Italy) in 21-28 April 1965.

interest at the regional level with the universal interest on which United Nations activities on behalf of refugees is founded.”¹²⁵

The organisation ended up having a quite active role in the development of this international instrument, and the UNHCR was “...committed to a forward-looking instrument that would have broad regional application and could serve as a possible precedent for universal arrangements.” (Helton, 2001a: 270). This shows the authority of the UNHCR for influencing rule-creating decisions, as foreseen in its Statute. The draft Convention was submitted to the OAU Council of Ministers at Nairobi in February 1965, which requested member States to submit their comments before the next session. The Council of Ministers of the OAU also established a Committee of Legal Experts in order to examine the draft Convention in light of these comments prior to that meeting. UNHCR maintained contact with the competent bodies of the OAU in relation to this work.

The Convention Governing the Specific Aspects of Refugee Problems in Africa, signed in 1969, known as the Organisation of African Unity (OAU) Convention, is the first instrument to acknowledge the regional and specific nature of refugee issues, and takes account of the evolution of the problem.¹²⁶ In 1967 the OAU recommended that the instrument they were preparing should be considered as complementary to the 1951 Convention (UNY 1967: 477). This shows the inadequacy of the agreement that led to the 1967 Protocol to face the needs in the African context. It was negotiated to fill the void left by the limited scope of the 1951 Convention. Hence the OAU Convention does not compete with but rather complements the 1951 Convention. It expresses the wish to establish common standards for their treatment, and expresses the need for continued co-operation between OAU and the UNHCR. Article 8 § 1 foresees the co-operation of Member States with UNHCR, and § 2 defines the Convention as “the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.”

The initiative for the OAU Convention was based on three considerations that reflected the needed search for a consensus among African states and also between these and the European-centered refugee system: “first, to find a balance between the States’ concern for refugees and the

¹²⁵ Statement by Mr. Felix Schnyder, United Nations High Commissioner for Refugees to the Third Committee of the GA at its twentieth session, 1965.

¹²⁶ 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa. It should be noted that the Convention only entered into force on June 20, 1974.

Pan-African ideal of eliminating the sources of tension between African States; second, to find an African solution to the refugee problem in the continent and; third, to complement the 1951 Convention definition of “refugee” to address situations occurring after the temporal limitation, 1 January 1951.” (Kourula, 1997: 147). It also introduces the notion of the need for a humanitarian approach to the problem and inserts human rights considerations in the preamble. Further, it recognises that refugee flows might constitute a source of friction between the states given that for other states to be judging the situation in another state was a very sensitive issue. The principle of granting asylum to refugees was increasingly reaffirmed: the Convention of 1969 included an article on asylum that provided that no person should be subject to rejection at the frontier, or expulsion, or return to a territory where his life or safety would be threatened. A similar provision was included in the 1969 Inter-American Convention on Human Rights (UNY 1969: 471).

This instrument adds to the 1951 Convention’s definition of refugee, the following: *“The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”*¹²⁷

Unlike the 1951 Convention, the OAU Convention explicitly states that “...the Contracting State of Asylum shall determine whether an applicant is a refugee.”¹²⁸ Although the intention was to contain a declaratory statement on the interpretation of the 1951 Convention definition, “in subsequent literature and State practice the second tier of the definition is generally seen to reinforce the interpretation according to which the 1951 Convention needs to be amended in order that it can be applied on the basis of objective criteria.” (Kourula, 1997: 149). Many African states expressed that observation when negotiating the 1967 Protocol.

Although it still stresses the international dimension of the refugee concept, defining it in terms of refuge sought outside the country of nationality or residence, the part of the definition added by the OAU Convention removes the element of direct persecution as criteria for status determination, making it much more flexible and enabling resort to *prima facie* group

¹²⁷ Idem. Art. 1 (2).

¹²⁸ Idem. Art. 6.

determinations in the continent's large-scale refugee situations, which has also contributed to the continued validity of the 1951 Convention definition (Kourula, 1997: 150).¹²⁹

However, the OAU Convention's characteristic of overlapping with and extending the 1950/1951 definitions has as consequence a lack of clarity regarding which legal framework was being used in each situation for the determination of what kind of assistance and protection was due. Several examples in Jackson's study show this ambiguity while he tries to demonstrate that most of the situations in Africa either were or could have been dealt with under the framework of the 1950/1951 definitions, and that if they weren't, it was for practical reasons of status determination procedures (1999: 176). The main implications of the choice between the legal framework used are the following: both the good offices procedure and the extended OAU Convention definition diminished the element of individual persecution as criteria for international refugee protection, whereas the framework of the 1950/1951 definitions required persecution as a criteria for refugee determination, be it through the sliver approach or through the prima facie group determination. This means that through the good offices the international level took responsibility on an ad hoc basis for such situations, and that at the national level only the states in the African continent took obligations regarding massive displacement. In practice the lack of means of most of these states ended up determining a much stronger role of the international level of responsibility.

This distinction between the two levels at which protection is given – national and international -, has in practice determined and structured the evolution not only of the conception of groups of concern to the UNHCR but also of the responses given to involuntary population movements in general. The use of collective or individual criteria for refugee status determination has evolved throughout the years and has shaped both the definitions and interpretations of refugee present in the international instruments that will be addressed in this chapter as well as the mechanisms and procedures applied.

The Arusha Conference of OAU in 1979 recommended that the OAU Convention be applied by the UN and all its organs as well as non-governmental organisations in dealing with refugee problems in Africa. These recommendations were fully endorsed by the UN General Assembly Resolution 34/116, of 29 November 1979. As a result of this development, the OAU Convention has become an important additional basis for the UNHCR's protection activities in Africa (Abd El

¹²⁹ For discussions on the issue of persecution in refugee law, see (Nathwani, 1998).

Razek, 1982: 72-73), but still imposes no legal obligations for the other states. Further, a consensus on this issue only emerges close to the beginning of the 1980s, when the convergence of states' preferences on refugee policy starts occurring, as will be seen in chapter five. Hence, different national interests explain a gap in the legal international framework for the protection of refugees. Among the major divergences concerning the expansion of the legal framework were comments by Western delegations saying the enormity of the commitments required for broadening the framework of action for refugees would be insurmountable.

These discussions concerning the broadening of the legal framework to cover pressing needs on the ground only emerged after the UNHCR had embarked on large-scale activities on the ground to assist and protect the populations in need to which it saw in its duty to extend its services.

4.2.2. Activities throughout the world: initial resistance and first steps

The evolving and increasing hardship on the ground during the 1960s raised the problem of defining the boundaries of UNHCR's response to such evolution. In the first years of the existence of the UNHCR several calls were made by countries outside Europe for assistance with their own refugee problems. The distinction of groups of concern was illustrated by High Commissioner Lindt based on the distinction between those that implied only social and economic needs and those that implied a legal aspect.¹³⁰ The mandate of the High Commissioner was then limited to providing international protection to the latter category and only occasionally, through GA determination would it provide material assistance. There was however an inherent functional link between the groups within and outside the mandate, based on the commonality of needs that was acknowledged from an early stage. While initially (up to Lindt) the High Commissioner refused such involvement, in the 1960s it took the major decision of expanding and initiated negotiations to become involved in the African context.¹³¹

¹³⁰ Statement by Dr. August Lindt, United Nations High Commissioner for Refugees to the ECOSOC, July 1960.

¹³¹ Although taking a careful stance, High Commissioner Lindt set the bases for the justification of expansion on the basis of the need to provide international protection: "Our Office, very aware of the great importance of international protection, has expanded its machinery for this task, and it has appointed correspondents in various countries whose task is to see that international protection does not remain a meaningless word, but that the refugee can really have a feeling that there is, in the country where he resides, the possibility of appealing to an authority who will be objective, impartial, and will try to defend his interests. These interests can be further defended by new projects of legal assistance, and legal assistance in a way is a corollary to the legal protection." Statement by Dr. August Lindt, United Nations High Commissioner for Refugees to the ECOSOC, July 1960.

The Berlin context

The situation of ethnic German refugees living in camps in Germany was outside the scope of the mandate of the High Commissioner, since the refugees were in their country of ethnic nationality and were entitled to protection from the local authorities. However, their situation remained unsolved for some years and a functional link emerged between the needs of these populations and those of the refugees under the High Commissioner's mandate.¹³² Still a very recent organisation, the High Commissioner stood firmly by the boundaries of its mandate but felt compelled in his speech in 1951 to draw attention to the problem that had consequences for its own population of concern: "It is not my function to recommend any particular solution, as the German refugees are outside the mandate which has been given to my Office by the General Assembly, but nevertheless I think it is right that I should bring to your notice some of the fundamental aspects of the problem."¹³³

4.2.3. Refugee protection in situations of mass influx

During the 1950s and in particular the 1960s, it became obvious that the existing refugee definitions and legal protection framework were not adequate to deal with the wider dimension of the problem. Thus the use of the expression "old" and "new" refugees in Europe became common: while the former designated those refugees living in camps in Western Europe after the end of World War II, the latter corresponded to subsequent exoduses fleeing repression from the Eastern bloc countries.¹³⁴ At the beginning of the 1960s there was a growing recognition of the new refugee situations to which the international community had to respond, as opposed to the "old" refugee caseload.¹³⁵ Despite these signals, the reference to the need to adjust the legal refugee definition to situations occurring beyond the date limitation set by the 1951 Convention

¹³² "The chief merit of this report, as far as the functions of my office are concerned, is that it shows clearly that there cannot be a solution to the problem of the re-integration of refugees in Germany by tackling any one group separately. My main concern is to show you that the economic integration of the non-German refugees, both in Germany and Austria, is impracticable unless the problem of integration of the German refugees is tackled at the same time." Statement by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees to the ECOSOC, 3 September 1951.

¹³³ *Idem*

¹³⁴ See for example General Assembly Resolution 1673 (XVI) of 18 December 1961, where it is expressly mentioned "old" refugees in Europe: "Expressing its appreciation for the efforts made by the High Commissioner to complete in the near future the major aid programmes for "old" refugees in Europe".

¹³⁵ This distinction is reflected in the programmes of the Office, which were divided into two sections: a "Major Aid" programme for material assistance problems for the "old" non-settled European refugees, and a "Current" programme for assistance to new groups of refugees, which was designed to enable the High Commissioner to adapt the work of international assistance to the requirements of the new problems of refugees which emerged in different parts of the world (UNY, 1964: 326).

was only first made in 1966, in General Assembly Resolution 2198 (XXI), of 16 December.¹³⁶ This awareness emerged because the “new” European refugees were clear individual persecution cases that were handled by the national authorities of the host countries.

Addressing the issue of new refugee situations was, thus, not unequivocal, as it was not clear whether the designation “new” refugee situations applied only to refugee situations that in some way fit the parameters of the definitions, albeit beyond the time or geographical limitation, or whether they really represented the new situations that were not at all envisaged in the existing instruments, namely the new mass influxes where individual persecution was not possible to isolate. Two informal categories then emerged which became new groups of concern to the UNHCR: persons in refugee-like situations and externally displaced persons.

Persons in refugee-like situations

The concept of persons in refugee-like situations developed in the context of frequent large-scale refugee movements during the 1950s and 1960s, mainly in Africa, where it was not practicable for UNHCR to screen all members of a group to determine whether they met the refugee criteria. (Gallagher and others, 1989: 338). This gave rise to a growing use of the *prima facie* determination criteria, which, as seen, is based on the premise that unless there is evidence to the contrary, all members of the group may be considered refugees without need for individual determination. The expression “persons in refugee-like situations” was developed to encompass all the other groups of displaced persons that had been left outside the Statute and the 1951 Convention definitions, but which became “persons of concern to the UNHCR” (Gallagher and others, 1989: 338).

In short, the practical activity of the UNHCR gave a wider scope to the refugee definition without formalisation in an international instrument directly binding the states until a later stage. It also led to the refugee concept taking different shapes in the different parts of the world affected by refugee problems that carried different geographical and political implications. Later there was a

¹³⁶ “By this resolution, the Assembly made the point that, as the 1951 Convention relating to the Status of Refugees covered only those who had become refugees as a result of events occurring before 1 January 1951, it was desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the date-line of 1 January 1951. The Executive Committee of the High Commissioner’s Programme, it was noted, had recommended that the Secretary-General be authorized to open the Protocol relating to the Status of Refugees for accession by Governments within the shortest possible time.” (UNY, 1966: 403).

recognition at the international level that there were many refugees outside the mandate that needed assistance regardless of being internationally recognised as such (UNY, 1958: 240; UNY, 1960: 366). For this reason the good offices doctrine was developed, which allowed the High Commissioner to take action to assist groups of refugees not coming within the competence of the UN, before receiving a request or authorisation from the General Assembly. This meant a practical broadening not only of the activity of the UNHCR but also of the implicit definition of refugee into the category of persons of concern to the organisation, as it became in a way subject to the discretion of the High Commissioner. An implicit international responsibility for these populations was through practice incorporated in the international level of responsibility. However, this established an ad hoc way of handling the problems in the context of the international refugee regime, which will be problematised further on.

Externally displaced persons

As seen above, the term displaced persons was part of the definitions present in the Constitution of the IRO, although bearing a different interpretation from the one it has later acquired with the masses of displaced people in Africa and the ensuing use of the concept of externally displaced persons. The fact that regarding the earlier notions of displaced persons, the later ones don't stress so much the fact that a person is physically "removed" from the territory of his/her country of origin, is a clear indicator that there has been an evolution in the conceptions, which is necessarily linked with the evolution of reality. In fact, since the early 1960s there has been a widespread development of situations where people are displaced from their homes, compelled to leave due to war, human rights abuses and generalised disruption, without being literally deported, being the decision to flee taken by the individual or the group, although coerced to it.¹³⁷

The emphasis on externally displaced persons as a category of concern to the UNHCR came only in 1975 in the event of assistance to Cambodians and Vietnamese outside their country of origin.

¹³⁷ Although some authors argue that in the IRO definition the practical distinction between refugees and displaced persons was hard to maintain (Kourula, 1997: 52), I would say that indeed the distinction there was based on a different criteria from the one used nowadays, which doesn't make it less clear. As seen above, in the IRO Constitution there is an emphasis on the voluntary or involuntary nature of the movement, not of the decision, as the distinction between refugees and displaced persons: the latter term applies to "...a person who, as a result of the actions of the authorities of the regimes mentioned [...] has been deported from, or has been obliged to leave his country of nationality or of former habitual residence, such as persons who were compelled to undertake forced labour, or who were deported for racial, religious or political reasons." See Annex 1 - Part 1, Section A, Constitution of the IRO.

within the framework of the "special operations" for programming and budgeting reasons. Again the term refugee was politically sensitive and considered inappropriate by countries of origin and of asylum in the region (Jackson, 1999: 234). The only difference between externally displaced persons and internally displaced persons is related to the important criteria for international law of having crossed an international border. Up to 1975 the term displaced persons was employed to ease the way for the inclusion of the internally displaced persons within assistance programmes for returning refugees (Goodwin-Gill, 1988: 150). Thus, the "special operations" on behalf of groups outside the mandate, on the basis of General Assembly resolution 2956 (XXVII) of 12 December 1972, were to address internally displaced persons and returnees (Jackson, 1999: 229).

The content of the terms refugees and externally displaced persons remains uncertain if not ambiguous, as does the level of protection or assistance that may be due to the different categories (Goodwin-Gill, 1988: 150). The distinction between refugees and externally displaced persons became grounded on whether individuals had a well-founded fear of persecution. "Externally displaced persons" is a sub-set of "persons in refugee-like situations", where individual persecution cannot be directly pointed out but where international protection is warranted. Sometimes the two categories were not distinguished since the grounds for fear of persecution were difficult to ascertain, which is the possible response to the delicate imbalance between the need to provide humanitarian assistance while at the same time avoiding politically sensitive deliberations about whether there was well-founded fear of persecution or whether the populations were fleeing generalised violence and war (Jackson, 1999: 394), or the incapacity of their state to protect them. As seen above, the emergence of situations of large-scale influx of refugees and general change in the nature of refugee flows took place on a regional scale, i.e., the situation did not evolve evenly and in the same patterns in the different regions of the world. This regional character of the problem is illustrated by a number of indicators, such as the fact that it usually affects a single region; the specificity of types of groups it produces, the causes for the displacements and the possible solutions. Due to the interconnectedness of the problems in the same region, as most countries often suffer the same kind of economic, political and social constraints, each problem in one country will not only cause disruption in its neighbour but also affect the possibilities for continuing or improving help. Hence, a spill-over of refugee problems also gave rise to a spill-over of UNHCR activities once the decision to expand had been made.

In sum, there has been a de facto expansion of the UNHCR's role and even of its mandate, which was not accompanied by a straightforward expansion at the normative level. This has created a

gap between the legal instruments and the practice, and led to an uncertain perspective regarding where to attribute responsibilities. To a certain extent it became a political issue whose implications will be assessed further on in this research. Much of this gap was grounded on the distinction between what were international responsibilities for protection and the national commitments of states and the high Commissioner has always been careful to make the necessary distinction between state responsibilities and the UNHCR's competences.¹³⁸ The result was the gap between institutional responses and the limited obligations formally accepted by states (Stein, 1988: 48).

It is here argued that not only has the external environment of the UNHCR evolved, with a concomitant evolution of the organisation towards adjusting to such changes, but also the organization has itself, through its activities and the intervention of its staff, including the important leadership of some of the High Commissioners, contributed to the evolution of how the international humanitarian system is perceived and conceptualised by the main actors. Still, this mutual adjustment has not been comprehensive because the 1951 Refugee Convention has not been changed largely due to the diversity of preferences and regional situations which led to a less than universal regime of refugee protection, where the UNHCR was left to manage its involvement depending on the specific context.

4.3. The adopted paradigm: a focus on local integration

An important policy area that was at the outset left open to the criteria of the High Commissioner was the nature of the solutions to be promoted. The Statute mentioned three main permanent solutions: voluntary repatriation, local integration or resettlement, where the first proved unfeasible. The choice of these solutions is not rule-based, but the object of a policy and in many circumstances political decision, depending on the local context and situation on the ground.

During the period that ranges from the early 1950s to the late 1970s the UNHCR focused mainly on the local integration of refugees and on the resettlement option. According to existing data on solutions to refugees by numbers of refugees assisted and by distribution of funds, the percentage

¹³⁸ "In order to reach this objective, international protection sometimes needed to be accompanied by material assistance, taking into account, however, that the responsibility for assistance to refugees was primarily incumbent on the Government of their country of residence." Extract of a speech by the High Commissioner (YB61: 335).

of voluntarily repatriated was less than 1 in 1963 and remained so until the early 1970s, when it had around 20% emphasis for two years (1972 and 1973), returning to low levels immediately after. Also according to existing data on the distribution of numbers assisted and funds for each of the solutions, in 1963 exceptionally resettlement accounted for 30% of the permanent solutions promoted, while from then on the numbers lowered to an average of 4% of the total refugees. Between 1974 and the end of the decade, resettlement numbers systematically rose, peaking in 1978, with 50% of the permanent solutions funds devoted to this solution. This shows the instability of allocations, largely dependent on the circumstances on the ground: in 1978 there were many resettlement programmes from the Indo-Chinese conflict into the USA. Finally, local integration was by far the preferred solution throughout the decades, with an average of 90% of the numbers of refugees for which permanent solutions were obtained between 1963 and 1975, and 80% of the funds spent on solutions.¹³⁹ It should be noted that the low numbers devoted to repatriation during this period are also linked to the fact that for most of the period the UNHCR was not responsible for activities for the reintegration of repatriated populations in their countries of origin, which later became a pattern.

These patterns reflect the divisions among countries concerning the best solution to pursue. For example, the phrasing of GA Resolution 1388 (XIV) of 20 November 1959, that clearly undervalues voluntary repatriation in favour of local integration and resettlement.¹⁴⁰

4.3.1. Local integration

Local integration constituted the most implemented option that was promoted during the decades of the 1950s, 1960s and 1970s, although voluntary repatriation remained in ideal terms the optimal solution. This option was promoted immediately after World War II in the European together with coordinated efforts for development and reconstruction activities in the continent. For example, a resolution concerning co-ordination for promoting local integration through long-term projects between UNHCR and the International Bank for Reconstruction and Development (IBRD), supported the efforts and clearly highlighted that local integration is the preferred permanent solution, as both resettlement and voluntary repatriation could not offer within a

¹³⁹ Numbers obtained from the yearly reports of the High Commissioner for Refugees to the General Assembly, available for the years of 1963 to 1991, 1996-1997 and 2001 concerning data on funds, and years 1963-1975 concerning data on numbers of refugees by solution.

¹⁴⁰ "Expressing the hope that **no additional efforts will be spared** for the repatriation of refugees who wish to return to their country of origin. Expressing the hope also that **every effort will be made** for the resettlement or integration of refugees." (emphasis added) GA Resolution 1388 (XIV) of 20 November 1959.

reasonable time a permanent solution.¹⁴¹ This clearly went against the interest of the Eastern bloc countries of origin, which preferred voluntary repatriation. At the same time it was in the interests of the members of the GA to promote co-operation between international agents that would take over long-term integration projects, namely the IBRD, to circumvent the need to create a new fund which states were reluctant to embark on.¹⁴²

For the other emergencies that mushroomed since the 1960s in other continents, local integration was also the most feasible option and was particularly implemented in the context of development projects in the African continent. The first project was implemented in 1964, where UNHCR collaborated in a regional development plan to benefit the refugee and local population affected by the flow from Rwanda, under the auspices of the ILO and the participation of UNHCR and others of the UN (UNY 1964: 493). Other projects for assistance of refugees in Africa through a development perspective had already taken place but UNHCR had not been involved. From this year on it gradually expanded to an increasing collaboration with development-oriented projects, and in 1967 the ExCom recommended that it participate in the meetings of UNDP's Inter-Agency Consultative Board and to participate in the preparatory work of the second UN Development Decade, which was supported by a GA resolution. (UNY 1967: 479). From here on co-operation with other UN agencies in particular in development projects intensified significantly. Still there was no discourse on linking relief to development nor had states developed any convergence on that area. It was largely in the interests of developing countries to receive funds and attention and thus generous asylum policies were maintained in the continent throughout these decades.

Although from the 1970s on GA resolutions already emphasise the importance of voluntary repatriation, local integration remained during the decade the most important of the permanent solutions. Indeed, from the 1970s on the UNHCR started to strongly link durable solutions with economic and social development of the countries concerned (UNY 1976). Local integration involved many operational activities of material assistance, some of them related to development programmes and also implied a functional adjustment to address needs of local populations affected by the refugee influxes. However, it should be noted that High Commissioner Goedhart was at the outset very careful on any attempt to expand its scope of activities: "As far as my office is concerned, I have no operational task in the assimilation of refugees and I don't want to have an

¹⁴¹ GA Resolution 638 (VII), of 20 December 1952 on Integration of refugees

¹⁴² Statement made by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees in the Third Committee of the Tenth General Assembly in New York on 4 October, 1955.

operational task in that field. I am perfectly glad to confine myself to promoting the activities of other interested organizations, governments, etc. which tend to assimilate refugees in the countries of their present residence."¹⁴³

4.3.2. Resettlement

During this period the major source of disagreement among states was between the emphasis on repatriation and the emphasis on resettlement in the work of the UNHCR. In 1951 the representative of Byelorussia submitted a draft resolution to the third committee condemning the actions of western countries, namely the U.S., France and the UK and the UN refugee institutions for not insisting on repatriation and promoting forced resettlement of displaced persons, which was supported by Czechoslovakia, Poland, the Ukrainian SSR, and the USSR, but which was rejected in the GA vote.¹⁴⁴

A second source of tension concerned the discussion among Western countries regarding the comparative advantage of a focus on local integration and third country resettlement. While in the Third Committee discussions some countries like Australia, Israel and the Netherlands emphasised that overseas migration and resettlement alone would not solve the problem, other countries like France pointed to the fact that local integration was not the only solution and that migration should be an important consideration (UNY 1951: 529).

The UNHCR could not perform direct operational activities in either of these solutions without the specific approval of the GA, but was charged with promoting the admission of refugees to the territories of states and under that mandate it made several appeals to governments to be as liberal as possible in the admission of refugees (UNY 1952: 498). However, it was clear that High Commissioner Goedhart was not much in favour resettlement as a solution because he did not consider it would provide long-term solution and that in social terms it could actually aggravating the problem by removing the valid workforce from countries in economic recovery.¹⁴⁵ The growing importance of resettlement as a solution became apparent in 1959, when increasing

¹⁴³ Statement made by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees to the 470th Meeting of the Third Committee of the General Assembly on 9 December 1952.

¹⁴⁴ Byelorussian SSR draft resolution, A/C.3/L.201. of 09 January 1951.

¹⁴⁵ Statement by Dr. G. J. van Heuven Goedhart the United Nations High Commissioner for Refugees at the 13th Session of the Economic and Social Council, 3 September 1951.

numbers of refugees found a solution in third countries. The Executive Committee of the High Commissioner's Programme placed special emphasis on resettlement as a solution and made several recommendations for liberalising immigration regulations and selection criteria at the national level (UNY 1959: 227). In this line, in the discussions in the ECOSOC in 1959, some representatives emphasised the difficulties which countries of asylum for refugees had to face and urged that more refugees be admitted for resettlement, particularly in overseas countries of immigration (UNY 1959: 229-230). In 1968-1969 an influx of new refugees in Europe started, to which the main solution was resettlement (UNY 1969: 473). By 1977 resettlement was the main solution in the Americas, but there were already problems promoting it in Canada and the U.S. (UNY 1977: 623), which shows the beginning of the regressive trend in terms of openness of Western countries, which is largely a result of the major resettlement operations that took place in the context of the refugee crisis in South-East Asia, when large numbers of Indo-Chinese refugees arrived in small boats in countries bordering the South China Sea or rescued on the high seas by passing ships. Assistance was provided for basic needs until their admission to a country for temporary or permanent settlement (UNY, 1976: 521).

4.3.3. Voluntary repatriation and supervision of state responsibilities

From the outset the High Commissioner was clear about the limits of its involvement in repatriation activities. These were within the competence of the national authorities and his role was merely of promoting visits and information concerning the conditions for repatriation.¹⁴⁶ More activities in that area would have to be determined expressly by the GA, according to § 9° of the Statute.¹⁴⁷ As part of the international protection function, emphasis was placed on the freedom of choice of the refugees to decide voluntarily on the possibility of repatriating.¹⁴⁸

The High Commissioner stood firm in his position that repatriation had to be voluntary against the repeated attacks from delegations of the countries of origin, even in the face of repeated threats and challenges to the existence of the Office.

¹⁴⁶ "Whenever a refugee wishing to be repatriated has applied to my Office he has been referred to the competent authorities and given such assistance as may be necessary to bring him into contact with the authorities of his country of origin, and his repatriation has, in this way, been facilitated." Statement by Dr. August Lindt, United Nations High Commissioner for Refugees in the 41st meeting of UNREF Executive Committee, 6 June 1957.

¹⁴⁷ Statement made by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees in the Third Committee of the Tenth General Assembly in New York on 4 October, 1955.

¹⁴⁸ *Idem*

Before the GA, the High Commissioner said that very few refugees had expressed desire to be repatriated, that resettlement was difficult and that the solution was the local integration. He promoted the shift from palliative to the finding of permanent solutions, although always shying from the operational involvement even in the context of the newly proposed international fund. In the sequence of this proposal a draft resolution was submitted by Belgium, Costa Rica, Ecuador, France, the Netherlands, Turkey and the U.S., later joined by Australia, proposing the establishment of a new voluntary fund to promote permanent solutions and to include emergency aid. The draft also made provision for giving governments a bigger share than before in planning and budgeting the High Commissioner's work (this means that with expansion comes a tighter control). This was also when the ECOSOC was asked either to set up an Executive Committee responsible for the direction and financial supervision of the new programme or to revise the terms of reference and composition of the High Commissioner's Advisory Committee to enable it to carry out its duties (UNY 1954: 254-255).

On repatriation, in 1955 again there were complaints by USSR about lack of repatriation efforts, supported by other Eastern bloc countries (UNY 1955: 200). To a draft resolution proposed by the USSR suggesting more emphasis on repatriation, the High Commissioner replied that it was displaced persons who were to be encouraged and assisted to return to their countries of origin. All displaced persons who wished to do so had long since returned home and those who remained had become refugees. Several delegations explained that they would be unable to vote for the USSR resolution because, besides confusing refugees with displaced persons, it imposed on the High Commissioner functions of a political character that ran counter to his Statute and omitted all reference to the solutions of resettlement and integration. The effect of adopting the resolution would be to require the High Commissioner to exert pressure on the refugees towards repatriation; it would also cause consternation among the refugees themselves (UNY 1955: 201). This last effect would imply a loss in *supervisory authority* or conflict with mandate.

In the presence of continued criticisms by the Eastern countries, namely USSR, Poland, Czechoslovakia concerning voluntary repatriation and the methods of assistance (UB 1958: 240), the High Commissioner underlined the need to provide solutions on a purely humanitarian basis and in accordance with the freely expressed wishes of the refugees. This language, present in the High Commissioner's report, was incorporated in a draft resolution on the World Refugee Year in 1958. Countries like Hungary and Saudi Arabia abstained from voting such resolution, arguing

that the World Refugee Year might give rise to political propaganda and demonstrations, especially by private organisations (UNY 1958: 240). The amendments suggested by the Eastern bloc to the draft were criticised by other delegations that regretted the introduction of political considerations into the debate and added that most refugees would not seek repatriation until the conditions leading them to request political asylum had disappeared (UNY 1958: 240).

In 1960 the Eastern bloc countries suggested that the time had come to consider abolishing the High Commissioner's Office, since it had almost completed its work (UNY 1960: 366). In 1961 again there are suggestions for discontinuing the work of the Office, since it was considered that most of the refugee problem had been solved and on those grounds Bulgaria submitted a request for a separate vote on a paragraph of the draft resolution on the report of the UNHCR (UNY: 61: 337).

Despite this the UNHCR was able to maintain its supervisory authority or better keeping to a strict analysis of the terms of authority given in its mandate by systematically refusing to promote repatriation that was not totally voluntary, as stated in the Statute. In a statement by the High Commissioner, and as a response to this sort of challenge, he underlined the need to guarantee the freedom of choice of the refugees (UNY 1957: 236).

Even some years later, towards the end of the 1970s, when states began converging on an emphasis on voluntary repatriation, High Commissioner Aga Khan emphasised the organisation's incapacity to enforce that preference without the concurrence of those directly involved, the refugees: "...the Chairman of my Executing Committee, summing up the debate on this matter in Geneva recently, expressed the hope that my Office would continue its efforts to alleviate suffering and, at the same time, promote durable solutions, including voluntary repatriation. We shall certainly try, but the decisions that will determine events must clearly be made by those directly concerned."¹⁴⁹

Under High Commissioner Hartling the emphasis on voluntary repatriation is already stronger, together with a stronger consensus on the part of states, which was called for by the High Commissioner. While criticising lack of political will and selectivity and being cautious about

¹⁴⁹ Statement by Prince Sadruddin Aga Khan, United Nations High Commissioner for Refugees to the Third Committee of the General Assembly, 14 November 1977.

politicisation, this High Commissioner was much more sensitive to "national perceptions".¹⁵⁰ The choice of solutions was placed more on governments than on UNHCR or on refugees. At the same time his speech placed a stronger emphasis on advantages that derived from the work of the organisation: respect for UNHCR deriving from a perception of integrity and effectiveness of the organisation; political impact of UNHCR's activities; and protection function as a source of authority given the delicacy of the function.¹⁵¹

This tension over the focus of activities of the High Commissioner gave it from the outset a margin of leeway for defining its own interpretation of its mandate, as is apparent in his first report where he stated that although he had no direct mandate to engage in repatriation and resettlement without the Assembly's approval, he considered it his duty to look for possibilities of voluntary repatriation or resettlement which would provide a solution for refugees within this mandate. Should this fail, his chief task then must be to assist, where feasible, the local settlement of those refugees within the competence of his Office for whom there were no chances for resettlement, and to promote the complete assimilation of all the refugees who had been resettled. (UNY 1951: 526).

In his address to the 470th Meeting of the Third Committee of the General Assembly (9 December 1952) the High Commissioner reiterated the need to focus on the three solutions to the refugee problem (repatriation, resettlement, and local integration). It seems the High Commissioner saw it as his first task to ensure voluntary repatriation (although he underlines that they have no operational role in such solution): resettlement was difficult, although preferred by the refugees, so it was the second priority. The increasingly important solution was local integration, but the UNHCR as an international and non-operational body did not have competence for that, which was an issue for voluntary agencies, churches and private individuals. This made integration his last priority (certain delegations were not in favour). In the same speech he adds assistance to those who cannot fend for themselves as a fourth element of refugee policy and their protection until a solution has been found as a fifth element. This is the beginning of an expansive interpretation.

¹⁵⁰ Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the General Assembly, 13 November 1978.

¹⁵¹ *Idem.*

At the 8th session of the GA the majority of states emphasised the necessity of working for permanent solutions but a number of representatives, among them those of Iraq, Saudi Arabia and Yugoslavia, considered that more attention should be paid to voluntary repatriation (UNY 1953: 436). Further, the Eastern countries considered that the work of the Office should be discontinued, based on the usual criticisms. To this the High Commissioner replied that although the ideal solution would be repatriation, it should be voluntary and not forced. Further, his task was not to ensure repatriation or resettlement of refugees, but to facilitate solutions of that kind. He had no funds to finance repatriation, and could only direct those interested in going back to the correct institutions and procedures. He also clarified that according to the statute a refugee who asked to return to his country ceased automatically to be a refugee within the meaning of such provisions and no longer came under his jurisdiction.

In his report to the GA in 1960, the High Commissioner expanded notions of material assistance into considering refugee problems from a humanitarian *and social* point of view, and underlined that in view of the slow rate at which the number of refugees coming within the mandate of the Office was decreasing, the provision on legal protection was a long-range matter. (UNY 1960: 365). Again this was against the preferences of the communist countries, which did not support an economic and social role for the UN and insisted on repatriation to solve the refugee problem. Countries like France, Denmark and UK maintained that, "responsibility for aiding refugees should be transferred at an early date to the governments of the countries where the refugees resided. Others, however, considered this either undesirable or difficult to put into practice. (UNY 1957: 237).

4.4. The turn to operational activities: broader range of policy options

This section will examine the policy direction taken by the UNHCR since the early days and into the end of its third decade of existence. During the first years the organisation had few operational activities and little funding to support them. Operational activities implied much more funding and authority for distributing these funds within the system and also of controlling them through direct implementation.

Initially activities of material assistance were of an exceptional and indirect nature and subject to approval by the GA. A few years later assistance operations started fitting under the umbrella of the good offices operations, which meant that they were initiated outside the regular programme.¹⁵² Expansion evolved rapidly in a largely autonomous way through the good offices function and as consequence of crucial decisions made by the UNHCR's leadership concerning the direction of the organisation's activities. Faced with the option of embarking on more operational tasks or of limiting activities to the legal advice and indirect catalytic role, the leadership slowly tilted the organisation towards the operational dimension, even if initially only with co-ordination and catalytic functions. The decision to become more operational paved the way for the broadening of the functions performed by the organisation and led to the expansion of scope of activity already partly analysed. Hence, actual expansion preceded formalisation of new tasks and incorporation of new groups of concern in the form of guidelines issued by the organisation's principals. It also took place in a context where principals did not have converging ideas concerning the ideal evolution of the UNHCR. In such context the mechanisms of control were limited, as were the guidelines provided to the organisation on policy directions. Actual activities on the ground were subsequently sanctioned through GA resolutions.

4.4.1. Initial reluctance to embark on operational activities

Initially the UNHCR remained attached to a strictly non-operational role and limited the promotion of solutions to a catalytic and co-ordination function. This was emphasised by several High Commissioners during the first decades: "But never have the agencies failed to stand ready to continue with the job and I would, certainly not know how to execute any programme, being non-operational myself, if I could not rely continuously on the wholehearted support of agencies of many descriptions which really do so much in this field and were already in existence long before my Office."¹⁵³ Further, the role of international protection was initially seen in terms of an indirect role, in the sense that it was not provided directly to refugees but took the shape of assistance to governments: "In the exercise of its function of international protection my Office is trying to advise and assist the competent authorities."¹⁵⁴ This applied in particular to repatriation movements, as a reaction to calls from the Eastern countries that the High Commissioner ensure

¹⁵² Budgeting was until recently divided into regular and special programmes (activities outside the core scope of the mandate).

¹⁵³ Statement made by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees in the Third Committee of the Tenth General Assembly in New York on 4 October, 1955.

¹⁵⁴ Statement by Dr. August Lindt, United Nations High Commissioner for Refugees in the 41st meeting of UNREF Executive Committee, 6 June 1957.

return and reintegration. Hence, ensuring the return in conditions of safety was not within the scope of the organisation's activities as seen "Whenever a refugee wishing to be repatriated has applied to my Office he has been referred to the competent authorities and given such assistance as may be necessary to bring him into contact with the authorities of his country of origin, and his repatriation has, in this way, been facilitated."

A strong degree of caution was emphasised concerning the limits of UNHCR's functions and also the boundary between its competencies and those of other actors, as well as the distinctions between the national and the international level of responsibility: "I would also like to underline again the so to speak marginal character of the action which my Office can take in view of the terms of its mandate and of the limited resources at its disposal. The essential role, as I already stated, is to induce governments and private institutions to provide the necessary support, and to act as a stimulant, a catalyst and a coordinator rather than to undertake operations which are the responsibility of other national or international bodies."¹⁵⁵ In the same line it kept initially firmly away from development related programming, although already during the early 1960s there was an acknowledgement of the need to assist refugees beyond immediate relief and for a "...longer-term process aimed at improving the situation of the local populations as a whole."¹⁵⁶ Also revealing of the initial objective of keeping with the mandate was a concern with maintaining the international protection function at the centre of activities: "These few examples, Mr. Chairman, will, I think, suffice to show that protection continues to receive very careful attention by the High Commissioner's Office. Far from being eclipsed by the sometimes burning problems of assistance which at present beset the African continent after having been to the forefront in Europe, the efforts to provide protection have drawn new strength and impetus from the geographical extension of our activities."¹⁵⁷ Up until then the expansion of activities into new geographical areas and material assistance did not curtail protection activities nor preclude the organisation from enforcing all dimensions of its mandate.

4.4.2. Good offices as an instrument of expansion

¹⁵⁵ Closing address by Mr. Felix Schnyder, High Commissioner for Refugees to the Third Committee of the GA, at its sixteenth session, 6 December 1961.

¹⁵⁶ Statement by Mr. Felix Schnyder, United Nations High Commissioner for Refugees to the Third Committee of the GA at its twentieth session, 1965.

¹⁵⁷ *Idem.*

As we have seen, in the beginning of the 1950s the international community opted for developing a relatively restricted definition of refugees, aiming at solving the problem of the remaining displaced populations in Europe resulting from World War II, and end international responsibility at that point. However, immediately after the signing of the 1951 Convention there were the first indications of a pressing gap between what was defined in the international instruments and the reality to be tackled. Besides the persistence of the problem of refugees in Europe, there was since the early 1950s an awareness of the wider dimension of the issues to be addressed, not only in terms of the changing nature of the problem, but also of the existence of enormous refugee needs beyond the European context.¹⁵⁸ The Statute of the UNHCR gave the organisation slightly broader capacities than those taken up by states in the 1951 Convention, but these were not without limits and were difficult to implement without the commitment of states.

The good offices mechanism provided a useful tool to surmount these shortcomings. It is by excellence an autonomous form of expansion of the High Commissioner's competence, as it enables the response to appeals for help in cases considered to be of concern to the international community without first having to decide whether the refugees in need of international assistance and protection come within its mandate (YB61: 331), and without having to undergo previous authorisation by the General Assembly. Under this procedure, when urgent material help was needed – as was the case with many new refugee emergencies in particular since the 1960s – the Office of the UNHCR could respond to appeals for help with actual action through emergency assistance. This measure circumvented the requisite present in art. 10° of the Statute, according to which the High Commissioner would have to request prior approval of the GA before appealing to governments for funds, which in practice meant that its assistance activities would be under the close scrutiny of states in the GA. Hence, involvement was made on the basis of executive decisions (Gordenker, 1987: 97) and also obviated the requirement of the individual refugee status determination, thus enabling assistance in situations of mass displacement. According to Gordenker, "The limitation on the bureaucratic functions of the Office [which determined that the work is to be based on humanitarian concerns and to exclude political activities] was originally states as a prohibition against operations and a denial of authority to appeal to governments for money. If it is assumed that the natural tendency of a supervisory organisation would be to step into operational breaches, this conceptual dimension sharply restricts bureaucratic development."

¹⁵⁸ This was expressed, for ex. in the recognition by the U.S. delegation of the "...continuing but constantly changing nature of the refugee problem" in the context of discussions towards the formulation of GA Resolution 1166 (XII) of 1957 (UNY, 1957: 237).

(1987: 33). Here lies the source of the dilemmas that would subsequently emerge concerning the maintenance of a strictly supervisory and independent role or a more active one but more subject to attempts at politicisation. In practice the good offices instrument has broadened the scope of activities of the organisation, namely the geographical one. In the words of High Commissioner Lindt, "Whereas the mandate was always global, the good offices function entrusted to the High Commissioner's Office has geographically considerably widened its scope. It seems to me, that in this development may be seen something like a recognition of the refugee question as a whole as a social and economic problem which is, on a purely non-political basis, of international concern."¹⁵⁹

Chinese refugees in Hong Kong

The good offices concept was first used in the late 1950s concerning assistance to the Chinese refugees in Hong Kong.¹⁶⁰ After some years of assistance being provided to this group under the banner of humanitarian reasons and the serious distress in which they found themselves, GA resolution 1167 (XII) adopted on 26 November 1957, recognised the problem to be of international concern and authorised the High Commissioner to use his good offices to encourage arrangements for contributions. The call for the use of the good offices derived from the lack of agreement among states concerning responsibility for this group and whether they fell within the mandate of the High Commissioner's office. In fact, the representative of the U.S. had stated concerning previous discussions, "The Executive Committee had been forced to recognize that it could not reach any clear agreement on the question of eligibility."¹⁶¹ He further proposed a draft resolution referring the issue for decision to the GA on the grounds that the Executive Committee was unable to reach a clear decision on the question of eligibility of those refugees for assistance and that there were no funds available. Other delegations pointed out that the question of eligibility was complicated by the divergent attitudes of states as to the legitimate Government of China. Upon complaints by the Chinese delegation that referring the issue to the next GA session would cause delays in assistance to desperately needing refugees, the chairman hinted that the advisory committee's resolution already constituted advice to the High Commissioner and implicitly incorporating the issue in the agenda. The High Commissioner stated that he saw his

¹⁵⁹ Statement by Dr. August Lindt, United Nations High Commissioner for Refugees to the ECOSOC, July 1960.

¹⁶⁰ The Hungarian refugee crisis was considered to be fully within the mandate and therefore not a good offices operation.

¹⁶¹ Report of the UNREF Executive Committee (Fourth session - Geneva, 29 January to 4 February 1957). Annex I to document A/3585/Rev. 1 1957 Report of the United Nations High Commissioner for Refugees.

mandate as "a global one and required him to assist refugees in whatever continent they might be" and would be happy to engage in assistance to this group.¹⁶² The role of the High Commissioner was to be of encouraging arrangements for contributions, thus not a direct role.

In a resolution adopted in 1959 the GA expanded the use of good offices beyond the Chinese refugees in Hong Kong: "Authorises the High Commissioner, in respect of refugees who do not come within the competence of the UN, to use his good offices in the transmission of contributions designed to provide assistance to these refugees."¹⁶³ The 1957 and 1959 resolutions were the basis for subsequent resolutions drawing on the precedent of the increasing attention that was being paid to the problem of refugees who did not come within the immediate competence of the UN to encourage such progress.¹⁶⁴

4.4.2.1. Crucial decision: the Algerian refugee crisis

In late 1957 the High Commissioner received from the government of Tunisia a request for aid on behalf of refugees from Algeria, to which the High Commissioner reacted with an appeal to governments in 1957 and 1958 for contributions for those refugees. During 1958 numbers of Algerian refugees in Tunisia and Morocco increased considerably, with an estimated 85,000 in Tunisia and 80,000 in Morocco.¹⁶⁵ According to Gordenker, the good offices formula provided a new conceptual elasticity in the definition of refugees that High Commissioner Lindt used on his own initiative to bring assistance to refugees from Algeria and only later obtained an explicit sanction from the General Assembly (Gordenker, 1987: 39).

In the following year a draft resolution was submitted to the GA for approval of UNHCR's involvement in the crisis, to which France and the UK reacted arguing that such a resolution was unnecessary since the High Commissioner already was providing assistance to these refugees and could be expected to continue it (UNY 1958: 241). The resolution, these delegations argued, might also impose a financial responsibility without requisite funds to carry it out (UNY 1958: 241). In a draft resolution submitted in the Third Committee by Libya, Morocco and Tunisia, it was emphasised that a special resolution had been devoted to the refugees from Algeria because

¹⁶² *Idem*

¹⁶³ GA Resolution 1388 (XIV) of 20 November 1959.

¹⁶⁴ GA Resolution 1499 (XV) of 5 December 1960.

¹⁶⁵ Report of the United Nations High Commissioner for Refugees, 1959.

they constituted a separate category. It was pointed out that the High Commissioner was only temporarily responsible for them and that it was the wish of the parties concerned that these refugees should return to their country (UNY 1959: 231). This resolution merely acknowledged the existence of the problem and in view of the efforts already being undertaken by the High Commissioner, recommended the continuation of such action.¹⁶⁶

Concerning these refugees, faced with the possible withdrawal of the League of the Red Cross and Red Crescent Societies, it was recommended that the High Commissioner assumed responsibility for these refugees. The French representative said that France claimed the right to provide all necessary assistance for the refugees from Algeria who had been obliged by the pressure of events to leave their homes. Being anxious, however, to place humanitarian before legal considerations, France had made three contributions to the High Commissioner's Office for aid to these refugees (UNY 1960: 366). It should be noted that the functions remained merely of co-ordination and channelling funds and such was underlined in the High Commissioner's speeches. However, the intention of embarking on further emergency assistance activities was clear in High Commissioner Lindt's speech: "The North African operation is a joint operation with the League of Red Cross Societies, a co-operation which, I think, is very fruitful, and extremely useful, and which includes the Government of the countries where these refugees are, and who themselves are very understanding of the problem. I think this co-operation between the International Red Cross and the High Commissioner's Office may constitute a certain pattern for action in other emergency situations if they arise."¹⁶⁷ Still the understanding of the organisation's work remained non-operational.¹⁶⁸

Since this crucial decision, other important decisions were made concerning involvement in specific situations that fell outside the mandate of the UNHCR. The response varied according to the degree of distance between the groups involved and the organisation's mandate, and while in some situations the organisation shied from specific protagonism, in other situations it was a major actor. The Algerian crisis embodied the tensions between the movements struggling for independence outside Europe and the West and in particular between the West and newly

¹⁶⁶ Approved as GA Resolution 1389 (XIV), of 6 November 1959.

¹⁶⁷ Statement by Dr. August Lindt, United Nations High Commissioner for Refugees to the ECOSOC, July 1960.

¹⁶⁸ "In all emigration questions, we cooperate very closely with the Intergovernmental Committee for European Migration, as we are a non-operational agency, and I can only congratulate myself on the co-operation we are receiving from this governmental organisation." Statement by Dr. August Lindt, United Nations High Commissioner for Refugees to the ECOSOC, July 1960.

decolonised countries, such as the case of Tunisia and Morocco, that received thousands of Algerian refugees. The UNHCR had to manage these contrasting interests, turning the decision into a strong political dilemma that was not without internal debate and divergences (Loescher, 2001b).

4.4.2.2. Decisions on involvement: a functional expansion

Three important decisions reinforced the initial crucial decision towards geographical expansion and an emphasis on material assistance: the refugee crisis in India, the Sudan cross-border operation, and the leadership of the humanitarian co-ordination in Cyprus. All three involved the UNHCR in new areas of activities that had not been foreseen in its mandate and which did not result from specific policy orientations provided by states but that were the result of the perspective of the leadership on the functional expansion that the organisation could and should take.

The refugee crisis in India: from co-ordination to repatriation

With the outbreak of civil strife in East Pakistan in March 1971 it soon became clear that international assistance on an unprecedented scale was urgently needed, both for the relief of the distressed people in East Pakistan and for aid to the refugees who had gone to India (UNY 1971: 137). This conflict strongly opposed Pakistan and India and the idea of refugee influxes as threats to international peace and security emerged strongly in this context. The disruption in East Pakistan created a refugee crisis that spanned to India, but gravely affected Pakistan itself. However, UNHCR's action was limited to the assistance of the government of India with the refugees in its territory while the assistance to the displaced populations inside Pakistan was left to other humanitarian agencies. Indeed this situation was particularly sensitive, as the issue of territorial autonomy made it very difficult to determine whether what Pakistan considered displaced people in its territory were indeed refugees in an autonomous territory (now Bangladesh). For that reason, the UNHCR took no direct action to assist those people.

During the 1960s the UNHCR was involved mainly in local integration activities and took the first steps in the direction of becoming an operational agency. The 1970s marks the beginning of increasing co-ordination efforts and the first times the UNHCR was designated focal point for the

co-ordination of humanitarian assistance provided by the UN system. This happened after a request for assistance by the government of India to the Secretary-General (Secretary-General) in 1971, to which the Secretary-General agreed and after consultation with specialised agencies designated the UNHCR as the focal point. In his appeal, the Secretary-General stated that the solution to the problem lay in the voluntary repatriation of the displaced persons at the earliest possible time. Several appeals for funds ensued, both by the Secretary-General and the UNHCR. In this operation the UNHCR still did not take over any actual relief operations, which remained the responsibility of the government of India and its main functions were co-ordination of supplies, mobilisation of international support and liaison with the government of India.

India was strongly pressing for voluntary repatriation but there were no signs of political reconciliation in East Pakistan. This fact threatened the relations between India and Pakistan since a lot of tension was created: The representative of Pakistan questioned the theory, which he said had been invented by India, that an influx of refugees constituted an aggression against the country that harboured them, and he noted that under international law such countries were required to prevent political activities by refugees that might endanger law and order in their country of origin (UNY 1971: 140). China sided with Pakistan, and the whole issue became highly politicised and the issue of internal affairs and territorial integrity came up systematically, as Pakistan accused India of trying to force a reconciliation in East Pakistan in order to enable the return of refugees.

The GA endorsed the designation of UNHCR as lead for co-ordination after the designation by the Secretary-General. With the outbreak of hostilities between India and Pakistan, the Secretary-General brought the issue to the Security Council (SC), in an unprecedented move. He argued that there was a conflict between territorial integrity and self-determination and that the consequences of the situation were not only humanitarian but also a potential threat to peace and security (UNY 1971: 144). The representative of the USSR accused Pakistan military of applying force and terror and causing the displacement and that the SC should deal with the root cause of the crisis. USSR and Poland were worried about the will of the people (probably supporting self-determination of East Bangladesh). There were conflicting votes of resolutions. The SC, due to lack of unanimity, referred the question to the GA. Already at this point, four neutral zones, or safe havens were created to help ensure observance of the Geneva Conventions and avoid the loss of lives.

While the UNHCR had not been involved in the relief operation in East Pakistan, once settled the issue, it became responsible, in 1973, for the repatriation operation of Bengalis in Pakistan and non-Bengalis in Bangladesh, which turned into a large scale operation, including airlift. It was the first time that it had a major role in ensuring the repatriation operation in the country of origin.

Cross-border operation in Sudan: functional link between categories

At the settlement of the civil conflict in Sudan through the Adis Ababa Agreement in 1972, the President of Sudan requested the Secretary-General's assistance. UNHCR was called upon to assume responsibility for coordinating the UN programme of immediate relief in the southern region of Sudan.¹⁶⁹ The aim of this programme was to encourage and facilitate the return of some 700.000 persons to their homes, including 180.000 refugees from neighbouring states. Once the immediate relief phase was completed, UNDP was to take over responsibility for longer-term development assistance in the area (UNY 1972: 411). When the operation was handed over to UNDP, the ECOSOC commended the work of the High Commissioner for the efficiency with which he had been coordinating the relief, the resettlement and rehabilitation operations (UNY 1973: 497).

It was seen as involvement with IDPs in the context of a "returnee-linked" programme and UNHCR was a member of the Joint Commission charged with supervising the cease-fire violations. UNHCR also worked to bring Army and rebel forces together by enlisting their co-operation in the assistance program. These measures were viewed as an attempt to "bring about a climate of complete confidence" among former enemies, and to gain trust (UNHCR, 1994a: § 16). Hence a diplomatic role was enforced with contribution to the peace settlement.

Internal displacement in Cyprus: leading humanitarian operations

Closely related to the good offices concept is the broadening of the concern of UNHCR to refugee-like situations, of which the clearest instance was the response to the large-scale displacement in Cyprus in 1974 (Gordenker, 1987: 40). This conflict opposed Greece and Turkey over control of the island and both accused each other of targeting the civilian population indiscriminately (UNY 1974: 267). Further, Greece accused Turkey of refusing to allow the

¹⁶⁹ GA Resolution 2956 (XXVII) of 12 December 1972, § 2 requested and supported assistance in Sudan.

return of refugees for political reasons, aimed at dividing the populations. The Turkish said that the Greek Cypriots encouraged the emigration of Turkish population. In 1974 there were large numbers of people in Cyprus that had been displaced and were in dire need of humanitarian assistance. The Secretary-General was asked in a SC resolution to continue to provide emergency UN humanitarian assistance to all parts of the population in need of it. The UNHCR was then appointed coordinator of UN humanitarian assistance for Cyprus. He was asked by the Secretary-General to coordinate humanitarian assistance in Cyprus with the task of meeting the emergency needs of more than 200.000 persons who were displaced or in need following events of July and August.

In August 1974, the Secretary-General requested UNHCR to co-ordinate humanitarian assistance to 260.000 Greek and Turkish Cypriots who were internally displaced, which meant an enlargement of Europe's share of the budget for the first time since the 1960s (Pitterman, 1985: 51). This authority was noted in a Security Council resolution, and involved UNHCR in an extraordinary role distinct from its mandated functions on behalf of refugees.¹⁷⁰ In 1981 this authority was reconfirmed by GA Resolution 36/125 of 14 December 1981, § 14. It was the first time that the organisation had been involved in IDP situations with no link to refugee/returnee issues.

In particular after its lead role in the co-ordination of humanitarian assistance to the more than 200.000 displaced populations in Cyprus, the UNHCR quickly took over a whole range of humanitarian tasks, which became progressively institutionalised, including in 1974 when the ExCom decided to invite the High Commissioner to report to the Committee on his special humanitarian tasks in the same way that he reported on other activities financed from trust funds under his regular budget (YB74: 597).

In the later 70s the emergency relief for new refugees and displaced persons already represented a major component of UNHCR's programmes, and the lead role was progressively recognised in different GA and Economic and Social Committee resolutions.

¹⁷⁰ Security Council Resolution 364 of 13 December 1974.

4.4.2.3. Expansion as a UN-wide development in circumstances of state divergence

A secondary but important aspect that contextualises the tendency for UNHCR expansion should be considered besides the particular situations of operational involvement that represented a broadening of the UNHCR's role and mandate during this period. Such aspect is the effect of a systemic UN trend towards expansion of activities that was subject of heated discussions in the GA and wide disagreements among countries concerning the appropriateness of such trend. Several UN agencies saw it in its duties from the 1970s on, to emphasise promotion of development activities. In a world that was divided among developed and developing countries this represented a risk of politicisation of the activities of these organisations and was also subject of serious reflections within them. The UNHCR can also be seen as integrating this trend.

Hence, the degree of politicisation of a UN agency is also dependent on the orientation of the UN system as a whole, as seems to have been the case in the 1970s with the increased support not only for relief but also for development of areas where predominantly there were refugees whose displacement had been caused by the situations arising from the activities of national liberation movements. This was the case in many situations in Africa, and in particular in South Africa. This reflects a particular trend in the UN system, with the increase in the General Assembly of countries recently independent from colonial powers, which pressured for increased support of these groups. This was reflected in the work of many UN agencies, including the UNHCR. Here one can wonder to what extent wasn't this prioritisation of groups not politicising the involvement of the organisation. It is interesting to note the criticisms on the part of the U.S. and the UK concerning this policy direction and denouncements of politicisation of the work of the UN (YB71: 527), while currently these are among the countries accused of manipulating and politicising the system for their own interests. This may entail that even in circumstances where politicisation occurs the organisation still has a margin for deciding whether or not and by whom to be politicised. This reverts to the discussion on responsibility and accountability that has been touched in the beginning of the research and will be reflected upon in the conclusion.

A major source of disagreement emerged with the role that the specialised agencies should have concerning the implementation of the Declaration on granting independence to colonial countries and peoples. In 1971, in the context of discussions concerning the implementation of the Declaration on the Granting of Independence for Colonial Countries and Peoples, there were disagreements between the USSR and Western countries on whether UN agencies should go

beyond their charters and follow the principles of the UN Charter.¹⁷¹ Sweden said that they shouldn't go beyond their statutes and should not be pressed to do so. The representative said that any resolution should take into account the constitutional position of the various agencies, and various other countries had reservations regarding this point. This argument was mainly used concerning UNDP and the International Bank and whether they should do more to increase the scope of their assistance to refugees from colonial territories (UNY 1971: 524-525). In the discussions for approval of the GA resolution, the issue of the mandates resurfaced and some members expressed reservations regarding certain paragraphs of the resolution, in particular those that could give the impression that the constitutional limitations of the UN institutions had not been taken fully into account. "The U.S. said that it was concerned at the trend among the specialized agencies to deal with political matters and it felt the resolution encouraged that trend. The politicisation of the specialized agencies would prevent them from carrying out the task entrusted to them." (UNY 1971: 527). The UK also expressed the same concern and was convinced that it was improper for the GA to seek to exert pressure on the agencies in respect of issues both in principle and of policy which should be decided in the light of their respective constitutions." (UNY 1971: 527). These discussions were originated by the suggestion for discontinuing aid to colonial and racist systems, which would represent an early kind of conditionality and questions were raised concerning the extent to which conditionality would politicise aid. Norway also said it couldn't support this request, but the resolution was approved (UNY 1971: 527).

In 1973 Bulgaria also said that these agencies should do more and could not differ from the role and practice of the UN itself (it seems UNESCO was one of the most involved ones); and the Ivory Coast appealed to those agencies and organisations which still hesitated to become involved in assistance to the liberation movements (UNY 1973: 677). There was a pressure for priority to be given to refugees coming out of colonial regimes.¹⁷² The High Commissioner was highly involved in this, since in 1974 the President's reported steady progress in aiding the refugees from

¹⁷¹ These discussions took place in pursuance of recommendations in GA Resolution 2426 of 18 December 1968.

¹⁷² For example, in 1978, the Special Committee for the implementation of the Declaration on granting independence, by the specialised agencies "...urged that the heads of the agencies submit to their governing bodies proposals for the full implementation of relevant UN decisions, in particular specific programmes of assistance to peoples in colonial territories and their national liberation movements." (UNY 1978: 831).

colonial territories in Africa through the efforts of the UNHCR in collaboration with other organisations (UNY 1974: 776).¹⁷³

Early signs of dysfunctions in the UN

This sort of pressure, along with specific organisational goals of task expansion and turf battles, led to the emergence of the first dysfunctions within the UN system, namely institutional inflation and difficulties in co-ordination. These are often associated with political considerations, be they external or internal to the bureaucracy. "We must be realistic in trying to deal with this institutional inflation, which is not a new phenomenon nor one unique to the UN. We have to recognize that political considerations play a dominant role in organization and that the UN system, for better or for worse, is no exception to this rule. We have to accept that a perfectly logical and functional institutional system is probably not within our reach and that we must make the existing one function better. We also have to accept a certain degree of institutional escapism as the Governments of the world grapple with new and overwhelming problems. By this I mean that it is sometimes easier to call a conference, or even to found a new institution, than to confront a complex problem directly." (UNY 1979: 12).¹⁷⁴

4.4.3. Effect on organisational structure and culture

The good offices had a very strong impact on the evolution of the mandate and of the role of the UNHCR. As mentioned before, the mandate defines the groups of concern to the organisation to whom certain services will be provided, which implies the fulfilment of a certain role and functions. The good offices mechanism shows that very often the expansion is caused by a functional difficulty in distinguishing the needs of the different groups during the regular provision of UNHCR services and therefore new groups are assisted, although initially informally and through exceptional mechanisms or even special operations not incorporated in the mandate.

¹⁷³ "While commending the action taken by ILO, FAO, UNESCO, UNICEF, UNHCR and UNDP to provide increased material assistance to refugees from the colonial territories in Africa, these representatives pointed out that as yet only UNESCO was providing assistance to national liberation movements of those territories. In their view, assistance to refugees was not sufficient. What was needed was for all the specialized agencies and other UN organizations to draw up, in consultation with OAU, concrete programmes of assistance to the national liberation movements of the territories and, through them, to the peoples in the colonial territories, and especially in the liberated areas of those territories." (UNY 1972: 554).

¹⁷⁴ From 1979 Report of the United Nations Secretary-General.

However, the organisation is keen on underlining that there is no link or parallel between the appearance of new groups of refugees and the development of these mechanisms (YB61: 331), i.e., these are not surreptitious forms of expanding a mandate, but circumstantial activities.

The major implication of the good offices function was a generalised authorisation to the High Commissioner to appeal for funds, namely in situations where there was disagreement among states. This authorisation was firstly for the grant of emergency relief and later for undertaking material assistance programmes in order to bring about permanent solutions for refugees under his mandate.¹⁷⁵ Subsequently appeals were authorised for groups outside the mandate. The good offices also had a social dimension that was not formally acknowledged by states in the sense of providing international assistance and not simply protection to the refugees in dire need but which the High Commissioner tried to underline. By 1961 it is evident that the majority of the activity of the office is devoted to "special refugee situations", where it was using its good offices outside the "regular programme".¹⁷⁶ In the ECOSOC discussions of the work of the High Commissioner, support was expressed for the its approach to problems of refugees not coming within the competence of the UN, thus making the services of an experienced agency available to interested governments (UNY 1961: 335). In his report and address to the GA in 1961, the High Commissioner conceptualised a closer relation between assistance and protection, although retaining the responsibility for assistance with the host governments. He argued that the new refugee situations raised essentially problems of material assistance rather than legal assistance and rebuked parallels that had been made between the appearance of new groups of refugees and the good offices resolutions. One development had not necessarily influenced the other. If problems of legal protection arouse in any of the new situations, he would not hesitate to examine them in the light of his mandate (UNY 1961: 336). This justification was particularly important in that it was a response to criticisms from some governments that the good offices were ways of legitimising new groups of refugees that previously did not come within the competence of the High Commissioner. This social dimension would eventually lead to the trail of more operational involvement.

¹⁷⁵ GA Resolution 1166 (XII) of 26 November 1957 authorised the appeal for funds.

¹⁷⁶ In that year the UNHCR was assisting refugees from Algeria in Morocco and Tunisia; refugees in Togo; refugees from Rwanda in Tanganyika, Uganda, Burundi, and in Kivu Province of Congo (Leopoldville); refugees from Tibet and Nepal; Refugees in Cambodia; refugees from Cuba in Spain; and started consultations with the Congolese government for offering the Office's experience of refugee problems by helping to coordinated and stimulate the required efforts (UNY 1961: 340).

However, the distinction between the legal protection and the social assistance was very sensitive and needed to be maintained. This is the genesis of the relation between international protection and assistance, that has over the years proven difficult to articulate in particular in situations of internal displacement since the issue of protection impinges deeply on the sovereignty of the state of origin and may be a symbolic criticism of a government's policy. Assistance is not so controversial.

With expansion to new refugee groups the good offices work of the UNHCR came to be perceived as universal in scope, like the mandate, although limits were still set to expansion: "It is clear nevertheless that some limit must be set to the action to be taken by my Office, as regards both the evaluation of situations in which it may be called upon to intervene and the nature of its intervention under the good offices resolutions."¹⁷⁷ The need for flexibility in decision-making was obvious: "No general rule therefore can be laid down defining the cases in which UNHCR may be called upon to intervene."¹⁷⁸

The magnitude of the increase was such that it altered the self-image of the organisation, from a provider of services to an actor representing the interests of the destitute of the world. In the words of High Commissioner Aga Khan, "An Office which it was hoped, in 1951, would soon wither away together with the refugee problem, finds itself speaking today for a nation of the nationless -more populous than many Member States, more neglected and deprived than any represented here."¹⁷⁹

By 1964/1965 the use of the "good offices" expression gives way to the use of the expression "humanitarian action". GA Resolution 2039 (XX) of 7 December 1965, for example, noting the increasingly universal character of refugee problems, invites states members and members of specialised agencies to "increase their support to the humanitarian action of the Office of the UNHCR". This shows a consolidation of the new functions in the mandate of the organisation, the "humanitarian step".

¹⁷⁷ Closing address by Mr. Felix Schnyder, High Commissioner for Refugees to the Third Committee of the GA, at its sixteenth session, 6 December 1961.

¹⁷⁸ *Idem.*

¹⁷⁹ Statement by Prince Sadruddin Aga Khan, United Nations High Commissioner for Refugees to the Third Committee of the General Assembly, 14 November 1977.

This systemic trend, together with the evolution of the activity of the organisation led to changes in the organisational structure, that reflect the direction of policy options that was reproduced since the first good offices involvements. The number of field offices and staff increased dramatically between the start of functions and 1979, and the structure at headquarters developed to accommodate the tendential understanding of the mandate in terms of the provision of material assistance in the various parts of the world. The weight of the regional offices and operational divisions became much stronger in the Executive office. This development however, was gradual and the function of international legal protection remained at the core of the mission interpretation (Tuerk, 1992).

During the 1960s, despite the Algerian refugee crisis in which there was a need for a more direct involvement, the High Commissioner continued its mainly catalytic role and promoting and co-ordination of operations. However, as one author pointed out, "...exactly where the boundaries between operational and non-operational can be found is less than clear when large-scale camp installations or resettlement projects have to be created quickly, even leadership constitutes a kind of operation. So does the application of standards of performance as the prerequisite for financing a project or a programme. As long as UNHCR is forced to involve itself closely with such enterprises, its role as a non-operational agency can be questioned. These questions relate to the very concept of non-operationality." (Gordenker, 1987: 60).

What eventually happened was that not only the funding and budgeting structures rapidly evolved to accommodate large budgets and programming decisions very much linked with the operational nature of activities for emergency response and relief. The general authorisations for appeals for funds and the management of vast amounts of resources gave the organisation significant autonomy and capacity to implement its priorities.

However, this also had an impact on the internal structure of the organisation, which underwent significant changes: during the late 1970s there was a considerable restructuring of the office into regional bureaus that were to have decision-making capacity and devoted attention mostly to operational activities. This decentralisation gave also strong influence to the heads of these regional bureaus in the executive staff. At the same time there was initially less concern for including protection in these regional bureaus and the department of international protection loss comparative weight inside the organisation. The implications for the policy direction are obvious.

with an incremental growth of operational activities on the ground and less interest for the rule-supervision role that will be reflected in the next period.

The rising numbers of refugees in Europe but in particular in Africa led to a need for organisational adjustment.¹⁸⁰ In 1963 there were important changes in terms of material assistance since there was a marked effort to clear “old” refugee caseload and turn to the “new” refugees.¹⁸¹ These new situations raised problems that were expected in developing countries and required stronger emphasis on material assistance. It was seen at the time that the non-operational nature of UNHCR’s activities was dependent on the existence of governmental infrastructure in the host country that would enable the state to provide assistance. This was not available in developing countries and for that reason the UNHCR started assuming such role in a more prominent manner. During the same period assistance for permanent solutions remained marginal and a focus kept on international protection as a basic goal, leading the High Commissioner Schnyder to conclude that it had not diverted from the guidelines provided by its principals.¹⁸²

Hesitations and refusals for involvement

Part of the problem with this new role of the organisation lied in the fundamentally distinct nature of activities that it would have to undertake. The mandate of the UNHCR is explicitly to help coordinate relief and other types of assistance, not to engage actively in operational activities (Pitterman, 1985: 54), and such role was underlined in the initial years by the High Commissioner, precluding involvement in any direct operational task, but inviting governmental and private agencies to implement any projects in the same way as projects provided for under the United Nations Refugee Emergency Fund (UNY 1954: 255). Thus the responsibilities of the United Nations in providing international protection and seeking permanent solutions should be, in the High Commissioner's opinion, mainly the promotion and co-ordination of operations on

¹⁸⁰ “This sudden increase in the number of refugees on the African continent compelled UNHCR to readjust and adapt its activities, and this trend still continues.” Statement by Mr. Felix Schnyder, United Nations High Commissioner for Refugees to the Third Committee of the GA at its twentieth session, 1965.

¹⁸¹ Statement by Mr. Felix Schnyder, United Nations High Commissioner for Refugees to the Third Committee of the GA at its twentieth session, 1965.

¹⁸² “In Africa, therefore, UNHCR has been obliged to introduce a number of innovations. Does that mean that it has departed from the traditional guiding lines laid down for it by this Assembly and by the Executive Committee of the High Commissioner Programme? Certainly not. These guiding lines derive from the very nature of its activities, the basic objective of which remains, needless to say, the international protection of refugees.” Statement by Mr. Felix Schnyder, United Nations High Commissioner for Refugees to the Third Committee of the GA at its twentieth session, 1965.

behalf of refugees.¹⁸³ In 1961 again the High Commissioner drew attention to the fact that his office was not equipped with the requisite machinery for undertaking operational tasks and that he could on no account engage in any large-scale operations without first consulting the international community through its competent organs. Since his office had not been provided with the administrative machinery which would enable it to direct and take full charge of assistance operations of any magnitude, it was necessary for him to remain to a certain extent behind the scenes and simply to act as intermediary between the international community and other public or private agencies equipped with the requisite machinery for undertaking operational tasks (UNY 1961: 336). Hence, the justification for refusing involvement lied not only on the original determinants and stipulations of the mandate, but also on the absence of an institutional structure adequate to deal with these issues. As will be seen the institutional structure will change to adapt to this more operational type of activities, and will largely constrain further types of involvement of the UNHCR.

4.5. Conclusion

Because states did not have a level of agreement concerning the evolution of the UNHCR and of the refugee regime itself, the initial expansion of the organisation was largely autonomous, relatively independent of given state preferences and enabled the organisation to retain and even increase its original autonomy: authority in the form of the exercise of the rule-supervisory authority inscribed in its mandate and in an increase of its expertise and relevance in the emerging humanitarian system, while retaining much of its independence and neutrality. The functional expansion of the organisation enabled it to increase the range of policy options effectively available to it in the form of new issue-areas of activity not only as far as the groups of concern and geographical scope are concerned, but also concerning the range of activities, of an increasingly operational nature regarding the solutions promoted. During this period increasing autonomy is explained by diverging preferences of states and a crucial initial decision to expand tasks.

¹⁸³ UNY 1952: 493 – Pakistan expressed regret that the High Commissioner's mandate precluded him from rendering assistance to such groups.

Response: "Theoretically it could be regretted that these latter groups are excluded from the United Nations mandate, but practically it must be admitted that a wider definition would include so many millions of uprooted people as to paralyse the Office and make it quite impossible to work out any programme." Address of Dr. G. J. van Heuven Goedhart: "Refugee Problems and their Solutions" Oslo, 12 December 1955.

In this context of relative autonomy a number of emerging dilemmas are noted: the systematic pattern of decision-making towards expansion in scope and range of activities tended to produce a lock-in effect that contained the potential contradictions between different dimensions of its action that later lead to dysfunctions, namely the danger of politicisation.

The emergence in the agenda of new categories of refugees had an impact on the division of responsibilities between the national and the international level of refugee protection that had been established at the time of the negotiations for the Statute and the Convention. This meant that certain states had chosen to broaden their commitments to new groups of refugees, mainly in the African context, while others remained attached to the original definitions, predominantly in the European context. The UNHCR saw it in its duties to embark on the assistance and protection of the new categories and in new regional settings, even if this led it to substantially increase its operational activities, which would then lead to substantial changes in funding and internal structure. These changes are the initial points of lock-in that will tilt the organisation's decision-making in a specific direction – focusing more on material assistance and on a social and more pragmatic role.

The continuing problem in Europe led to the need to negotiate the 1967 Protocol to the 1951 Convention that would introduce changes to the limited scope of the document. However, the changes were also limited and showed the lack of willingness of European countries to assume permanent national responsibilities for the protection of refugees from other continents, many of which originated from massive forms of forcible displacement. The subsequent negotiation of the OAU Convention in 1969 showed the dramatically different needs and preferences of African countries to address issues of mass displacement. The UNHCR, with the involvement in the Algerian refugee crisis, and as part of its rule-creation function, saw it in its duties to assist the African states in the negotiation process and eventually it was agreed that it would also have competence for the broader categories of refugees as defined in the 1969 OAU Convention. This was also a move to legitimise the activities on behalf of new groups of concern: externally displaced persons and persons in refugee-like situations. The constraints on the ground and the recent nature of these problems as well as the generosity of African countries hosting refugees – for which they would also receive much needed international assistance – led to a focus on local integration as the main solution and resettlement as a second best during the period under analysis. Voluntary repatriation, while upheld as the ideal solution was for a time not promoted in policy terms. This was so not only because conditions in countries of massive displacement were

not stable but also because it would legitimise the pretensions of the Eastern bloc for an emphasis on voluntary repatriation in conditions that were less than voluntary.

Finally, with the move to Africa, a new type of direction emerged that turned the UNHCR into a much more operational organisation than originally foreseen, providing more co-ordination on the ground, which it eventually took over as direct management of food and shelter distribution, etc. All this enhanced the organisation's range of activities and of choices to be made, enabled the request of many more funds which it would distribute among the implementing agencies and made it an overall much more relevant agent that would work as the world's fireman of refugee emergencies. It also entailed consequences for other dimensions of its work.

This chapter shows how the UNHCR's capacity for autonomous choice emerged in a context of diverging state preferences where no prevalent state interests could be aggregated that can explain the direction of the organisation's policy choices. This is consistent with the idea that divergences of multiple principals lead to more organisational leeway due to the existence of ill-defined or conflicting outputs. Indeed, what is observed in this period is a divergence of preferences among the principals with some of them, such as the Eastern bloc countries, in outright disagreement regarding the options made by the High Commissioner. Having fulfilled the initial goals of the organisation, half way through this phase there was the discussion on the survival of the UNHCR, bearing in mind the limited scope of the mandate and the time frame of five years. The High Commissioner's calculations were certainly determined by these considerations when it made the crucial decision of embarking on expansion through the good offices function. This expansion also initially provided the prospect of making the organisation ever more relevant and with more autonomy and authority for making decisions on an increasing number of issue-areas thus improving also the possibility of implementing a mandate in a wider range of areas. This constituted a source of increasing returns for the organisation that its leadership chose to take at a time when states were struggling with diverging perspectives over the evolution of the organisation.

Consistent with path-dependence theory, the positive returns that the organisation was obtaining from its crucial decision to expand led it on a path-dependent process of systematic reproduction and increase of the operational line of activity. After a point its activities and organisational structure became geared toward that type of activities. While not limiting its autonomy to exercise activities and define autonomous policies in other areas, this move significantly biased the policy

direction of the organisation. This entailed potential contradictions with the original mandate and with the prosecution of the main or core goals. These circumstances would at the next stage limit the autonomy of the organisation by giving the expansion a dysfunctional character due to states' redistributions of preferences in a converging direction, as will be seen in the next chapter.

Chapter 5. The focus on repatriation

The main argument in this chapter is that dysfunctional expansion is linked to losses in organisational autonomy. Dysfunctional expansion is observed from the early 1980s when states start issuing more guidelines to the UNHCR, specifying in what direction the organisation should structure its efforts for the protection and assistance of populations of concern. The increasing number of situations for which the UNHCR became formally responsible during this period through incorporation of new groups of concern and geographical expansion, turned it into a truly universal organisation. This has brought positive authority as a diplomatic actor and relevance to the organisation as a provider of indispensable services to the international community but has also restricted some of its policy options since it became much more dependent on funding to pursue the very operational line of intervention that had been developing in the previous period and consolidated in these decades. The line of decision-making also became dominated by a structural organisational adjustment to more operational functions with a concurrent neglect for the functions of legal international protection and rule-supervision.

This period corresponds to the consolidation of the UNHCR's operational shift and internal decentralisation. This decentralisation leads to a particularistic view of needs on the ground and disarticulation with the broad core aspects of the organisation's activity. It is observed that the expansionist trend of the organisation is paralleled by a restrictivist trend on the part of states concerning asylum policy, which then constrains the organisation in its capacity to pursue solutions. This happens in a context of change in the international system. Since in this section of the research there is a convergence of preferences of states, the analysis will expose the new preferences of states and will compare them with those of the organisation in order to track the disjunctures or similarities. It will be seen that there are apparently many commonalities and that the organisation often seems to go in the same direction as states indicate. However, much of this is also the result of a path-dependent process from which it is difficult to escape in particular in the face of convergences of state preferences.

The period that ranges from the 1980s to 2002 provides evidence on the cumulative effect of organisational expansion, with the impact of converging state preferences. Western states started since the 1980s pressuring the organisation to adopt certain policies that could hamper the exercise of some of its core activities or jeopardise some of the rights that it stood for. An instance

of this was the emphasis on voluntary repatriation as the best solution even in circumstances when repatriation was not clearly voluntary. While these two decades represent very different political contexts, in particular with the end of the Cold War, this research has found no significant discontinuity in the organisation's policy or on its autonomy from what was the trend that consolidated from the 1980s on. Contrary to the emphasis that is placed on the Cold War as restructuring the refugee regime by Mertus (1998) and Keely (2001), this research found that the end of the Cold War brought new possibilities to the organisation but the policy line had already been shaped earlier. This means that the path-dependent process has evolved linearly and was reinforced by states positioning of preferences since the mid-1980s and in particular after the end of the Cold War that enabled a legitimacy discourse of an already existing type of intervention. As will be seen, the end of the Cold War was used to justify - at the level of symbolic decisions -, an already existing trend in the area of programmatic decisions and patterns in asylum policies. Such policy line developed into the so-called new-humanitarian agenda that can be either interpreted as preventive and addressing the root causes of forced displacement or as containing refugee movements.

5.1. International change and gradual convergence of state preferences on asylum policy

During the 1980s and in particular the 1990s, significant change occurred in the international system that led to a reorganisation of states' preferences concerning the management of refugee flows. While previously the magnitude of the influxes was burdening to most host countries in the developing world, they did not significantly affect industrialised countries. With the increasing mobility since the 1980s, the latter became destination of increasing numbers of asylum-seekers originating from the most diverse parts of the world. Further, the intensity and new nature of conflicts made it very difficult to provide solutions for the millions of displaced populations and refugees that the international community had to respond to.

5.1.1. The international environment during and after the Cold War

The period identified for this chapter incorporates an event that is considered of fundamental discontinuity for the international environment. The end of the Cold War is often cited as the

touchstone for changes in the international system (Vayrynen, 2001; Brown, 2002). This section will analyse the impact of the end of the Cold War on state preferences towards the international management of refugee flows, which can be seen as a combination of changes in asylum and foreign policy. The Cold War had largely functioned as a structuring environment for preference ordering in terms of foreign and asylum policy and it will be argued that the end of the Cold War had a stronger impact on the foreign policy dimension of the response to forced displacement and on the possibility of shaping a new humanitarian discourse, than at the level of asylum policy itself. This observation justifies the maintenance of a continuous unit of analysis ranging the decades of the 1980s and 1990s, since the structural trend in terms of asylum policy is similar.

Important developments after 1989 seemed to affect the concept of sovereignty and the discourse around it: there was an increasing possibility and hope that human rights concerns would from then on shape foreign policy priorities as grounds for intervention within a country, and the concept of sovereignty became blurred in several dimensions, including the strict norm of non-interference in the internal affairs of a sovereign state. Humanitarian intervention was indeed given much greater emphasis during the 1990s (Wheeler, 2000), but the concept remained unclear and much more so did the criteria and conditions of such humanitarian intervention, which remained very much dependent on the political will of the actors involved. At the level of the discourse there was a convergence among states on the importance and direction of the changes towards stronger concern for human rights, namely in normative terms, although the crises of the 1990s showed that in concrete policy terms much remained to be structurally changed. Many of the conflicts in the 1990s were of an internal nature, and remained shielded by sovereignty. Further, recent examples of “humanitarian” intervention have not made the prospect of increasing universality of human rights much better.¹⁸⁴ Hence, without the traditional bipolar confrontation to structure asylum/foreign policy preferences, and with a fuzzy evolution of the commitment to humanitarian imperatives, the increasingly globalised international community turned to the prevention and when necessary deterrence of refugee movements.

5.1.2. States’ asylum and foreign policies

¹⁸⁴ Kosovo in particular but also Afghanistan operations in part have been justified in humanitarian terms, while more recently the populations displaced in Darfur region of Sudan have been left largely to their own fate by the international community, evidencing the continuing selectivity in humanitarian policy.

The end of the Cold War also entailed the end of the East/West divergences concerning asylum policy, as the refugees from the East lost their value as instruments of foreign policy. Further, the previous pattern of external involvement in conflicts around the world that were producing mass displacements (see Gibney, 1991) also changed: developed countries with large interests could no longer interfere in a covert manner under the banner of the Cold War protection of spheres of influence in the world. In terms of asylum policy *per se*, the end of the Cold War only enhanced a pattern of converging restrictive trends that had started already in the early 1980s, with the development of largely restrictive asylum policies in industrialised countries in Northern America and Western Europe.¹⁸⁵ This was accompanied by increasing reluctance to take in more refugees of traditionally generous African states. These predispositions would later have an impact on states' provision of guidelines concerning the policy direction to be taken by the UNHCR in general terms.

In the United States, domestic asylum legislation only started being developed in the early 1980s and even so with internal divergences (Rystad, 1990: 211). This was the 1980 Refugee Act, which for the first time incorporated the legal definition of refugee as contained in the 1967 Protocol that was only then ratified by the U.S. (Gorman, 1991). The only legislation covering refugee assistance prior to that was the Migration and Refugee Assistance Act of 1962, that created a group-targeted policy that was then used along foreign policy lines. The approach in the 1980 Refugee Act was focused on tackling the root causes that generate refugees and on the solution of voluntary repatriation. As pointed out by McNamara, the U.S. Refugee Act of 1980 led to stringent screening for resettlement and a dramatic increase in voluntary repatriation (McNamara, 1989: 128). While initially focusing mostly on immigration and border control, policy-makers started during the 1990s incorporating questions of root causes in the foreign policy agenda, thus linking the two fields (Muenz and Weiner, 1997). Over the years a substantial increase in concern for refugee assistance are illustrated by the growth of American refugee bureaucracy, in particular in 1979 with the expansion of refugee situations in Africa, the Caribbean and Indochina (Gorman, 1991). Concerning refugee assistance, the trend in the U.S. during the 1980s was one of committing funds through multilateral channels and declined significantly from the mid-1980s to the early 1990s in per capita terms (Gorman, 1991: 140). Assistance is focused on the temporary nature of asylum in forms of local settlement pending the possibility of repatriation. While the Refugee Act made U.S. refugee policy more universal and open to asylum applications and

¹⁸⁵ On the determinants of refugee policy by asylum countries, see (Jacobsen, 1996).

resettlement, it created a negative impact on U.S. public opinion and on foreign policy (Feen, 1985). The increasing numbers of applications have generated a policy geared for reducing such numbers and impact. From the 1980s on there was also an increasing awareness that the automatic admission of people fleeing communist countries was no longer a useful tool of foreign policy (Feen, 1985). Asylum policy is the scope of the Bureau of Population, Refugees and Migration with the State Department. However, the consistency of policies between asylum departments and foreign policy is not always effective (Newland, 1995; Kaysen, 1995). In particular as regards U.S. involvement in complex humanitarian emergencies, the shaping of an adequate response has been a difficult process. In 1995, a former head of the Office of U.S. Foreign Disaster Assistance recommended that professionals must reform the way in which the U.S. responds to such emergencies since there was no organisational restructuring to respond to the new international order, which had already occurred in organisations such as the UNHCR, thus implying that U.S. leadership in this area was seriously compromised (Natsios, 1995). The different attribution of policy competences may mean that there are conflicts of policies, some guided by interests, others by norms: "...the State Department's focus on geopolitical matters can be at odds with the life-saving mandate of OFDA and FFP." (Natsios, 1995: 14). Indeed, much is still to be done concerning U.S. policy as a key player in international humanitarian action (Helton, 2002). In this context of lack of clarity, UNHCR and other humanitarian agencies have often been pushed to the frontlines. Although the lack of consistency in the humanitarian area reduces its credibility and leadership capacity (Washburn, 1996), the U.S. is still one of the major donors of UNHCR funds and the organisation has had to balance those inconsistencies as they are reflected in the government's policy.

Canada also started from the mid-1980s developing its own asylum mechanisms, with a significant emphasis on voluntary repatriation (Adelman, 1991). Canada's asylum policy during the Cold War was also driven by propaganda motives and foreign policy interests not only by welcoming refugees as freedom fighters and defenders of liberal ideals, but also by bringing it closer to NATO partners in condemning totalitarian regimes of Eastern Europe (Dirks, 1985: 125).

Such legislation was converging with Europe's increasing restrictivist trend. This was enhanced by the large numbers of asylum-seekers trying to access these regions and also given the problems in the South-East Asian continent, from which large numbers of refugees were being resettled. The bulk of protection in Europe during the 1970s, had been directed to the increasing numbers of

refugees from other regions, namely Latin America and Indo-China (UNY, 1975: 552). During the 1980s there was mounting concern over the movements of refugees across continents and over the grant of asylum (UNY, 1985: 990). This is one of the trends that gave rise to the crisis in refugee protection (Stein, 1988: 47). Asylum-seekers arriving in what became perceived as uncontrolled masses, became threats to the states in the European area that was since the achievement of the internal market in 1986 reshaping its external and internal borders with a zone of free movement of goods, capitals, services and people. This process of integration has entailed a harmonisation of procedures and legislation concerning entry and permanence of foreigners that significantly affects refugee policy (see European Council on Refugees and Exiles, 1994; Joly and others, 1997; Towle, 1992; European Council on Refugees and Exiles, 1997; Guild, 1996).

The increase in asylum applications from the Third World was accompanied by increasingly restrictive admission policies in Europe and North America (Loescher, 1989: 17). In fact, it led to an increase in restrictive asylum policies in Europe and, with the development of the European integration process, to a specific European refugee regime, which remains based on the 1951 Convention, and did not develop an ulterior specific definition that would encompass the needs for international protection of new categories of refugees.¹⁸⁶ The regional refugee regime that has been emerging in Europe tends to adopt the minimum standards possible and the extent to which it conforms to the 1951 Convention can be questioned. Further, the practice of insisting on promoting the repatriation of refugees in circumstances where reintegration and security are not assured and where the situation in the country of origin remains complex, has become common practice (Black and others, 1998; Selm-Thorburn, 1998). Another example of restrictive policies has been the response of some countries to the influx of refugees from neighbouring countries, adopting clearly containment measures as in the case of the Italian response to the Albanian crisis in 1997 (Perlmutter, 1998).¹⁸⁷ Hence, the end of the Cold War only enabled an increasing convergence of policies at the European level, but this was already a trend that was happening before 1989. These restrictive policies have succeeded in containing the numbers of asylum applications over the 1990s (Zetter and others, 2003).¹⁸⁸

¹⁸⁶ For more on the Europeanisation of refugee policies, see (Lavenex, 1999).

¹⁸⁷ Some of the problems highlighted during the early 1990s were: treatment of asylum-seekers at airports; carrier sanctions; detention; accelerated procedures; safe country of origin; first asylum country; restrictive interpretation of the 1951 Convention definition; treatment of rejected caseload. UNHCR IOM/28/1992 – FOM/29/1992 – Current Asylum Issues.

¹⁸⁸ On the link between EU foreign policy and migration/refugee policy, see (European Council on Refugees and Exiles, 2003; Haglund, 2001; Klages, 2001; Bell, 2001; Przetakiewicz, 1998; Smith, 2003).

Japan became an important donor to the UNHCR in the 1990s in the context of the process of internationalisation of the country (Ogata, 1992) and also as a result of the election of Sadako Ogata, a Japanese national, as High Commissioner for Refugees. It has not had an asylum policy of very strong relevance and even in humanitarian terms only from the mid-1990s on has it had a substantial impact, since its foreign aid in humanitarian and development terms were predominantly bilateral and directed towards assistance to strategic countries in regions where Japan wanted to invest. This is foreign policy guided by economic concerns rather than political ones, an imperative after the history of aggressive Japanese foreign policy in the region (Ippei, 1992). However, Japan became an important donor to the UNHCR and its position was quite influential during the 1990s.

International donor fatigue to fund the many projects for refugees in the developing world and in particular in Africa, as well as a generalised disenchantment with development initiatives, led many African states to be weary of receiving new refugee influxes, a trend that was aggravated over the 1980s (Zolberg, 1990). The traditional generosity of African countries was replaced by an insistence on more burden-sharing with developed countries and a notion of the destabilising effects of receiving large numbers of refugees, not only in political terms but also in social, economic and environmental terms. Such generosity was also replaced by an increasing focus on containment strategies and the creation of "safe zones" in the country of origin, with those states now routinely rejecting asylum-seekers at the borders (Crisp, 2000: 5). This was in great part due to a larger change in the causes for flight, no longer connected to anti-colonialist struggles for which there was political support in the region and is aggravated by the dramatic increase in numbers of populations fleeing. Crisp implies that African states to a large extent follow suit to the example of developed countries' convergence towards restrictive policies, which is all the more justified in countries that are hard pressed in all senses, particularly at the economical and environmental levels, and to which the presence of refugees represents a strong burden (Crisp, 2000).

Also the Asian states have been increasingly reluctant to provide asylum, grounded on the political, security, social and economic impact of influxes but also because "the ever more restrictive asylum policies of a growing number of Western countries have dampened the interest of at least some countries in the developing world in upholding the ideals of international refugee protection and acceding to international refugee instruments." (Abrar, 2001: 21). In the rest of the

world the willingness of states to receive new influxes has been diminishing and efforts to contain such influxes started being developed.

As will be seen, the restrictive trend translated not only into national deterrent measures but also in the guidelines for UNHCR as a tool to further such goals. This does not exclude that there are also humanitarian motivations behind the policies devised by states, but the fact is that the systematic convergence of policy directions at the national level has only been identified in the restrictive and deterrent sense. A clear example of the importance of the convergence of state preferences for enabling significant state pressure on UNHCR policy is the evolution of the policy on refugee-processing centres, a topic currently very much discussed. Back in 1986, Denmark had submitted a draft resolution to the Third Committee of the GA where request was made to the Secretary-General, with UNHCR's co-operation, to evaluate the costs involved in setting up enough United Nations refugee-processing centres to deal with the existing flow of refugees and indicating the number of refugees that each Member State might be able to receive (UNY 1986: 850). This was requested as part of a comprehensive approach to the refugee problem and within the UN context, imposing a number of obligations on its members. Since this would impose a burden on all states to make available a quota for refugee admissions, based on the population, population density and GNP, it naturally did not receive much support from the rest of the states and the Third Committee decided in the following year to take no action on the draft (UNY 1987: 898). However, since the late 1990s there have been suggestions and even consultations among states and with UNHCR concerning the possibilities of creating refugee processing centres outside Europe and the idea is taking shape, albeit outside the formal UN framework and without the direct involvement of the UNHCR in the processing.

5.1.3. New nature and burden of forced displacement

Another pattern of evolution since the 1980s that was enhanced by the end of the Cold War with an impact on UNHCR's work were the new dimensions of forced displacement and complex emergencies that rose in the international agenda. As the 1960s and 1970s were marked by decolonisation and the creation of new states, along with widespread conflictuality that lasted through the 1980s, the 1990s were marked by the effects of the breakdown of the Eastern bloc and an outbreak of more internal conflicts around the world. This entailed strong consequences not only in terms of the type and impact in terms of numbers of victims and types and impact of

human rights violations of post-Cold War conflicts, but also in terms of actors' perception of how world politics are structured. Authors like Copeland (1998), suggest that the nature of refugee flows itself has changed since the end of the Cold War. While largely true, the trend of intensified internal conflicts, widespread destruction and forcible displacement did not start at that point and was already present in the previous decades.¹⁸⁹ But the widespread pattern of change in the international environment, with increasing interdependence from the 1980s on and more mobility in transportation led to a new context for framing the issue of forced displacement.

Most of the conflicts during the 1990s were of an internal dimension. Between 1989 and 1994 there were 94 conflicts in 64 locations across the world, yet only four of these were classic inter-state conflicts (Bennett, 1998b: 16). In 2002 the Global IDP Project estimated the existence of about 25 million displaced, up from an estimated 5 million in the 1970s (Global IDP Project, 2002: 4).¹⁹⁰ These situations are characterised by the breakdown of civil society, disintegration of the state structure and disruption of the system of national law and order. An effective national, political and executive authority either does not exist or is incapable of protecting its population (Okoth-Obbo, 1996: 8). Civilians become prime targets rather than incidental casualties of internal conflicts and internally displaced persons are often not victims of individualised persecution, but of group abuse, mass rights violations and general chaos (McNamara, 1998a: 53). In other cases, internal strife has a persecutory character, or refugee camps are militarised and whole populations fall victim (UNY, 1994: 1234).

This raised a whole set of new problems that was accompanied by an increase in groups of internally displaced persons, with specific needs, within specific political situations that have little to do with the European context existent at the time of the creation of the refugee regime. While the problem of refugees in Europe was for some decades effectively controlled in the context of bipolarity, after the Cold War there was a return of waves of violence and large-scale displacement, for example in former-Yugoslavia. However, in this case the characteristics of the conflicts were not framed by the superpower logic of balance of power, but were grounded on nationalistic and ethnic motivations that affect much more the civilian populations.

¹⁸⁹ Newman contests the argument of the fundamental discontinuity in the nature of conflict and forced displacement before and after the Cold War (Newman, 2003).

¹⁹⁰ It is very difficult to obtain accurate estimates of IDPs not only for difficulties in accessing available information but also for the difficulties in obtaining reliable data from the actors in the conflict and also due to the different criteria that are used for identifying IDPs.

In addition to the political, ethnic and economic conflicts, widespread famine, insecurity, violence exacerbated by poverty and environmental degradation incited new population movements. In 1981, the UN Yearbook identified the following political and military developments, both domestic and foreign - such as political oppression, foreign intervention, armed aggression, and military occupation; colonialism; denial of the right of peoples to self-determination; violation of international law; human rights violations; racial discrimination; apartheid; Zionism; need to preserve independence, freedom and faith; social and/or economic factors; specific events; push and pull factors that included propaganda, incitement and other forms of encouragement through the mass media (UNY, 1981: 1052-1053).¹⁹¹

This was in pair with an increase in the scale of human rights violations, the acknowledgement of which was made in 1981 with the appointment of a Special Rapporteur on Human Rights and Mass Exoduses for the Commission on Human Rights.¹⁹² In 1982 the situation was described in terms of an increasing scale and magnitude of exoduses and displacements of populations, with human rights violations among the principal factors in the complex and multiple root causes.¹⁹³ These forms of displacement led in most cases to disordered exodus, where people fled to wherever they could find some shelter, as was the particularly acute drama of the Indochinese boat people in the late 1970s. To these pressing problems the international community started devising ways of responding in an increasingly coordinated manner. Nevertheless, as will be seen, the growing tendency to promote voluntary repatriation as soon as possible led to an increase in the dimension of problems with the incidence of complex emergencies, characterised by the existence of a mixture of populations with different statuses and degrees of assistance by the international community which created a new set of dilemmas for international organisations like the UNHCR.

5.2. New categories: responsibility for returnees and AFP

During the 1980s and 1990s there was a further expansion of the categories of concern to the UNHCR and a host of new forms of protection introduced at the national level to which UNHCR has had to respond and adjust. The category of returnees emerged formally as one of the groups

¹⁹¹ On evolving grounds of forced displacement, see for example, (Zolberg, 1985; Druce-Bolewski, 1988; Rizvi, 1988; Whitel de Wenden, 1993; Hashmi, 1997; Weiner, 1997; Jackson, 2000).

¹⁹² General Assembly Resolution 29 (XXXVII), of 11 March 1981.

¹⁹³ "Human Rights and Mass Exoduses" General Assembly Resolution A/RES/37/186, of 17 December 1982.

under the organisation's responsibility, and other categories emerged at the national level for which the UNHCR had the opportunity to clarify the legitimacy and in cases where it was warranted, to provide services to assist in the protection of such categories. Such was the case of different types of temporarily protected status that emerged in different industrialised countries, granting temporary forms of asylum for humanitarian reasons in situations of mass displacement. It is also the case of the multiple alternative forms of protection (AFP) that have been and are still being devised to circumvent the need to resort to asylum.

5.2.1. Returnees as a category of concern

This category derives from the increasing focus on country of origin and the perception of voluntary repatriation as the ideal durable solution. Since voluntary repatriation started being performed increasingly in less than ideal circumstances, there was a growing need for a continued accompaniment of the situation in the reintegration of returning refugees in the country of origin in order to avoid a second flight.

In his statement before the Third Committee of the GA in 1980, the High Commissioner referred to returnees as a welcome new category of concern: "In the case of voluntary repatriation, the General Assembly resolutions these last few years have specifically referred to returnees as a group of concern to UNHCR, and I am prepared to continue playing a co-ordinating role in these situations."¹⁹⁴ At this time several internal guidelines were also being issued concerning the redefinition of the categories of concern to which the organisation could extend its services. This represented an expansion that was welcome by the organisation.

Although activities with returnees had been a reality since the 1970s, it is only in the last part of that decade and early 1980s that states start converging in instructions for the UNHCR to become formally involved with these populations as part of its mandate. This was done through GA resolutions commending the work of the UNHCR with such categories and requesting it to continue, but also at the level of the oversight body, ExCom, where working groups and conclusions on voluntary repatriation and reintegration increased, as will be seen further on.

¹⁹⁴ Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 10 November 1980.

This consensus among states was possible due to the fact that the Cold War was nearing its end and also that the magnitude of the massive displacement problem overshadowed the refugee problem of those that escaped the Eastern bloc and were subject of individual status determination. These presented a strong political problem but not so much a humanitarian one compared to the dimensions that the displacements in other continents happened. For that reason there was much less resistance from the Eastern countries to activities developed by the UNHCR. At the same time also the Western states became less concerned about possible return and reintegration activities that the UNHCR could have in that part of the world, since the direction of activities was leading towards other continents and in particular areas where recent independence processes paved the way for the possible return of many refugees.¹⁹⁵ During the 1980s there was an impetus for the promotion of refugee aid and development, which faded away due to lack of agreement -and consequently a lack of funding-as a result of host and donor government differences on the key issues of responsibility, burden-sharing, durable solutions and conditionality (UNHCR (Central Evaluation Section), 1994). This link between aid and development would inevitably lead to the promotion of local integration rather than voluntary repatriation, which was the converging preference of donors and host countries alike. In the 1990s returnee aid came to fill this gap by providing more hopes among donors of actually solving the situation at the country of origin level and the UNHCR has been investing on the link of relief to development in this same logic. This whole effort is based on an evolutionary model of country of origin-centred planning and on a logic that foresaw that IDP problems would become much more pressing and of concern to the international community.¹⁹⁶

By including return and reintegration activities as part of its functions the UNHCR significantly expanded its operations but these took the shape of assistance and operational activities more than those of international legal protection. Part of this extension derived from a functional difficulty in distinguishing the different categories of concern in terms of needs and in terms of planning and programming. Very often refugees were being assisted in the same areas where there were returnee movements and also IDP situations. The following passage shows the increasing difficulty already since the early 1980s, despite UNHCR efforts, to distinguish refugees from other groups of displaced people, especially bearing in mind that the repressive agents are for the most part not concerned with how these people are defined at the international level: "Cases of mass expulsion or displacement of aliens which could have involved refugees occurred during

¹⁹⁵ ExCom Conclusion n° 18 (XXXI), 1980 – Voluntary Repatriation

¹⁹⁶ Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).

1982. In one of those cases, assurances were given by the expelling authorities that persons of concern to UNHCR would not be affected; in another instance involving the forced internal displacement of some 85.000 persons, a large number of refugees, mostly of foreign origin and not fully integrated, were uprooted and compelled to flee from their homes.” (UNY, 1982: 1218). Therefore, assistance and often protection was extended to categories of returnees and IDPs. However, it is difficult to exercise protection activities within the country of origin, where authority and legitimacy for protection lies with the state, and also where the presence and access of humanitarian personnel to those in need depends on the same authorities. Depending on funding availability, the implementation of material assistance becomes easier than protection activities, which explains functionally the trend towards more operational expansion than legal and advocacy activities in these situations. This however, left the UNHCR dependent on the availability of funds for the success of its programmes, often running risks of politicisation of activities and affecting its capacity to exercise supervisory activities, which means that a dysfunctional expansion took place that brought consequences for the autonomy of the organisation since it effectively limited its range of policy options, in particular those related with the implementation of its core mandate, the international protection of refugees.¹⁹⁷

5.2.2. Alternative forms of protection: national and international level

The creation of forms of protection that were not foreseen by the 1951 Convention started happening from the late 1970s/early 1980s on. They had an impact both on the national level policies for refugees, reflected in the possibility of granting temporary protection pending repatriation, and later impacted on the international level, using forms of in-country protection that are now beginning to receive some credit as international forms of protection that may constitute alternatives to the asylum option.

5.2.2.1. Temporary protection and other statuses (national level)

¹⁹⁷ One dimension of the range of policy options is the capacity to enforce protection in legal terms, defending the institution of asylum and supervising existing norms as well as promoting new ones that adequately ensure the rights of refugees and asylum-seekers, as well as other forms of protection of a more physical and material nature (usually associated with complex emergencies or humanitarian-type of involvements, where protection activities are more related to human rights protection).

During this period there is a reorganisation of the concepts that dominated refugee approaches. The concept of temporary refuge was devised due to the difficulty of absorbing or providing permanent solutions in situations of large-scale influx, in particular where the countries of first asylum were already in some kind of difficulty.¹⁹⁸ Temporary protection has been coined as a policy concept in the context of South-East Asia displacements and represented the possible alternative to the deterrence measures that were being applied by the countries in the region (such as the refusal of access to the territory to refugees travelling by boat).

This was the Indo-Chinese crisis of the late 1970s when massive displacements occurred in the region along with widespread rejection of asylum-seekers by some countries in the area. Such concept was formally developed in the context of the first International Conference on Indo-Chinese Refugees, organised by the UNHCR in 1979, to address the situation in South-East Asia, where the countries claimed to be unable to provide long-term asylum (Kourula, 1997: 104). Further, the situation was becoming desperate due to the arrival of boat people, who were being systematically rejected at arrival. To respond to this type of situation where states' unwillingness to receive refugees aggravates the existing problems and where solutions like local integration and resettlement were not available, mainly due to the very substantial numbers of people fleeing, the idea of temporary protection emerged. Although this concept is to be implemented at the national level, since it is the responsibility of the host state to admit an asylum-seeker or refugee to its territory and establish the conditions of permanence, the UNHCR maintains its supervisory obligation of ensuring adequate international legal protection and that durable solutions are devised for refugees even in circumstances of temporary displacement.

It is also in the beginning of the 1980s that ExCom Conclusions are issued on the subject of temporary protection. Hence in 1980, ExCom Conclusion 19 refers to Temporary Refuge, while in 1981, ExCom Conclusion 22 focuses on the protection of asylum-seekers in situations of large-scale influx, where a list of safeguards is foreseen for those temporarily admitted to a country pending arrangements for a durable solution. The permanent solution to be promoted is voluntary repatriation and questions have been raised concerning the link between the two issues: temporary protection implies that voluntary return is to be promoted at the earliest possible date, on occasion endangering the truly voluntary nature of return or in possibly promoting it in less than ideal

¹⁹⁸ In 1980 the Executive Committee decided to request the High Commissioner to convene an expert group to examine all aspects of temporary refuge within the framework of problems of large-scale influx. See Conclusions of the Executive Committee N. 19, 1980 (Temporary Refuge).

conditions. The UNHCR recognised the importance of this last Conclusion in an internal document to staff where it is pointed out that its special significance resides in the fact that it expressly recognises that a large-scale influx may also include persons falling within the wider refugee definition who are thus also of concern to UNHCR and entitled to international protection.¹⁹⁹ Such importance is also attached to the fact that "it is the first time that the wider definition has been included in a document which was accepted at the international level by government representatives from nearly all regions of the world."²⁰⁰ Again in 1991 the increasing consensus among states concerning the populations of concern to the UNHCR emerged in an internal document relating to ExCom's Working Group on Solutions and Protection, where it was noted that the most important outcome was the list of groups of concern to UNHCR under its mandate and that it was the first time that "...the issue of UNHCR competence has been put so clearly to Governments and met with such overall acceptance."²⁰¹

In 1992, the UNHCR formally endorsed the concept of "temporary protected status", to encourage governments to open their doors to refugees in need of protection and relocation (Minear and others, 1994: 23).²⁰² In the case of the refugees from Bosnia, and later with those of Kosovo, the concept was further institutionalised, in particular within European countries, many of which developed specific designations for this new status of temporary refugee, where the degree of definitional limitations varies. Some observers raise the question of the admissibility of these persons for refugee status, on the grounds that if they are already being protected by a mechanism, even if temporary and not encompassing the same rights as full refugee status, they are considered as not qualifying for refugee status (Hathaway and Castillo, 1997: 3-4). This represented significant limitations on the UNHCR's policy options and capacity to fulfil its mandate for the enforcement of durable solutions. Indeed, the use of temporary protection is marked by a restrictive tendency and displaces asylum as a remedy for many who should benefit from the protection of the 1951 Convention provisions (Fitzpatrick, 1994).

¹⁹⁹ IOM/95/1981 – FOM/95/1981 Conclusions on international protection adopted by the Executive Committee at its 32nd Session

²⁰⁰ *Idem.*

²⁰¹ IOM/36/1991 – FOM/37/1991 Working Group on solutions and protection: progress report

²⁰² Hofman (1995: 259) argues that temporary protection is a pragmatic solution found by the UNHCR to circumvent states' lack of willingness to adopt an international convention on IDPs. He focuses on the analysis of the 1994 Note on International Protection and suggests that the High Commissioner opted for the pragmatic approach and that in the face of states' lack of willingness to enter into further commitments, temporary protection and a declaration of GPs on international protection and ad hoc international coordinated responses should be developed.

The need to develop this concept is indicative of the perception of inadequacy of existing international instruments pertaining to refugees to cover situations of large-scale influx. On the other hand, an indicator of the difficulties in agreeing on this is the proliferation of concepts and subsidiary refugee "statuses".²⁰³ Thus, some multinational co-operation has been developed to regulate these movements because these people are more vulnerable to expulsion from the countries where they seek refuge (Gallagher and others, 1989: 337). While in the European context it took some years to develop a consensus on these issues, whose harmonisation was dependent on a consensus among states (Kerber, 1997), currently the increased integration makes progress much easier.

5.2.2.2. Internal flight alternatives (IFA) and displacement of protection (international level)

Among developed countries and donors to the UNHCR there is a trend towards the increasing use of alternative forms of protection such as the notion of the internal flight alternative, according to which the possibility of the person seeking protection in another area of the country of origin would preclude application for asylum outside of that country. Other forms that displace access to the system are the designated regional reception centres for processing asylum claims in developing countries.²⁰⁴ This trend of restrictivism has a negative impact on the political will of developing countries, many of which do not even have in place national legal systems for the protection of refugees.

The development of the notion of humanitarian policy during this period had implications on the ground but also at the level of the creation of legal categories. This was the case of concepts such as the "right to remain" and the "right to return", as well as the development of internal protection categories such as safe zones, associated with the idea of a temporary internal protection.²⁰⁵ Many

²⁰³ Alternative forms of protection have been developing since the 1980s but with a particular impetus since the 1990s. Temporary protection is the most famous but there are other designations that varied widely in particular in the European context, for example Class C refugee status; provisional admission, toleration, Duldung; extraordinary leave to remain (Gallagher and others, 1989: 345). These function as excuses not to accord formal refugee status and the inherent rights (Gallagher and others, 1989: 348).

²⁰⁴ For more considerations on this alternative form of protection, see (Frelick, 1999; Kelley, 2002; Marx, 2002; Hathaway and Foster, 2003).

²⁰⁵ For a very critical view of the notion of safe zones, preventive protection and the concept of a "right to remain", see (Chimni, 1995; Frelick, 1995). Barutciski notes that "One important difficulty with the promotion of a "right to remain" is that its various concerns regarding displacement are essentially already addressed in the body of

observers saw in these a link with the developed world's efforts to contain and emphasise the temporary local protection responses (Fitzpatrick, 1994: 16), but also linked to the internalised nature of conflicts from the 1980s on (Hathaway and Foster, 2003). Internal forms of protection also justified on occasion the closure of borders by neighbouring countries (Fitzpatrick, 1994). This sort of activities was also pointed out as creating myths of protection that were not enforceable by agencies like the UNHCR (Mooney, 1995).

However, the notion of internal flight alternative has been spreading over many countries in national jurisprudence in Europe and the U.S. (Hathaway and Foster, 2003). For example, The Netherlands' delegation in the 51st meeting of ExCom in 2000 clearly argued for an action-oriented approach on concepts such as internal flight and alternative forms of protection, reception in the region and the prevention of situations that make people seek protection outside their country. The use of such concepts has been noted by UNHCR's Department of International Protection, whose director argued that the recently emerging alternative protection concepts "...rather than serving an evidentiary function within a full refugee status determination process, are coming to constitute the rationale for non-resort to the Convention procedures in the first place. From the perspective of UNHCR, refugee protection can only be seriously jeopardised as a result." (Feller, 2001: 8). The development of these alternative forms of protection has significant implications for UNHCR's policy options, namely its capacity to uphold the institution of asylum above all. The UNHCR's Division of International Protection issued a position paper in 1999 reflecting on the possibility that internal relocation may be considered as a reasonable alternative to seeking asylum. It concluded against the idea, claiming that it has the potential to seriously distort refugee law.²⁰⁶ The paper safeguarded against allegations that if international protection was afforded in areas inside the country the refugee claimant should have relocated to such area of international protection. There are concerns that the concept is being misapplied and inconsistently applied both within and across jurisdictions in a manner that undermines the refugee status determination procedure (Kelley, 2002).

international human rights law." (Barutciski, 1996: 97). In another perspective, Tiso observes the effectiveness of safe havens but only as a temporary, reactive mechanism, not a permanent solution to refugee crises (1994). Likewise, safe-havens are justified by Freedman on the grounds that they serve to stem the flow of displaced persons across borders which become threats to international peace and security if they spill-over the borders of the country in conflict (1995: 579). Also a Director of International Protection in 1995 actively promoted the idea of safe zones for IDPs in the context of preventive measures and comprehensive approaches (see Franco, 1995). Posen alerts to the distinction between safe-havens and safe-zones, arguing that "safe zones will often amount to a de facto secession, implemented by outside powers." (1997: 311).

²⁰⁶ UNHCR (Department of International Protection) (1999) UNHCR Position Paper: Relocating Internally As a Reasonable Alternative to Seeking Asylum

The dilemma that arises is to what extent can the same entity that is responsible for the international protection of people outside their country of origin and on specific situations also responsible for their protection within the country of origin, such as when UNHCR takes the lead role for protection in in-country operations, ascertain whether protection is indeed being provided inside the country or parts of the country. Still, this type of in-country involvement can be seen as another form of geographical expansion where the UNHCR asserts competences beyond the territorial boundary of "country of origin", not just expanding across continents to all refugee-hosting countries, which was completed during the 1980s and 1990s.

5.3. Geographical expansion: universalism and the territorial boundary

During the 1980s there was a substantial increase in the number of persons of concern to the UNHCR (UNY, 1982: 1212), due to increasing numbers worldwide but also to the expansion of the mandate to in-country assistance to repatriation and assistance to persons in refugee-like situations (externally displaced persons) and occasional work for internally displaced persons. In the 1990s the trend was emphasised. States around the world increasingly converged around the notion of mass displacement and the definition of refugee as part of mass displacement enshrined in the OAU 1969 Convention. Other regional instruments were developed to address the problem in different parts of the world. Hence, while some states were converging on the need to provide international assistance and protection to victims of mass displacement and developed instruments similar to the OAU Convention, such as the Cartagena Declaration and the Bangkok Principles, others focused on the notion of temporary displacement as international protection and other alternative forms of protection, and developed national legislation to incorporate the concept. The common trend in these initiatives was an increasing focus on the need to promote voluntary repatriation as the preferred solution. These developments attached to the UNHCR enabled a legitimisation of the organisation's concern for new populations across the world and also introduced a degree of flexibility on the mandate definition or on the refugee determination: "Given the variations of approach this implies, we must avoid getting bogged down in controversies over the definition of who is, or is not, a "real" refugee under today's

circumstances."²⁰⁷ According to High Commissioner Hocké, the mandate incorporates GA resolutions and regional initiatives but the criterion for determining the competence of the UNHCR was based on the need for international protection.²⁰⁸

The UNHCR thus had a considerable expansion from the 1980s on, mainly in developing countries throughout Africa, Asia and Latin America, enabling it to argue that protection expanded worldwide, which also gave the organisation worldwide credibility.²⁰⁹ The problem also started being seen as universal in its implications, since it was a global reality that affected all. However, the stronger impact of the expansion was in the size of programmes and operational activities for emergencies and permanent solutions.²¹⁰ High Commissioner Hartling pointed out the paradox of the size of the organisation compared with its limited mandate and the fact that it had no guaranteed source of income.²¹¹ Still it continued expanding activities not only to new geographical areas but also to new political areas, which was the case of the progress towards forms of protection and assistance inside the country of origin.

5.3.1. Cartagena Declaration

The violence in Central America had until the 1980s produced an estimated two million refugees - victims of governmental repression and the displacement that accompanies civil wars (Ferris, 1985: 187). However, there has been a variation in time regarding the type of violence: in earlier times, the political violence was largely concentrated in urban areas and directed at politically articulate opponents of a particular regime. In the 1980s, violence became generalised in El Salvador, Guatemala and Nicaragua, when almost two million people were displaced. The victims of the violence were as likely to be illiterate bystanders as politically active dissidents (Ferris, 1985: 187). Correspondingly, in Central and Latin America, asylum and refugee tradition up to the 1970s was individually oriented and based on the protection of persons suffering from persecution, when the inadequacy of this approach became evident (Kourula, 1997: 150). The

²⁰⁷ Statement by Mr. Jean-Pierre Hocké, United Nations High Commissioner for Refugees to the Third Committee of the GA, 7 November 1986.

²⁰⁸ *Idem.*

²⁰⁹ Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 11 November 1985.

²¹⁰ Statement by Mr. Jean-Pierre Hocké, United Nations High Commissioner for Refugees to the Third Committee of the GA, 7 November 1986.

²¹¹ Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 11 November 1985.

issue was addressed in 1984 in the Cartagena declaration on Refugees that established the grounds for the *prima facie* refugee determination. Several conventions in Latin America regarding diplomatic asylum (UNY, 1974: 848) show the more individual and politically charged nature of the persecutions in those countries (see also Caminos, 1988).

The Cartagena Declaration follows the example of the OAU Convention and the doctrine employed in the reports of the Inter-American Commission on Human Rights, emphasising the need to develop mechanisms to address the problem of massive flows of refugees in the Central American area. It adds to the 1951 Convention definition of refugees a recommendation for the definition or concept of refugee to be used in the region which, "*...in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.*"²¹² In practice, the definition has been applied on a *prima facie* basis rather than within the individual (sliver) approach. In one respect, however, the Declaration goes further than the 1969 OAU Convention definition; it contains an expression of concern at the situation of internally displaced persons and calls for national authorities and competent international organizations "to offer protection and assistance" to this category (Kourula, 1997: 152). Many of the refugee groups in Central America were composed of victims of internal armed conflicts carried out in a highly political context and involving serious ill-treatment of the civilian population supporting or suspected of supporting an opposing faction (Jackson, 1999: 393). In this charged political setting the distinction between the various categories of persons forming part of a large-scale influx became a very sensitive issue and the Cartagena Declaration proved a useful instrument to overcome that problem, as its extended definition encompassed both victims of individual persecution and victims of war and generalised violence (Jackson, 1999: 394).

The Cartagena refugee definition is closely integrated into measures for implementing the 1951 Convention and the 1967 Protocol, and persons recognised as refugees according to the broader definition are to receive legal status as refugees in the same manner as those foreseen in the 1950/1951 definitions (Jackson, 1999: 415). Further, it lays down stricter criteria than the OAU Convention, for example in the reference to threats to life, safety and freedom of refugees.

²¹² Cartagena Declaration on Refugees, § 3.

In 1994, the tenth anniversary of the Cartagena Declaration proved the validity and usefulness of the Cartagena Declaration in addressing the problems of human displacement in the region. Even asylum-seekers arriving from other continents have so far been given refugee status in accordance with the broad refugee definition. Although the Declaration is not legally binding in the states concerned, it is widely applied in the continent and incorporated in municipal laws (Kourula, 1997: 151-153).

Camino (1988: 95) suggested that the international, regional and national levels of sources of law should be combined and co-ordinated to form a uniform and effective regime within the inter-American system. This system was indeed created with the signing of the Esquipulas II accords in 1987 among five Central American presidents and the subsequent creation of the International Conference on Central American Refugees (CIREFCA) which has proven very successful in promoting integrated approaches to the problems of displacement and stability in the sub-continent with a focus on lasting solutions as condition for peace and stability.

5.3.2. Asia

The situation that occurred in South-East Asia presented a remarkable precedent for the further development and expansion of the international refugee regime, with an impact during the 1980s, not only in terms of increasing the resource to the figure of temporary asylum, but also in terms of the establishment of the concept of externally displaced persons (Jackson, 1999: 345).

The main problem in the region in the early 1980s was related to the widespread use of deterrence measures (McNamara, 1989: 123). It started with a relatively small movement of refugees following the fall of Phnom Penh and then Saigon in 1975. After the initial American evacuation of some 130,000 Indo-Chinese, mainly from Vietnam, subsequent influxes into the region did not cause undue concern until the end of 1977, with the exception of Thailand which received more than 100,000 Laotians, Cambodians and Vietnamese. Within a short time increased Sino-Vietnamese tensions and new economic measures in Vietnam increased dramatically the numbers. By the end of 1978, 86,000 boat people had arrived in countries throughout the region. As the influx doubled in 1979, the regional reaction was hostile and harsh, with thousands of rejections (McNamara, 1989: 123-125). Although the crisis was prompted by the regional resistance to the

dramatic influx by boat from Vietnam, there was no unified approach to the Indo-Chinese exodus by the international community (McNamara, 1989: 125-132). Here the UNHCR had an important role in finding alternative solutions such as the strong promotion of resettlement and also helping develop the concept of temporary protection. High Commissioner Hocké was strongly critical of industrialised countries restrictive measures, denounced deterrence, selectivity, and refused to allow UNHCR action to be a substitute for lack of political will to accept refugees: "It is no longer sufficient for States to consider they have fulfilled their obligations by contributing generously to UNHCR programmes."²¹³

Many of the Asian states have been reluctant to become parties to the international refugee instruments. The Bangkok Principles (created in 1966 but only approved a final version in 2001), incorporated in a legally non-binding document of a recommendatory nature, issued from the Asian-African Legal Consultative Committee, try to provide a uniform refugee definition for the region. However, there is much disagreement between states on the definition. In the 1990s this Committee prepared a document entitled Model Legislation on the Status and Treatment of Refugees. It also comprises a two-tier definition in the line of the other regional arrangements. Compared to the OAU definition, it introduces "internal conflict" as an objective reason that may justify refugee status. Moreover, the definition requires "massive violation of public order" whereas in the 1969 OAU Convention, "events seriously disturbing public order" suffice (Kourula, 1997: 154-155).

5.4. The predominant paradigm: from voluntary repatriation to human security

The UNHCR's policy direction is defined by a balance between external and internal pressures: states' guidelines and executive staff's predominant paradigm of mission interpretation concerning the best durable solution to promote and enforce and by the interpretation of organisational functions such as international protection and material assistance or boundary activities that are necessary to fulfil the mandate.

²¹³ Statement by Mr. Jean-Pierre Hocké, United Nations High Commissioner for Refugees to the Third Committee of the GA, 7 November 1986.

The paradigm of UNHCR activity that evolved from the 1980s into the twenty-first century was marked by three main dimensions: Prevention and preparedness; voluntary repatriation and response; human security. The first dimension encompasses efforts at addressing the root causes of refugee flows and preventing displacement through development and relief measures; the second dimension encompasses efforts at minimising the costs of displacement through early voluntary repatriation; the third dimension encompasses the former two and links the problems of displacement to a broad notion of universal and all-encompassing security of the individual, including physical, economic and social dimensions. As will be seen there is a strong movement of convergence among states' preferences towards the first two directions and the synthesis that occurred through the human security concept was largely promoted by the former High Commissioner Ogata. There has been an interplay between such convergence of preferences at state level and the organisational adjustment to the reality on the ground. During much of this period no obvious disjuncture of preferences between the states and the UNHCR in the broad policy lines because the organisation until very late was buffering the inconsistent and conflicting dimensions of the different functions it had developed.

While this progress had the effect of enlarging the scope of activities of the organisation, such expansion was dysfunctional in the sense that it further tilted the organisation's decisions towards the emphasis on the operational and pragmatic direction that was much more dependent on funding, leaving aside its original functions of rule-supervision and rule-creation. This section will show how states' converging preferences towards voluntary repatriation and in-country activities at this point reduced the capacity of the organisation to stand-up to states' restrictive asylum policies and locked it in a decision-path where relevance for states took primacy in the programming process.

5.4.1. Root causes and system-wide preventive action

From the early 1980s on there was among states an increasing consensus on the need to invest on prevention of refugee flows, as is illustrated by the following passage of the UN Yearbook: "As for more specific measures, Australia suggested the establishment of early-warning mechanisms and the empowering of international organs to carry out such functions as inquiry into potential mass-flow situations, mediation and the formulation of recommendations for their solution or improvement. Making a similar suggestion, Somalia said the findings of such a special body could form a basis for action by the General Assembly or the Security Council.[...] The FRG

suggested improving international mechanisms - for instance by broadening the mandates of UN bodies and specialized agencies, creating new bodies within the system and enhancing the role of regional organizations..." (UNY 1981: 1053).

In 1980 Germany had requested that the item of international co-operation to avert new flows of refugees be introduced in the GA assembly for consideration. In 1981 a working group of governmental experts was created to study ways to avert new refugee flows.²¹⁴ This was an explicit attempt to develop preventative strategies that would eliminate the reasons for displacement in a context of the beginning of a tendency towards restrictive asylum policies in the West. The group only met for the first time in 1983, and in 1984 the High Commissioner made critical remarks to deterrence measures and restrictive practices that were being implemented by states: "In this regard, it is distressing for me to have to report that there continue to be violations of refugees' rights in many parts of the world - cases of refoulement or rejection at the frontier both of individuals or groups, acts of violence and brutality against them, both on the land and on the high seas, measures of deterrence including abusive and unnecessarily long periods of detention and restrictions on their movement, even in States which are parties to the international instruments."²¹⁵ The creation of this working group mirrors the increasing concern of all states in the UN with the proportions that the scale of displacement in the world was taking and the need to develop measures to control it. In 1986 the group presented its conclusions and recommended measures to improve co-operation among states to devise preventive strategies to avert refugee flows and also called on UN agencies to contribute to such efforts by becoming involved at the earliest stage and improving co-ordination among the different agencies.²¹⁶ This had important implications for the UNHCR as one of the major agencies concerned with the problem of massive refugee outflows, further realigning the policy direction on the preventive and curative rather than palliative dimension as was originally defined.

Continuum of relief to development

Matching this evolution in the area of prevention was the increasing integration of relief and development activities in the humanitarian system that mirrored the logic taking shape at the level

²¹⁴ Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees, established by GA Resolution 36/148, of 16 December 1981.

²¹⁵ Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 12 November 1984.

²¹⁶ A/41/324 - International Co-operation to Avert New Flows of Refugees, 13 May 1986.

of the UN system towards broad and integrated approaches to humanitarianism.²¹⁷ The idea of bridging relief and development concerns stems from a functional expansion of the UNHCR's activities and from a system-wide logic of integrating the approaches of the different humanitarian agencies.²¹⁸ This idea formally emerges in the early 1990s but was already being explored long before that.²¹⁹ The project of bridging the gap between assistance of refugees/returnees, and development of war-torn societies fits to a large extent the objectives of what is designated as the Brookings Process and started already in the 1980s (Cuénod, 1989), where it is understood that the humanitarian aid provided should bear in mind not only immediate needs, but also prepare future reconstruction work. It was seen in 2000 as a prospectively well-financed area of activities where the High Commissioner didn't want to miss the opportunity that the UNHCR is involved, not only because of the funding but also in terms of charisma for the organisation.²²⁰ Among turfs and other sources of inter-institutional competition there are the problems of the link between relief and development. This entails a double challenge: on the one hand the inclusion of a development concern at the first stages of humanitarian relief entails a well-worked out co-ordination structure between the different organisations and their mandates. Sometimes the eagerness to do everything creates territorial battles that undermine the effectiveness of the efforts being undertaken. On the other hand, the complexity of the crises often makes it difficult to establish the boundaries of engagement and disengagement, when some actors should leave the ground to new actors with more adequate functions. The volatile nature of such situations makes this decision-making very uncertain. This was evident in the debates during ExCom's 51st Session in 2000. However, for an organisation that had become highly dependent on funds it was important to fill in the issue-areas where donors had more interest, otherwise other actors would do so. A senior UNHCR officer portrays the international humanitarian agenda in terms of an alternating predominance of certain issue-areas and groups of focus, such as IDPs, women,

²¹⁷ On the implications of the problem, there is a debate well illustrated in (Jackson and Walker, 1999) about two models of humanitarian aid and the dilemmas each raises: the broadened model, that encompasses peace-building and development in aid, and the back to basics model that is limited to core humanitarian principles. Critics of reform, according to these authors, accuse reformers of eroding humanitarian principles into an isolationist and political position that uses relief agencies as excuses for lack of political will. One of the questions is whether reform is consistent with humanitarian principles. For more on the dilemmas of politicisation of humanitarian aid, see (Pasic and Weiss, 1997; Destexhe, 1997; Mapel, 1997; Duffield and Stork, 1994).

²¹⁸ For a discussion of the effectiveness of the link between returnee aid and development that became a policy in the UNHCR since around 1992, see (Gorman and Kibreab, 1997).

²¹⁹ It is interesting to note that during the 1970s and 1980s these efforts were designated "refugee aid and development" and in the 1990s they became "returnee aid and development" (Crisp, 2001), which is illustrative of the evolving emphasis on repatriation and country of origin assistance.

²²⁰ Interview with UNHCR Officer, Mr. Jacobo El-Hillo, (Geneva, 07/12/2000).

children, and elderly.²²¹ Each of these have different support groups for lobbying and agenda-setting.

This aspect confirms the idea that one of the constraints for the organisation in getting involved in as many activities as possible is that it has to remain a reference in the international system and a pro-active and valid one²²². Hence the need to adjust to the new demands in the humanitarian environment. The problem in the context of IDPs is that the cost/benefit analysis is so difficult that the interests of the organisation are not defined, nor are the policy orientations regarding the need or desirability to become involved systematically object of consensual agreement.

Guest (1991) points out the development of this idea of bridging aid and development as a way to abide by states' interests of limiting influxes of economic migrants.²²³ However, the whole discussion is integrated in a broader framework of prevention. One of the main obstacles to proper reintegration of returnees or even local integration of refugees was the lack of development conditions in the areas of integration, not only for the populations being assisted but also for the resident populations suffering the impact of the influxes. Given the widespread destruction resulting from conflicts, the conditions for ulterior development and stabilisation were dire and the international community saw it in its duties to promote consistent ways of development to avoid the relief-dependency of which many refugee communities were suffering. It was further noted that lack of development conditions also fuelled conflict and forced displacement.

The impact that this had on UNHCR's activities was of increasing even further the operational nature of activities and making it more dependent on funding to deliver its programmes as well as further locking the organisation into this policy direction by generating an organisational restructuring which consolidated a culture of operational involvement. Three reasons led to UNHCR's interest in the area of country of origin and development activities: functional expansion of activities and expected increased relevance and autonomy; lock-in towards operational activities due to the consolidation of a particular organisational structure and budgeting into large assistance programmes that could well incorporate development components; competition with other humanitarian actors to retain policy space and a lead co-ordination role.

²²¹ Interview with UNHCR Officer, Mr. Jeff Crisp (Geneva, 11/12/2000).

²²² Interview with UNHCR Officer, Mr. Jacobo El-Hillo, (Geneva, 07/12/2000).

²²³ For more on the discussion of the migration-development relation, see (Nyberg-Sorensen and others, 2002).

5.4.2. ExCom and GA guidelines on voluntary repatriation

The extent to which states should control and guide the UNHCR is a consideration that has varied over time and also among different states. While some states currently insist on imposing their own views in strong detail at ExCom and in particular in the Standing Committee of ExCom, other countries have a policy of allowing more autonomy to the organisation in defining its own priorities and preferences. The representative of Japan used the restaurant metaphor to convey the idea that Japan doesn't want to do the cooking itself and trusts UNHCR's capacities. It only demands that the product is a quality one.²²⁴ This invokes UNHCR autonomy, partly by opposition to other countries, like Canada that has a culture of micro-management.

The representative of Japan also claimed that co-ordination among donors should be enhanced. It should be noted that the ExCom meetings serve two main purposes: to agree on guidelines for the organisation but also to promote co-operation among the states. On occasion states are challenging each other's policy options or the ways they decide to address the organisation. This is the case with the micro-management versus a broad and more flexible approach that relies on the staff's options.

However, during the 1980s and 1990s there was a convergence among states in ExCom and the GA on the preferred durable solution of voluntary repatriation, given the fundamentally different nature of forced displacement but also of the conditions in international politics.²²⁵ With gradually less structural confrontation with the Eastern countries and refugees from the communist bloc perceived as less useful as instruments of foreign policy, more GA resolutions and ExCom conclusions were issued directing the organisation towards activities of repatriation and reintegration of returnees.

²²⁴ Interview with the representative of the government of Japan (Geneva, 05/12/2000).

²²⁵ In the 1992 General Conclusion on International Protection (N. 68), the Executive Committee of the UNHCR's Programme expressed concern about the inadequacy of international protection for various groups of refugees and noted the scale and complexity of the refugee problem, the risk of new refugee situations developing, and the challenges posed to refugee protection by the constantly changing global political, social and economic climate. The Executive Committee deplored ethnic and other forms of intolerance as a major cause of forced migratory movement, and expressed its concern regarding xenophobia in segments of the population in a number of countries receiving refugees and asylum-seekers.

In 1980 the first ExCom Conclusion devoted to the subject of voluntary repatriation was issued.²²⁶ The scope of UNHCR's functions in this regard is left ambiguous, since it is mentioned that the organisation is "...to be associated..." with appropriate arrangements for the voluntary repatriation. While for most of the Conclusion the UNHCR seems to be left with a monitoring role, it is also associated with arrangements for the reception of returnees and establishment of projects for their reintegration in the country of origin. In 1984 for the first time the UNHCR was requested to mobilize emergency assistance for a group of returnees and displaced persons in Chad.²²⁷

In 1985, ExCom Conclusion 40 again focuses on voluntary repatriation, this time specifying in more detail the nature of UNHCR's functions in this regard: "The existing mandate of the High Commissioner is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them, and by acting as an intermediary or channel of communication. It is important that he establishes, whenever possible, contact with all the main parties and acquaints himself with their points of view. From the outset of a refugee situation, the High Commissioner should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review and the High Commissioner, whenever he deems that the prevailing circumstances are appropriate, should actively pursue the promotion of this solution".²²⁸ The operational component of UNHCR's activities in regard to the reintegration of returnees is also consolidated in this Conclusion: "Assistance for the reintegration of returnees provided by the international community in the country of origin is recognized as an important factor in promoting repatriation. To this end, UNHCR and other United Nations agencies as appropriate, should have funds readily available to assist returnees in the various stages of their integration and rehabilitation in their country of origin;"²²⁹

It was during the 1990s that an even clearer focus emerged on what the UNHCR could do in terms of returnee assistance in post-conflict situations. With the 1990s being declared the decade of voluntary repatriation and the initial post-Cold War optimism concerning the solution of conflicts in the world, efforts had to be put in place that such repatriation happened smoothly. In

²²⁶ ExCom Conclusion n° 18 (XXXI), 1980 – Voluntary Repatriation § c

²²⁷ GA Resolution A/RES/39/106 of 14 December 1984

²²⁸ ExCom Conclusion n° 40 (XXXVI), 1985 – Voluntary Repatriation. § c

²²⁹ ExCom Conclusion n° 40 (XXXVI), 1985 – Voluntary Repatriation. § k.

the same line the Executive Committee issued further guidelines in 1992, linking returnee aid and development, which was to add to the guidelines it had issued in 1984 under the “Principles for Action in Developing Countries” within the context of refugee aid and development (UNHCR (Central Evaluation Section), 1994). The preventative nature of the instructions was clear in the following segment of 1992 ExCom Conclusion: “Supports, in this connection, strengthened efforts by the High Commissioner to explore further approaches encompassing early warning, training, advisory services and promotion of human rights and of development, in conformity with her mandate and responsibilities, within an inter-agency, intergovernmental and non-governmental framework as appropriate, to prevent conditions giving rise to refugee exoduses;”²³⁰

Activities within the area of reintegration were not without its dilemmas and the implications of such operations were discussed in a paper by the Centre of Documentation and Research in 1997.²³¹ It is one of the first documents where the nature of returns from specific policies entailing dilemmas are evaluated, representing efforts of the organisation at clarifying the problems and contradictions inherent to certain types of functions. Other important studies reflecting on activities in specific issue-areas were performed before that, but when the conclusions were not in tune with the High Commissioner Ogata, emphasising too much the contradictions at stake, they were not actively publicised even within the house.²³²

Further, UNHCR started embarking on operations of voluntary repatriation in conditions where there was no clear stability in the country of origin, as was already pointed out in the early 1990s (Guest, 1991). In the mid-1990s Cohen found a direct relation between international preoccupation with reducing refugee flows and the increase in internal displacement as well as hasty and premature returns of refugees to situations where they risked becoming internally displaced (Cohen, 1996: 2). This represents a serious restriction of the UNHCR’s capacity to enforce its core mandate of international protection of refugees, hence curtailing its range of policy options, in situations when it deliberates it has no other policy option than to enforce involuntary, or less than voluntary repatriation.

²³⁰ ExCom Conclusion n° 68 (XLIII), 1992 – General Conclusion on International Protection.

²³¹ UNHCR (Centre for Documentation and Research), “*Reintegration in the transition from war to peace*”, Geneva, 1997

²³² For example, a study on “*UNHCR’s Role in Protecting and Assisting Internally Displaced People*”, by the Central Evaluation Section Discussion Paper, November 1993.

This was linked to an increasing focus on cessation of refugee status, but the evaluation of the “changed circumstances” in the country of origin gave rise to problems concerning standards: Zieck (1997: 7) questions the reasonableness of having a lower threshold for situations of voluntary repatriation than for the cessation of refugee status, which is stipulated in UNHCR’s draft guidelines on voluntary repatriation. In the same line are internal guidelines of 1987.²³³ This aspect was later justified in the UNHCR handbook on voluntary repatriation.²³⁴

5.4.3. New humanitarianism and human security

Largely as a reaction to repeated attacks on humanitarianism (see Macrae, 1998), Western governments have been redefining their humanitarian policies in the sense of introducing objectives of “good humanitarian donorship” (Macrae and others, 2002), which can be called the new-humanitarianism (Duffield and Macrae, 2001). This translates into a search for coherence of donor policies for humanitarian assistance (Macrae and Leader, 2000) with a view to avoid selectivity and distributive problems across the world. The full implications of this process are yet to be seen but there is a stated concern for introducing humanitarian values into aid policies that were to a large extent dominated by foreign policy concerns (including often concerns about refugee movements) and by particularistic interests rather than needs or rights of the populations affected.²³⁵

Linked to this is also the concept of human security, which took significant shape since the second half of the 1990s in particular. Actively promoted within the UN system, and initiated by the UNDP, the concept was endorsed by the High Commissioner Sadako Ogata and actively promoted in meetings in particular with states.²³⁶ Indicative of the dominant paradigm within the organisation is one of its reference publications in 1998 that focuses extensively on human security and the changing dimensions of security (UNHCR, 1998). As mentioned before the concept is linked to a broad view of security that encompasses economic and social rights. It fits

²³³ IOM/5/1987 - FOM/5/1987 Voluntary Repatriation: Principles and Guidelines for Action, 10 February 1987

²³⁴ “The fact that the voluntary repatriation of refugees can take place at a lower threshold of change in the country of origin than cessation is based on two elements. One is that a “fundamental change of circumstances” implies the consolidation, over time, of a process of stabilization. The other is that the voluntary nature of the refugee’s decision to repatriate constitutes the core element in promoting and facilitating repatriation.” (UNHCR, 1996).

²³⁵ For some critical and sceptical remarks concerning the new-humanitarianism, see (Chimni, 2000).

²³⁶ See, for example, statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees “Human Security: a Refugee Perspective”, in Ministerial Meeting on Human Security Issues of the ‘Lysoen Process’ Group of Governments, 19/5/1999.

in well within a logic of development and seems to represent a way to push forward the development agenda in a time when development policies were out of fashion. However, the concept is plagued with ambivalence due to the need to combine human rights concerns with state interests (see Hammerstad, 2000) and its full implications for refugee protection can be questioned (see Freitas, 2002).

5.5. Consolidation of the operational turn

The paradigm of solutions that was defined during the 1980s and heavily promoted during the 1990s, of voluntary repatriation and in-country activities, meant a strong broadening of direct activities of assistance to returning populations and displaced persons. This evolution entailed the performance of increasingly operational activities through direct implementation instead of implementation through partners (Telford, 2001).

The adjustment to activities in the field entailed a reorganisation of the UNHCR to manage its expanded dimensions and increasing funding. Such expansion enhanced UNHCR's authority in the political world but did not entail a direct expansion in the organisation's range of policy options, since the redirection of efforts towards the field meant a lower investment on protection and legal assistance or rule-supervision.²³⁷ The funding dependence also left the organisation more vulnerable to the preferences of states and the organisational readjustments tilted decisions towards the broad, expanded and operational policy direction of its work of international protection. Hence the capacity to fulfil some of the core mandate functions was reduced with expansion and the UNHCR effectively lost autonomy in terms of policy choice, having to manage more efficiently between relevance, independence and authority. This, however, was not immediately apparent within the organisation.

5.5.1. Functions and mission interpretation

Two main lines of dilemmas emerged in the mission interpretation of the UNHCR that became acute in this period: the relationship between assistance and protection and the legal versus operational approach to its role. This eventually generated an internal debate concerning the

²³⁷ Some examples of this loss were the lack of capacity to react firmly to Australia's recent strongly restrictive moves in terms of asylum policy and law (ICVA, 2001a).

expansion or contraction of the organisation, when it became obvious that the policy direction was producing decreasing returns for the goals of the organisation, which culminated in the Global Consultations process, that is explored further on.

5.5.1.1. Dilemmas: legal / operational approach to international protection

There are two major lines of cleavage within UNHCR's mission interpretation. The first is between the legal versus operational policy direction, which is deeply related to a second line that is the relation between assistance and protection activities. Both are in turn related to a broader debate, which is the one on the core and non-core functions, in other words the debate between a narrow or a broad conception of UNHCR's mission. These cleavages did not emerge until states' restrictive tendencies started undermining the international refugee system and until the contradictions of humanitarian activity in a state-centric world became clear. However, once such became apparent, also the inherent contradictions and dysfunctions of UNHCR's line of expansion came to the fore.

There is strong controversy concerning the link between these two lines of the UNHCR's role and mandate. Often it is argued that protection cannot be performed without assistance, that assistance to refugees is both part of protection and essential to enable international protection, but also that the combination of the two may lead to politicisation. This contradiction represents some of the several dilemmas that the UNHCR is confronted with in its decision-making process and target of reflection by observers since the early 1990s (see for example, Melander, 1990).

International protection has been conceived both in legal terms and in material terms. International protection in material terms implies a needs-based perspective whereby the provision of relief supplies like shelter, water and food are considered to be protection, often life-saving activities. Over the years, physical protection has also been included in the conception of international protection, but such is still subject of debate for two main reasons: it involves entering notions of security, which entail a military capacity that the organisation does not have, and risks politicising the activities through close links with the military. These links have also emerged in the context of the provision of humanitarian assistance in complex emergencies of a very high profile where UNHCR acted as the lead agency for the co-ordination of the humanitarian effort (Williams, 1998). The military have also been associated with the protection of humanitarian workers. Roberts points out the advantages and disadvantages of such close

involvement, in particular in what regards the capacity of humanitarian agencies to remain impartial (Roberts, 1996).²³⁸ The development of physical protection as an element of international protection gave rise to confusion within the organisation, which already in 1983 had to be corrected through a note from the Director of International Protection to the staff.²³⁹ The idea of physical protection has subsequently been frequently underlying some of the organisation's mission interpretation, although it is acknowledged that it is not among the UNHCR's functions and that the organisation can only strive to advocate for the physical security of the populations of concern. However, on occasion the participation of the UNHCR in situations of in-country protection has led to the erroneous perception that it was able to ensure the physical security of the populations (Mooney, 1995).

The conception of international protection as a legal activity does not involve the same operational apparatus and stands on a rights-based approach, which is more difficult to measure in terms of resources and effectiveness than material assistance activities. The contrast in functions was also evident for example in the intervention in Bosnia, where UNHCR was able to deliver large quantities of humanitarian supplies but much less successful in carrying out its protection mandate (Cutts, 1999: 16). Since the late 1990s there was strong concern among donors regarding the quality of protection that the UNHCR was offering refugees and some thought it should concentrate on the core functions of its mandate, as will be seen in the next chapter. There was active internal reflection on how to improve protection but staff argued that it is difficult to measure protection.

A matching distinction in the work of the UNHCR is the one between legal and operational protection activities, where operational protection would correspond to the material assistance dimension.²⁴⁰ In the early 1990s the speech delivered by the Chief of General Legal Advice Section at the Division of International Protection to a conference on refugee protection is illustrative of the consolidation of the culture of operational emphasis rather than legal one,

²³⁸ For more reflections on the impact of the co-ordination of efforts of different types of actors on the protection capacity, see (Minear, 1999; Weiss, 1997) Summary of Proceedings of the 'Tbilisi Symposium on Conflict and Humanitarian Politics', October, 7 1998, Tbilisi, Georgia.

²³⁹ IOM 26/1983 – FOM 22/1983 Meaning and Use of the term "International Protection"

²⁴⁰ Interview with UNHCR Officer, Ms. Irene Khan. (Geneva 13/11/2000).

advocating protection from a very operational angle, linking it to prevention and more active involvement in situations of active crisis or open conflict (Bertrand, 1993: 499).²⁴¹

5.1.1.2. Buffering inconsistent demands and implications of operational turn

Some authors point to the implications of the UNHCR's functions as leader of humanitarian assistance and the perils of politicisation due to the contradictions between the legal and operational role of the organisation (Cunliffe and Pugh, 1999). In the same line, protection is seen as problematic with the new functions and the original role of the organisation distorted or undermined (Goodwin-Gill, 1999).

Many among the staff do not see contradictions between these two roles and underline the fact that the mandate is not inadequate, but it is the practice of states in instrumentally using humanitarian assistance that creates contradictions between asylum and international protection on the one hand and notions of prevention and in-country assistance on the other (Okoth-Obbo, 1996: 10). This created the need for the organisation to balance these two extremes, but evidence shows that it relied too much on states' good will. The expectation that states would respect the normative side of the question thus enabling the organisation to pursue expansion in all directions without creating dysfunctions did not materialise.

There are two sides of the impact of the operational turn on the supervisory/protection role of the UNHCR: one is a loss of autonomy in terms of substantive authority for supervising the Convention in legal terms and towards developed countries, of whom it is dependent for funding. On the other hand there is a gain in autonomy in terms of an increase in substantive authority for ensuring or promoting protection in operational and emergency circumstances in the developing world, namely when it is providing emergency assistance to refugees and IDP populations. The knowledge, resources and expertise acquired by the UNHCR over the years also made it one of the most significant and indispensable organisations in the humanitarian system.²⁴²

²⁴¹ Although this represents the personal view of this senior officer, and not the official UNHCR position, it is telling of the general organisational culture, when the legal department is so concerned with operational involvement.

²⁴² For example in the case of Colombia it became involved with IDPs in the country mainly because of its track record in addressing international protection and due to the importance of the work carried out by the organisation in neighbouring countries to improve asylum conditions. Statement of the representative of Colombia at the 51st session of ExCom, 04/10/2000.

These contradictions only became issue of consistent reflection at the end of the 1990s, when states started showing discontentment with the way UNHCR was managing its activities and some instances of poor performance, such as the operation in Kosovo in 1999.

5.5.2. Funding and budgeting structure

As seen above, the funding of the UNHCR comes from two sources: a limited amount of the budget is taken from the UN general budget for administrative expenses, and the rest is entirely provided by voluntary contributions given by states or by other entities. The more the UNHCR expanded its activities the more responsibility and authority it had to manage vast sums but it also became dependent on those contributions to pursue its large programmes, which normally are not finished within a one-year schedule. Further, from early on funds were rarely enough to cover all the costs with programmes, and choices had to be made concerning the distribution of resources across projects and geographical areas.

5.5.2.1. Funding shortages and earmarking

An example of the contradictions of operational involvement in material assistance was that during the early 1980s the UNHCR had the legacy of long-term care and maintenance programmes for situations of prolonged displacement that had no real solution in sight. According to the UNHCR's Manual this led to the financial crises of 1984 and 1989 (UNHCR, 1999), where donor fatigue led to generalised lack of funding (Kibreab, 1993). By 1989, there was refusal to approve the UNHCR's annual operating budget and a call for a further scaling back of its relief operations among donor (mostly Western) nations.

Telford argues that funding crises in UNHCR are cyclical and new funds will flow as soon as needs are perceived (Telford, 2001). However, it should be noted that the funding crisis that has emerged in the late 1990s is not just a problem of the UNHCR, but a global UN problem with diminishing credibility in terms of management of funds (McDermott, 2000: 11). It was also generated by rumours of waste, mismanagement and possibly fraud.

Every year ExCom has to approve the budget for the next year, which normally it does, with the exception of 1989. But this does not imply that states commit themselves to funding such budget:

each provides funds according to the amounts they define, regardless of a concerted approach of all states to provide enough funding for all operations. Further, with the earmarking trends there is a tendency for certain operations to have large levels of funding while others are severely underfunded. This state of affairs reflects the selectivity in funding and the extent to which humanitarian aid is driven by specific interests. Very often states withhold funds until late in the year in case some emergency arises. This results in slow financing over the year as states allocate funds for emergencies as they arise, which means that they will not allocate immediately the entire budget, preferring to spend when situations occur that suit better their interests.

States either give unearmarked money and the UNHCR allocates it, or they earmark for particular operations that are being promoted by the UNHCR. Of course, in situations of particular interest for certain influential donors, involvement may be previously negotiated and a subsequent appeal made, but in many situations the prioritisation is up to the organisation and if states approve of the choices they fund with a higher or lower degree of earmarking. This constitutes an excellent control mechanism but does not in effect prevent the organisation from being involved in any particular situation (nor does it compel it to become involved in situations beyond its mandate).

The practice of earmarking funds by states provides a strong source of guidelines for the allocation of funds.²⁴³ The extent to which such is defined by the national interest or by humanitarian concerns of the donor state is subject of debate. Rarely are they based on the needs on the ground.²⁴⁴ For that reason the UNHCR often finds itself in the difficult situation of having to balance between satisfying the wishes of donors and pursuing its functions in the most effective manner, with a needs-based allocation of funds. The larger the organisation became, the wider the gap between needs and funds and the more pressing the dilemma became.

5.5.2.2. Funding dependency and earmarking

Funding dependency created increasing concern for organisational relevance and donor priorities.²⁴⁵ A study requested by the UNHCR in the late 1980s focusing on the donor priorities in the development area also shows the extent to which the organisation consciously sought to

²⁴³ For more on determinants of foreign aid, see (Pitterman, 1987; Noel and Therien, 1995; Lumsdaine, 1993; Weck-Hannemann and Schneider, 1991; Smillie and Minear, 2003).

²⁴⁴ For a discussion on needs-based assessments for humanitarian operations, see (Darcy and Hofmann, 2003).

²⁴⁵ On conditions for funding dependency in international institutions, see (Schermers and Blokker, 1997).

explore the possibilities that would lead to more funding and how to address governments in that respect.²⁴⁶ This is also indicative of the fact that very often it is the organisation itself that seeks a change and tries to persuade states to fund its initiatives, rather than being pressed to follow a certain policy line. The pressure arrives when states then develop clear preferences in the same line and create obstacles to the fulfilment of the mandate in its entirety. In the UNHCR's Manual of 1998 it is stated that: "[r]aising one billion dollars per year in voluntary contributions has been a characteristic of UNHCR since 1991. These results have been achieved by the quality of our efforts towards protection and durable solutions as well as our emergency response, our flexibility and a very positive perception amongst donors of our institution and our leadership." Funding is seen by the UNHCR as much dependent on the organisation's image in terms of profile of emergencies and tasks performed, credibility and relevance.²⁴⁷ Four main criteria are pointed out explicitly in the UNHCR Manual (1998) to secure credibility: operational competence, diplomatic confidence, public information and institutional visibility. Here the importance of the authority provided by the rule-supervisory function or by the characteristic of impartiality and neutrality is not given weight, since it is not expected to attract added funding. It is true, however, that if the organisation did not strive to remain alive and relevant, probably its rule-supervisory functions would have been even more difficult to implement in a dramatically changed world.

Hence, budgeting and programming is done more on the basis of existing and prospective funds than on the basis of needs and responses. This reduces the range of policy options available to the organisation, since the limited amount of funds does not enable the organisation to address all problems but the selective nature of donor priorities tilts the organisation's priorities towards areas that are in the interests of some but not necessarily the most needy from the perspective of the fulfilment of the mandate. This may question the independence of the organisation and makes it dependent on being relevant to particularistic interests.²⁴⁸

Budgeting and prioritisation of operations and functions are in the end the politicisation of refugee assistance, even if there is a clear mandate that presupposes universality. But because resources

²⁴⁶ See report (Price Waterhouse, 1987)

²⁴⁷ Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).

²⁴⁸ However, the head of the CASWANAME bureau was clear in that: "We should not in principle work according to the donors' interest. When we start working according to donor interests we lose. If you take donors individually they have their clear interest. But if they are together they will never give clear evidence. Everything is always fine in group. At the end ExCom approves the budget we submit but there are no guarantees that they will fund the budget. We have to find a solution to this problem in order to guarantee funding. We have to meet their interests but we have a mandate, a protection mandate to assist refugees and we have our own interest." Interview with UNHCR Officer, Mr. Mustapha Djemali, (Geneva, 24/11/2000).

are scarce, it becomes difficult to allocate funds on a needs-basis only and other concerns are prone to exercise influence. In fact, the extreme funding dependency that consolidated in this period was largely responsible for the organisation's loss in autonomy for decision-making on its activities, namely the capacity to exercise its rule-supervisory functions vis-à-vis developed countries that were less willing to receive refugees but willing to increase funding, particularly for humanitarian operations that threatened to cause refugee flows in the area.²⁴⁹ Such was the case with the support that has been provided when there have been crises in the Balkans, with significant amounts of money being given to contain refugee movements.²⁵⁰

Prioritisation is an area where states expect the organisation to anticipate their preferences and with funding shortages there are increasing calls for prioritisation. However, given their lack of convergence they cannot expect the organisation to fulfil all their preferences. Partly for that reason, currently states are making efforts towards more coherent and co-ordinated approaches to humanitarian aid. The UNHCR may submit a budget that is not pleasing to all preferences, but it runs higher risks if it displeases the most important donors, giving rise to funding shortages.²⁵¹ The question about whether an organisation should anticipate donor preferences is a matter of morality and of evaluating the potential dysfunctions that may emerge from the choices. While most normative analysts criticise the organisation for anticipating the preferences of the donors and being manipulated, more policy oriented analysts claim that the UNHCR is more defensive than proactive in anticipating donor preferences or agenda (Macrae, 2002).

5.5.3. Organisational adjustment

The organisational structure that emerged out of the expansion process in the UNHCR led to divisions inside the house and to a particular organisational culture that reflects the potential contradictions between the original mandate of the organisation and its subsequent evolution. This has also led to a difficulty on the part of the UNHCR to express clear preferences and capacity to stick to its original principles, often choosing to repeat the pattern of decisions that pointed towards a more proactive and operational role, thus introducing inconsistencies and dysfunction in its stance.

²⁴⁹ During the 2000 ExCom meetings on several occasions senior officials complained that excessive earmarking hampered the exercise of the organisation's core functions.

²⁵⁰ Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).

²⁵¹ Approval of the budget does not guarantee its funding and it is very difficult to persuade states to commit to such possibility.

5.5.3.1. Organisational culture

The UNHCR is marked by an organisational culture that is made of the need to retain relevance, be proactive and provide solutions for states, under the risk of losing ground in the inter-institutional competition or not being able to fulfil its goals.²⁵² This is a logic that was stimulated by the High Commissioner Ogata: "In order to meet these five challenges, the Office must make further efforts to adapt. As for any international public organisation, change is a painful and laborious process for UNHCR. Since 1996, we have made progress. But, clearly, UNHCR must become a much more modern organisation if it wishes to remain **relevant and effective**".²⁵³ In her farewell speech, High Commissioner Ogata made the options very clear and basically concluded that there was no option but to follow the operational path: "I had to think very quickly – and two main conclusions permeated my vision of the Office in the years to come. The first was that UNHCR would end if it remained a slow, static, conservative organisation; if UNHCR was to stay relevant – and when I say relevant, I mean to refugees – then it had to be quick, smart, effective, and adaptable to a fast changing environment. The second conclusion was that just to speak from the "high moral ground" on which – I was told very early on – stood the High Commissioner, was not enough. Telling states to protect refugees was fine – but we had to help them do it, and actively search for solutions while staying as much as possible close to the refugees themselves, so that our arguments would be credible."²⁵⁴ High Commissioner Ogata also clearly set the organisation with a field orientation, as opposed to "bureaucratic" that required "creativity", an expression often used in her speeches.

Staff reflecting policy direction

These divisions were also shaped by the composition of the staff. According to a senior officer, the cleavage was accentuated as more non-lawyers were recruited to fill new positions deriving

²⁵² An example of the pertinence of this logic was the emphasis at the end of the 1990s on Migration and Asylum nexus, which was a great concern for states and they pressured for more emphasis of the organisation in dealing with this problem. The threat that states will assign issue-areas that touch on some areas of UNHCR's work is consistent with the emphasis put by a UNHCR officer, stating "either we deal with this or we're out".

²⁵³ Opening Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees at the Fifty-first Session of the Executive Committee of the High Commissioner's Programme (Geneva), 02/10/2000.

²⁵⁴ Statement of Farewell to the UNHCR by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, Geneva, 20 December 2000.

from expansion and operational needs.²⁵⁵ Again this shows the importance of path-dependent evolution, with new decisions reproducing and incrementing the direction of previous decisions. This cleavage was accentuated under the leadership of the former High Commissioner, Mrs. Sadako Ogata, who had a proclaimed disdain for lawyers²⁵⁶. This created a situation where, as was concluded in a study in 1997, as far as involvement in in-country situations is concerned, UNHCR staff lacked the expertise and training in human rights and humanitarian law that ICRC staff possessed for a long time (Loescher, 1997: 160). As Walkup notes, "...the expectations, values, and ideologies of personnel may conflict with their assigned organizational roles and tasks. [...] Personnel often find themselves in situations where the HO's [Humanitarian Organisations] goals conflict with those it is supposedly assisting." (Walkup, 1997: 41). Organisational changes in the UNHCR have led to much more emphasis on operational expertise than on protection even on the part of staff (Loescher, 2001a).

In such an internal environment it is natural to expect that the organisation's conflicting demands are buffered from each other, in particular when action is required speedy in highly volatile situations and not much reflection is going on at headquarters, more worried with obtaining funding for operations.

5.5.3.2. Organisational restructuring: internal divisions

The needs created by the development of an emergency response and operational capacity entailed a number of adjustments in the UNHCR, namely in internal structure and management. In the late 1970s there was a first major restructuring process of the organisation that will consolidated the operational turn. 1980 was also an important year that marked considerable changes, with several new emergencies calling for rapid action on a large scale. An Operations Management System was created in 1981, followed by revisions in 1989 and 1990. Programmes grew considerably and activities of an emergency nature became a permanent feature of the work of the UNHCR, along with the search for permanent solutions.²⁵⁷ This caused a first significant adjustment of the structure of the organisation, which was followed by other major restructuring processes. In the early 1990s a clear restructuring of the UNHCR in the direction of improved

²⁵⁵ Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).

²⁵⁶ Goodwin-Gill, quoted in (Chimni, 1998)

²⁵⁷ Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 10 November 1980.

operational planning was under way as shown by the creation of an internal Working Group on Programme Management and Operational Capacity in 1993. The Group's recommendations focus on greater delegation to the field and a modified UNHCR programming cycle to allow integrated planning and enhanced monitoring and reporting.

In 1998, significant restructuring occurred in the sequence of recommendations of a report that was submitted to the High Commissioner in 1996 under the designation of Project Delphi, for the restructuring of the UNHCR.²⁵⁸ In 1999 another restructuring took place at headquarters, deriving from internal and external imperatives.²⁵⁹ This came as a response to the awareness of acute external pressure for change and the reality of strong earmarking of funds and states tightening the control. In this report it is expressly mentioned that the convergence of the international political, military and humanitarian agendas bring limitations to the organisation, to which it has to adjust. A clear goal of having an impact on policy-making and being active in persuading policy-makers to put humanitarian issues and root causes on the agenda was also acknowledged. Overall this project was devised in order to provide policy direction that would enable more consistent decision-making to the organisation's staff and strategic thinking. The 1999 restructuring provides for the centralisation of policy definition at the level of the Executive Office, with other guidelines emanating directly from the general policy lines. This tendency was supported by most states in 2000, with few exceptions, like Japan who instead of a top-down, strategic approach to programming with stronger management inputs, favoured a bottom-up approach since there was a trend for decentralisation of regional bureaus and it would create problems to accommodate these inverse trends.²⁶⁰

The structure that dominates the UNHCR is marked by the cleavages between field and headquarters and within headquarters also along divisions between regional bureaus and departments more oriented towards the protection than material assistance, such as DIP. This partly reflects the cleavages between operational and legal policy directions. The different organisational cultures helped prolong the situation where the contradictions in UNHCR's activities were being buffered, as seen above.

Field versus headquarters

²⁵⁸ Change Management Group, "Final Report - Project Delphi" 1996: Geneva. UNHCR

²⁵⁹ UNHCR, "UNHCR's New Headquarters Structure" 3/2/1999 Geneva, Briefing Paper.

²⁶⁰ Statement by the representative of the government of Japan, (Geneva, 13/11/2000).

There are divergences between field offices and headquarters concerning which are the best solutions to implement in specific circumstances. This reflects an internal inconsistency that is mirrored in the general orientation of the organisation. The evaluation of conditions on the ground is sometimes affected by the vision of headquarters, where criteria are not necessarily the same everywhere. Divisions among top-down and bottom-up approaches and between field and headquarters is reflected in the budget and some states recognise this as hampering the work of the organisation and definition of an overall strategy that they can see is worth funding.

Department of International Protection and regional bureaus

Within the UNHCR there is also a divide between operational and regional bureaus on the one hand, and the legal ones such as the DIP on the other hand. The latter has developed a legalistic approach and "...tends to view the UNHCR and itself as the refugee's lawyer and as the protector of refugee rights under international law" (Barnett and Finnemore, 1999) , while the former are more liable to give in to state pressures in the field. There is an evident cultural conflict here between the more narrow organizational goals, linked to the supervisory functions of the organization, and the broader organisational goals that have progressively been incorporated.

The different emphasis on the respective importance of the DIP and the regional bureaus within the organisation also became an important divisive issue, since DIP became much less important and influential over the two decades under analysis, with the legal advice being transferred to the regional bureaus and decentralised from the Office of the Director.²⁶¹ This meant less consistency for the approach to international protection. Such inconsistency was acknowledged in the plan for restructuring in 1996, which didn't prevent it from happening in the next year. It also identified more concern of an operational nature, which as seen above is characteristic of the regional bureaus.²⁶² According to Barnett, "UNHCR's organisational chart was restructured so that regional offices holding more more pragmatic views no longer had to report directly to a Protection Division that saw itself as the 'priest of principles'." (2001b: 33).

In fact, over the years the authority and influence of the DIP have eroded to a point that advice was generally sought only after decisions have been made by policy and programme staff, with

²⁶¹ IOM/55/1997 – FOM/62/1997 – Restructuring the Division of International Protection

²⁶² Change Management Group. "Final Report - Project Delphi" 1996: Geneva. UNHCR

the aim of legitimising decisions. This problem became a serious concern for a group of NGOs who, in a letter to the Executive Committee, underlined the importance of restoring the primacy of the DIP: "The Division of International Protection should once again be mandated to play the leading role in the decision making on UNHCR's priorities. Moreover, re-establishment of the authority of the Division should of course also be felt and reintegrated in other parts of the organization." (Working Group on International Refugee Policy, 1999). It has also been pointed out in a document distributed at the ExCom meeting of October 1996, that through this change in institutional roles, international law has been relegated to an inferior position vis-à-vis the political concerns of UN Member States as expressed through their representatives on the Executive Committee. The document emphasised the need to improve the authority of DIP, whose supervisory role would "...greatly enhance UNHCR's reputation, and leverage, as an impartial arbiter and defender of refugees in the world, and thereby also restore the Office to its primary function – providing international protection." (Anonymous, 1997).

These structural patterns lead to dysfunctions that are repeated over time and over which no one has real control until significant change is imposed. As Maley (2003: 311) suggests, a procedural path becomes installed in the organisation, leading to dysfunctionality from which it is difficult to part because procedures develop lives of their own.

5.6. Conclusion

The trend for convergence of states' preferences is reflected not only in states' individual asylum policies, as seen above, but also in joint efforts at the international level to address the problem of refugee flows and massive displacement. Although this trend started taking shape significantly since the beginning of the 1980s, the end of the Cold War freed the way for much more investment on repatriation activities and to a focus on the country of origin rather than on host countries.

A disjuncture of preferences between the agent and its principals emerges when the direction of evolution becomes dysfunctional and when the autonomy of the organisation to implement all the original and expanded policy options is curtailed by the inconsistencies that this sort of combination raises. However, the leadership itself was for much of the period proactively intent on continuing threading on the same path, since the perception of returns was obfuscated: as long as significant funding and donor reliance on the expertise of the organisation made it the most

important player in the humanitarian sector, the decreasing returns on the autonomy were not significant to impose a reversal.

The main question that is put in this period is whether or to what extent was the UNHCR manipulated by states into a focus on in-country activities such as voluntary repatriation, reintegration and rehabilitation of returnees, development and IDP involvement as well as preventative activities within the broader context of the human security paradigm. States did press it in a certain direction but such direction was not incompatible with the organisation's preferences, given that states only reinforced the direction that the organisation had already autonomously embarked on. Hence, rational choice explains reduction of organisational range of policy options through a convergence of states' preferences and historical institutionalism explains such reduction through a lock-in deriving from the direction of agent drift.

Taking the premise that coherent and consistent policy positions enhance an actor's capacity to act, it is here seen that states do exert more control during this period due to their convergence of positions towards voluntary repatriation, both along West/East and along North/South lines. At the same time the organisation shows signs of internal inconsistencies given the dilemmas and contradictions that were breeding from its previous evolution. Inconsistencies of the UNHCR lead to less autonomy. Inconsistent policies of the agent regarding its original mandate and clear preferences of the principals lead to less autonomy, hence more control on the part of the principals, and organisational options more tailored to the preferences of the principals in case these are divergent from the original mandate. Because the UNHCR had already embarked on an expansionist trend that implied a broadening of activities and scope as well as an operational orientation rather than a legal one, it was in effect unable to retain the focus on core activities and on its rule-supervisory functions. With its emphasis on an organisational structure based on regional and specific concerns, as well as a bottom-up approach to management, the UNHCR became much more focused on field operations. These were structured predominantly around needs-based rather than rights-based approaches, reflecting the trend that came from the 1970s of operational activities on the ground. Such large operations involving direct implementation also brought complex budgeting systems that had to be continuously funded and for which the organisation had to strive to retain its relevance. When eventually states consolidated their restrictive asylum approaches during the 1980s, the UNHCR went along the same lines, not calculating the full consequences of such a deep broadening of its operations, both in terms of the funding dependency and in terms of the authority to supervise principles and commitments of

refugee protection and allowing the refugee regime to become corrupt with policies that served the interests of states better than those of refugees.

This introduced dysfunctions in the activities of the organisation and a strong internal debate ensued in the beginning of the twenty-first century concerning the direction of the organisation. Although from 2000 again there was a convergence of some actors – though not all – towards the need to go back to core mandate, and the organisation itself has locked out of the expansionist trend (see chapter six), its path-dependent development is hardly reversible and a strong operational role on the ground as well as a quest for leadership in the humanitarian system are likely to continue. It remains to be seen whether the UNHCR will further bow to states' movements towards alternative forms of protection and to what extent it will be involved in the development of an alternative asylum system with novel concepts such as the “internal flight alternative”, already being used by a number of states. An important step towards reaffirming basic principles would be for the UNHCR to become “...more proactive in publicising cases where governments are unfairly infringing upon the right to asylum”.²⁶³ A cautionary step was only taken in the context of IDPs, where the perception of decreasing returns that would derive from a formalisation of expansion in the area became acute. Such decreasing returns were linked to the potential contradictions with core functions, enhanced by the constraints put by the convergence of states' preferences. They were also linked to the reactions from the rest of the humanitarian system to such expansion, as will be seen in chapter six.

In sum, three main lines of policy characterise the UNHCR's paradigm of action during this period: a focus on voluntary repatriation, an operational insistence on the link between relief and development; and the human security paradigm. However, a fundamental discontinuity is observed concerning the mandate, i.e., while in practical terms there is an increase of the populations of concern and all activities are consistent with an expansionist trend, the organisation shies away from a mandate in a crucial area: responsibility for the assistance and protection of internally displaced persons (IDPs). This issue will be the focus of the next chapter of this thesis. The goal will be to explain the cut in this trend of expansion, in particular in a context that would fit states' preferences for a focus on the country of origin and the organisation's expansionist ambitions.

²⁶³ Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).

Chapter 6. UNHCR policy on internal displacement

Having traced the determinants of the evolution of the UNHCR and assessed the value of the proposed explanations for the variation in organisational autonomy concerning the definition of its role and mandate, I will in this light explain two events related to the organisation's autonomy that constituted the core empirical puzzle of this research: why have states not imposed a mandate for IDPs on the UNHCR, and why has the organisation shied from such formalisation. The explanations proposed for the variation in autonomy and explored in the past chapters are applied to these two empirical questions: states have not been able to agree on what policy they expected the organisation to follow concerning its involvement with IDPs and the organisation took such leeway to autonomously develop internal criteria that would set autonomous parameters of involvement. A formal task expansion in this area was – also in line with previous findings and propositions – not desirable to the organisation due to the internal divergences and inconsistencies that the new role entailed vis-à-vis the original mandate. Such expansion would entail dysfunctions that would reduce the returns for the organisation by restricting the range of policy options, i.e. its autonomy for decision-making and its capacity to enforce substantive goals, by creating conflicts between the organisation's authority, independence and relevance. The UNHCR would have to become systematically involved in situations that potentially challenged its core functions. The previous pattern of involvement in complex emergencies produced dysfunctions that set prospective decreasing returns from a mandate for IDPs and the leadership of the organisation was able to lock it out of the path dependent process of increasing expansion for this issue-area, hence retaining autonomy both from states and from the expansionist historical trend that had marked it over the years.

With a past of continuing task expansion, the UNHCR came to a stage at the end of the 1990s where itself was contracting despite contradictory pressures from the environment and from the actors that had some sort of influence in the policy definition. Due to the complexity of the IDP problem and to internal and external factors, a definite expansion into the IDP area was not in the interest of the organisation. This chapter analyses UNHCR's response to IDPs and how over time this new issue area has been incorporated in its activities, but not in its mandate, thus enabling the organisation to retain at least formal autonomy for decisions on involvement in IDP situations. It also analyses how the organisation developed its own policy preferences and was largely able to enforce them. The result has been that when pressed to make decisions over its mandate, the

UNHCR produces symbolic position papers that are very strong in that they enable the organisation to make decisions over the definition of its own mandate, allowing it to keep its responsibilities dependent on its own judgement.

This chapter is designed to assess the effect of diverging and unclear state preferences vis-à-vis clear organisational preferences for decision-making flexibility, which together explain the autonomous capacity of the UNHCR. The chapter also analyses the process behind the contrasting state preferences and takes the process-tracing method to understand the nature of those preferences at state level. This derives from the observation of an apparent P-A problem where the UNHCR opposed explicitly stated preferences by its main donor, the United States.

As Cox and Jacobson (Cox and Jacobson, 1973) have shown, IGOs are important arenas where different actors interact and where the analyst can observe the main constraints at work in the international system. However, these authors conclude that IGOs are in the end only what their founders allow them to be. This chapter will show how the capacity or interest of states to constrain organisational decisions may be limited by the contradictions inherent to change in the international environment, thus increasing the organisation's leeway. Thus, the final conclusion will suggest that the way in which the organisation handles new international issue areas, such as IDPs, can boost its possibilities to incorporate and institutionalise forms of decision-making with a strong degree of autonomy. The autonomy was sought consciously by the organisation's skilful exploitation of the leeway that was not "given" by states, but that emerged as a result of lack of agreement among them for a number of reasons. Foremost among these reasons were the structurally differing preferences among states concerning certain aspects of foreign policy and the fact that the IDP issue-area is a new area of policy-making where previous policies and institutional structures of decision-making were not available at state level to define clear preferences.

The chapter will start by characterising the international environment that frames decisions in this area and then focus on the institutional context of international efforts for IDPs. It will then overview the policy process for this issue-area within the UNHCR including the internal and external constraints on decision-making, addressing in particular the debates that occurred around the year 2000 in different fora. Finally, it confronts the preferences of states and of the UNHCR on the issue and explain how the organisation's preferences prevailed despite apparently contrasting positions vis-à-vis important donors like the U.S.

6.1. The international context and IDPs

The last two decades of the twentieth century were marked by fast technological changes that enabled increasing mobility at the international level and the possibility of creating a global environment for economic and social interchanges. In political terms the end of the Cold War was an important stepping-stone that entailed significant changes in the international political structure, balance of forces and in the nature of international political events. In particular it enabled significant breaches in the previously sacrosanct concept of sovereignty and human rights emerged as a central aspect of concern. This also enabled a stronger discourse on the rights of internally displaced persons, placing them clearly in the international humanitarian agenda and raising awareness for their plight (Phuong, 2005). Such development was enabled by a stronger linkage and interconnection between human rights, humanitarian and refugee law, promoting better co-ordination mechanisms to address problems that by nature stand at the intersection of these three bodies of norms (Melander, 1997).

6.1.1. Post-Cold War environment

The importance of the post-Cold War international system for the development of a normative framework for IDPs has for long been underlined by observers (Davies, 1998). The end of the bipolar struggle has dropped many barriers of the main powers dominating the world concerning sovereignty and enabled the discourse on humanitarianism and human rights to become bolder and more assertive. Hence, efforts started being developed to find ways to address the needs of persons that were displaced inside their own country, which were not previously recognised as in need of international protection, since the protection of the citizens of a given country was held as the responsibility of that government.

This implied a rethinking of the whole humanitarian system, faced with significant changes in terms of the problems it had to deal with and also in terms of the loss of systemic framework of reference for decision-making: “[w]ithout the framework of the Cold War for making decisions about priorities in responding to and solving new and existing crises, what principles of humanitarian action will take its place?” (Refugee Policy Group, 1992: 3). In fact, the Cold War provided a steady framework for decision-making, and the international community has for over a decade been learning how to structure a new system based on other constraints. After the Cold War, governments increasingly focused on concerns about forced displacement and the victims of

forced displacement from what was perceived as a growing number of internal conflicts and that had a strong impact on the international community. The Secretary-General's Representative for IDPs pointed to a correlation between the increase of internally displaced persons and decrease of refugees since the end of the Cold War (Deng, 1998: 1).²⁶⁴ Such correlation was also noted by the UN Secretary-General. In an important speech at the 51st Session of ExCom the Secretary-General operationalised the main concerns about instrumental objectives of states in the IDP issue-area and the implications of such for organisational mandates. He also reminded states that mandates have to be matched with resources and political will. This is one of the main reasons why the UNHCR could not take up a mandate for IDPs. In his speech the Secretary-General was very critical of the lack of political will of states and the selectivity of funding, specifying that for emergencies in countries nearing the borders of donor countries there was disproportionately more funding than for those in other continents.²⁶⁵ The implications inherent to this observation are that the nature of the conflicts has changed, but it also suggests that there might have been a change in the responses given by the international community towards preventing the displacement inside the borders of the country of origin (Bennett, 1998a: 4), without the willingness to provide adequate funding and political involvement to solve the problems.

One of the new dilemmas that come up after the Cold War are whether the nation state is fading away and human rights considerations will take precedence and whether there is any contradiction between the two. This raises the question of a right to humanitarian intervention, which can be held at a theoretical and ethical-philosophical level, but which also raises more practical concerns: what is the institutional framework most appropriate to deal with such problems, and while this debate is going on, who is doing the job? This new set of problems is at the moment being addressed by the international community, which, after an initial period of strong optimism regarding the new possibilities of improvement of UN capacity for humanitarian operations (Jonah, 1991: 86; Refugee Policy Group, 1992), is now interpreting the experience of some years (Newland, 2003). New forms of co-operation between humanitarian and state actors are being developed and new international forms of intervention being devised, albeit with volatile results. Developments in the world in the late 1990s and early 2000's have significantly challenged the legitimacy of certain interventions in the name of humanitarianism and the increasing use of aid

²⁶⁴ For numbers and comparison between refugee and IDP populations by region, see (Schmeidl, 1998). For detailed information on the situation of refugees worldwide see also (Cohen and Deng, 1998b; Cohen and Deng, 1998a; Hampton, 1998; Global IDP Project, 2002).

²⁶⁵ Statement of the Secretary-General of the UN, Kofi Annan, to the Executive Committee of the UNHCR on 02/10/2000.

for political purposes, but at the same time the international community is more alert to those dangers.

By blurring the concept of sovereignty, the end of the Cold War has enabled the UNHCR to produce quite proactive and assertive discourses on certain rights that traditionally belonged more to the internal realm of enforcement of the nation-state than to the international one.²⁶⁶ The euphoria with the prospects of a better world in the early 1990s led to successive interventions and the creation of safe zones, with mixed results of success and failure. This led to subsequent more caution concerning the effects of involvement by humanitarian agencies in situations characterised by internal strife, where legality and abidance to humanitarian law and principles was scarce.

6.1.2. New nature of conflicts: internal dimension

The new conflicts that emerged after the Cold War were no longer framed by the superpower logic of balance of power, but were grounded on nationalistic motivations and ethnic rivalries. Conflicts were characterised by a much stronger impact on the civilian populations. This stronger impact was also translated into a rise in the numbers of people displaced inside their country of origin. Reacting to this, and in order to stay relevant, the UNHCR embarked proactively in the pursuit of the leadership of yet another area of humanitarian co-ordination where its expertise could bring an added value – in-country protection and assistance of IDPs. However, such role did not emerge as a result of the end of the Cold War, since the organisation was performing such functions since the early 1970s. It merely enabled a new discourse on humanitarianism and protection as well as increasing the possibility of involvement in situations of active conflict.²⁶⁷

This new nature of conflicts, much associated with events in decolonised countries that had never achieved stability, increased significantly the internal dimension of the problems and the sensitivity to sovereignty and the concomitant notion of self-determination from the rest of the world. Hence, the permanence of divisions in the UN among some states that upheld human rights' primacy and tendentially could conceive of a right to humanitarian intervention, and others that were and still are very weary of such initiatives.

²⁶⁶ Drawn from the analysis of the speeches of High Commissioner Ogata during the 1990s.

²⁶⁷ See (Keely, 2001) for a discussion on the impact of the end of the Cold War on the international refugee regime.

Jacobson's (1984) observation still holds that it is necessary to consider the existence of different groups of states within the UN system. The post-Cold War development of an international regime on IDPs as well as the concurrent impact of potentially conflicting norms of sovereignty and human rights has a different bearing on powerful, developed countries, and on weak, developing countries. Indeed, as Ness and Brechin point out, "...the "sovereignty" of the nation-states in the international system is a variable rather than a constant." (Ness and Brechin, 1988: 255). This explains the observation further on of substantially different positions taken by different groups of states at the UN when confronted with the development of international principles and mechanisms for the protection of internally displaced persons.

6.1.3. Sovereignty and human rights

In the new international environment there is a strong tension between the concept of sovereignty and that of human rights. Many observers consider that there is no contradiction between the two, and that human rights is part of the definition of sovereignty rather than in opposition to it (Fox, 1997; Bennett, 1998b; Neier, 2000). Others emphasise the tensions between the two (Whitman, 2000; Krasner, 1993). This debate is linked with the idea of sovereignty as responsibility, an idea widely promoted by the Special Representative of the Secretary-General on IDPs, Dr. Francis Deng (Deng, 2003), according to which the protection of human rights of its citizens is a sovereign responsibility of the national authorities and confers the state its legitimacy. Other observers emphasise more the dimension of the legitimacy of intervention in situations where the state is not able or does not want to fulfil those responsibilities, although there is much debate concerning the real motivations around humanitarian intervention (see for example, Wheeler, 2000).

In practical terms the rule of sovereignty remains effective both at the diplomatic level and at the operational level, making it dependent on the consent of the state of origin to allow access to displaced populations whose human rights are violated.²⁶⁸ Although intervention can be forced, it risks politicisation when humanitarian agencies are too closely involved with military forces (Van Mierop, 2000). On the other hand, access of these agencies to the displaced can otherwise be

²⁶⁸ Issues of principle concerning the need for consent of the state: India at the 51st ExCom meeting (2000). for example insisted forcefully that the primary duty to protect IDPs is with the state of origin.

provided only with the co-operation of the local authorities. Very often forced displacement is used as a conflict strategy in itself and local authorities are the least cooperative. In such context the question arises of to what extent is it possible to include the protection of human rights as an international responsibility, transferring it from the isolated realm of the nation-state to the international community, and what entities should or can enforce such protection.

6.2. Institutional options for an IDP responsibility

During the 1990s the debate over an international responsibility for IDPs came to the fore. Since it was such a sensitive issue, there were few expectations that an international agreement would emerge among states for attribution of an international responsibility for the protection of populations displaced within the confines of their countries of origin. However, at the level of the humanitarian system the first steps were made towards the set-up of a system of protection at the legal and at the material level. At the legal level through the setup of a legal framework combining refugee, humanitarian and human rights law. At the material level there were three options for institutional commitments: one was the attribution of a full responsibility in the shape of a formal mandate to the UNHCR that was the best qualified institution for the role; another was the creation of a new agency specifically for the issue; finally was the improvement of existing co-ordination mechanisms within the UN system and the development of what came to be known as the "collaborative approach".

The UNHCR was considered the most persuasive alternative, as it already had developed special expertise in working with the displaced (Cohen, 1998). Several observers would be strongly in favour of this option (see Weiss, 1999a; Hofman, 1995), although some conceded that on occasions protection had to be subsumed to the advantages of an effective leadership role in delivering assistance as an extension of its concern for refugees to IDPs and besieged populations (Weiss and Pasic, 1998: 180). One draft of *Renewing the United Nations*, the reform programme of 1997, had recommended that UNHCR be asked to assume DHA's functions, making it the permanent lead agency for all war victims (Weiss, 1999b: 120). Creating a new agency was an unrealistic option because there was neither the political will nor the resources and it would duplicate the work of the UNHCR (Cohen, 1998). The option of strengthening the collaborative arrangements among different institutions with mandates for humanitarian assistance was the one endorsed in the 1997 UN reform programme and has been developing considerably since then, including through the development of guidelines for involvement and co-ordination structures at

the UN level, and an IDP Division within OCHA at headquarters level, in charge of overseeing the progress of IDP protection aspects over the world. However, this has not been a simple and straightforward evolution.

6.2.1. The inter-institutional context – boundary decisions and turfs

For some time international organisations other than the UNHCR have also been protecting and assisting internally displaced persons, but approaches were characterised by organisational individualism and lack of inter-institutional co-operation.²⁶⁹ However, since the early 1990s the need for increased co-ordination of efforts became acute and the new post-Cold War international environment allowed for initiatives to enhance inter-institutional co-operation in this area due to an increase in funds and renewed commitments on the part of states and of the humanitarian system.

Thus, in 1991 was created the post of Emergency Relief Coordinator (or Under-Secretary-General for Humanitarian Affairs), who retains a direct link to the field through Resident Coordinators. Subsequently the Department of Humanitarian Affairs (DHA) was created with the responsibility of “determining which humanitarian emergencies require co-ordination by the United Nations, assigning responsibility to agencies in the field, coordinating a consolidated appeals process to mobilize contributions for emergency humanitarian response, allocating emergency funds and ensuring the inclusion of rehabilitation and reconstruction elements in emergency relief operations”.²⁷⁰ It was created in the context of GA resolution A/46/182 of 19 December 1991, on “Strengthening the co-ordination of humanitarian and emergency assistance of the UN”, which included a set of 42 guiding principles for humanitarian and emergency assistance. With the reform of 1997, DHA became OCHA (Office for the Co-ordination of Humanitarian Affairs).

The Inter-Agency Standing Committee (IASC) is another co-ordination structure, composed of the heads of the major UN relief and development agencies and is largely a vehicle for OCHA’s coordinating role in emergency situations. In 1992, this committee, chaired by the ERC, created an Inter-Agency Task Force on Internally Displaced Persons to improve communication and look

²⁶⁹ For example, UNDP, UNICEF, WFP, WHO, ICRC, and many other IGOs and NGOs have a concern for IDPs as part of their humanitarian work.

²⁷⁰ (Deng, 1995: §170-171).

into possible ways of increasing co-ordination and designating responsibility for internally displaced persons.²⁷¹ The ERC has in effect become the UN's focal point for co-ordination of activities with IDPs.²⁷² Despite all the attempts at increased co-ordination between the different agencies, it has so far proven difficult to develop an integrated framework, due to the institutional culture of these organisations, usually very resistant to being co-ordinated by sister agencies.²⁷³

One of the main problems with the collaborative approach is the notion that "protection as an activity does not lend itself to co-ordination as in the case of assistance".²⁷⁴ At stake in much of this seems to be the leadership that can be exercised and its particular importance in situations of internal displacement. While stating that confusion between protection and assistance functions may lead to disaster, as was the case in Rwanda, the UNHCR on the other hand upholds the impossibility of dissociating the two functions in most of its recent policy positions. Leadership of the humanitarian system provides an important status and leverage as a diplomatic actor for the organisation, as illustrated by the following account by a UNHCR officer: "As the lead humanitarian agency, UNHCR often found itself in the privileged position of having a place at the 'top table' in high level political negotiations, being seen as the bridge between the political/military actors and the humanitarian community. For example, UNPROFOR always ensured that UNHCR was informed about planned air-strikes before they actually took place, so that it could ensure the safety of humanitarian personnel." (Cutts, 1999: 7).

6.2.2. A new institutional and legal framework

Working closely with the UN system in these developments have been the NGOs, whose advocacy role since the co-ordination process started has been noted as quite important, particularly in contributing to the appointment in 1992 of the Representative of the Secretary-General on Internally Displaced Persons, Dr. Francis Deng (McNamara, 1995).²⁷⁵ His work is an

²⁷¹ (Deng, 1995: §176).

²⁷² For a recent overview on how the collaborative approach is currently structured, (see Inter-Agency Standing Committee, 2004).

²⁷³ The notion of the need to protect turfs and promote the image of an agency due to interagency competition for authority and the ways in which this impacted on co-ordination was already apparent in the 1980s (see Pitterman, 1985)

²⁷⁴ "Internally Displaced Persons: UNHCR's perspective", Paper prepared by UNHCR for the Symposium on Internally Displaced Persons, Chavannes-des-Bogis, 23-25 October 1995.

²⁷⁵ The important role of such organisations in the field has also been noted by the Special Representative himself (see Deng, 1995: §228).

important example of how an official can have ground-breaking impact in promoting a set of norms, with a strong influence in institutional change (Weiss, 1999a). He issued the Guiding Principles on Internal Displacement, approved by the GA in 1998, which have served as a strong basis for humanitarian organisations and for the development of an international normative basis.²⁷⁶

Since then, NGOs and interested governments have focused on building political and institutional commitment to addressing the needs of the internally displaced (Balian, 1995). In particular some NGOs that work closer with Francis Deng, contribute with significant work in the area of research and in substantiating his efforts, which is a vital element in the current initiatives to develop a regime for the protection and assistance to internally displaced persons and within the collaborative approach. NGOs have also been integrated in the work of the Inter-Agency Standing Committee, in particular with the creation in 2000 of a Senior Network on Internal Displacement, where the NGOs are very active and coordinating efforts and positions to feed into the system, and also participating and reporting on visits of assessment to country operations.

Definitions

In 1999 there was no generally accepted definition of an internally displaced person (Tuerk, 1999: 158). although currently most actors endorse the working definition proposed in § 2 of the Guiding Principles on Internal Displacement, of 1998: “... *persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”.²⁷⁷ The Oslo Declaration calls for a “flexible definition of internally displaced persons which should not be restricted by existing mandates of concerned UN agencies and/or NGOs, and should be based on practical and empirical analysis of the root causes of displacement”.²⁷⁸ While indeed the different humanitarian organisations have maintained a flexible approach in interpreting their mandates to respond to internal displacement,

²⁷⁶ *The Guiding Principles on Internal Displacement*. United Nations Commission on Human Rights. Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, UN Doc. E/CN.4/1998/53/Add. 2, February 11, 1998.

²⁷⁷ *Idem*

²⁷⁸ Recommendation 40, Oslo Declaration and Plan of Action, adopted at the Global NGO and UNHCR Partnership in Action Conference (Oslo, 6 to 9 June 1994)

there are significant gaps in the system-wide approach, such as co-ordination (in particular for assigning institutional responsibility); physical and human rights protection for IDPs; reintegration and development support (Cohen and Cuénod, 1996: 54; Inter-Agency Standing Committee, 2002).

The UNHCR's operational definition is what I would designate a definition by counter-factual, in the sense that it is based on the assumption that had the person managed to cross an international boundary, he/she would have received refugee status (see UNHCR, 1994a). Thus, the territorial and state-centric dimension of the refugee definition is underlined, as the distinction between refugees and IDPs is grounded on this circumstance: "[t]he definition offered by the UNHCR draws attention, incidentally, to the fact that an internally displaced person is often distinguished from a refugee within the meaning of the Geneva Convention and New York Protocol only by the fact that the former remains within his state of nationality." (Plender, 1996: 131).²⁷⁹ UNHCR's definition is distinct from the one in the Guiding Principles on Internal Displacement due to the fact that it doesn't apply to natural disasters.

Although the Guiding Principles on Internal Displacement are gaining increasing international recognition and are a significant contribution for the development of a legal framework for the protection of IDPs, they do not constitute a legally binding instrument since at present they are merely declaratory. Further, the problems raised by the possibility of protection activities within a country of origin make the work of humanitarian agencies very difficult and there is a lack of definition concerning the respective mandates of the different agencies. This means that the international community offers only an ad hoc basis of protection, despite increasing efforts at international co-ordination of activities with these populations, and operations aimed at protection are still selective and inadequate (Helle, 1998: 36).

Position of other actors

Insofar as UNHCR policy on IDPs also constitutes a boundary type of decision, defining jurisdictional limits of competence, the rest of the UN agencies, IGOs, and NGOs involved also have a vested interest in its policy definition and their positions, as well as the developments at the inter-institutional level, are liable to in turn influence decisions in the UNHCR. When the

²⁷⁹ For more on the discussion whether there should be a legal separation between the two categories or not, see (Geissler, 1999; Lee, 1996; Lee, 2002).

issue of UNHCR formalisation of responsibility for IDPs has escalated in the international agenda, other UN organisations have made clear to the UNHCR their displeasure at the idea. Whatever the real direct influence of the inter-institutional arrangements, they form a competitive environment that creates pressures on the UNHCR for efficient or responsive behaviour (Barnett and Finnemore, 1999). This is linked with the need for predictability in UNHCR's definition of its policy to IDPs, and the pressure that the rest of the system has put on the UNHCR to explain its actions, in particular when the reasons for its decisions are not so clear (Garling, 2000). Several calls have been made by external actors until recently for a clarification of UNHCR's involvement, namely its position within the collaborative approach and the need for more consistency in UNHCR's response. In 2002 there were clear calls at ExCom for clarification of UNHCR's position since the criteria it has been putting forward does not enable predictability concerning its involvement with IDPs (Cohen, 2002a).

However influential at the more global level, NGOs seem to bear little when it comes to UNHCR policy definition on IDPs. Partly this is because of their inconsistency of positions regarding UNHCR's role. Although there is a consensus that the UNHCR's primary responsibility should remain the protection of the rights of refugees across the borders and that only in exceptional circumstances should it be involved in in-country protection, there are divisions regarding the impact of such role on the organisation's general mandate: "Some believe that any decline in protection standards are primarily due to the politicization of protection and the lack of state support. Others feel that there are very powerful trends within UNHCR to maximize its budget and power through an assertion of its role way beyond its mandate." (Working Group on International Refugee Policy, 1999: 216).

There is a degree of inconsistency also in the positions of NGOs regarding what UNHCR's involvement on IDPs should be, with a general distinction between more operational NGOs which normally demand more involvement of the UNHCR. Those that have a more significant role in advocacy for refugee rights oppose such a role due to the possible contradiction with the institution of asylum. This debate reflects also the debate at all levels between those who support a more interventionist role (the "pragmatists") and those who believe such a role endangers the core mandate functions (the "conservatives").

6.2.3. Leadership: selective goal

This situation defines the debate around the IDP regime as one of contention between the different agencies regarding who is to lead the operations, which in some cases may be desirable while in others not (Cohen and Cuénod, 1996). Further, if we take Weiss's observation that "...co-ordination is the most used and least understood term in the UN lexicon. Everyone is for it, but no one wishes to be coordinated if it entails any loss of power or autonomy." (Weiss, 1999a: 370), it is easy to understand how constraining is the whole process at the inter-institutional level, in terms of defining organisational interests for becoming involved or not in specific IDP situations. This substantiates the observation that IGOs have clear and identifiable goals, fight over keeping or pushing away responsibilities (Ness and Brechin, 1988), and create new interests (March and Olsen, 1998). However, although they may have clear materialistic goals and interests, they do not always have clear policies, which has hampered efforts to define a UN system of co-ordination for involvement with IDPs (Phuong, 2002).

Several observers point to the problem of the difficulties of inter-agency co-ordination, which is associated with power and turf battles: "Every agency in the UN system is designed to deal with specific tasks. If their tasks were easily interchangeable, there would have been no rationale for the creation of the different organisations. Recognizing this, we are also faced with the problem that many agencies have overlapping responsibilities, which only intensifies the turf sensibilities of each agency. Thus, while inter-agency co-ordination is desperately needed, many obstacles impede its realization." (Gorman and Kibreab, 1997: 44). Within the collaborative approach, which is the option on which a minimum agreement has been achieved, there were also several options for structuring co-ordination, among them the lead agency model and the HC/RC model. UNHCR originally favoured the lead agency model. According to the former head of the IDP Unit at OCHA, with the intensification of the collaborative approach, the question became not of who would become involved, but who would lead specific operations.²⁸⁰ Despite many efforts at co-ordination and learning between agencies, the experience in Afghanistan in 2001 has shown the same old turf problems between OCHA and the UNHCR (ICVA, 2001b).

In a workshop organised by DIP and the EPAU departments of UNHCR in 2002, the absence of one single agency that could assume global responsibility for IDPs was recognised. Therefore the

²⁸⁰ Interview with Mr. Dennis McNamara (Geneva, 30/11/2000).

need for effective co-ordination among all the actors concerned, not only international organisations and NGOs but also the effective mobilisation of national institutions in the countries concerned, was emphasised as crucial. In the same line, at the ECOSOC meeting of 19-21 July 2002 the High Commissioner emphasised the fact that inter-agency collaboration and co-ordination are essential, expressing support for the collaborative approach and for IASC's efforts in that regard. This support can be seen as an attempt to divert full responsibility from the organisation while at the same time retaining the status as the leader organisation in terms of expertise and capabilities. In fact, the leading staff of the collaborative efforts has been either seconded by the UNHCR or is drawn from former UNHCR officials, such as Dennis McNamara, who became Special Coordinator on Internal Displacement in 2000, and in 2004 became the Director of the Inter-Agency Internal Displacement Division within OCHA (successor to the IDP Unit created under his recommendation in 2000).

6.3. Characterisation of the UNHCR policy

As seen in chapter four, UNHCR's involvement with IDPs started some decades ago, long before the end of the Cold War, with the involvement in the operations in Sudan (1971) and Cyprus (1972). However, at that time these were exceptional situations, totally outside the normal framework of action of the UNHCR and there was no specific policy on the issue of involvement of the organisation with IDPs.²⁸¹

As time went by the situations of involvement with IDPs escalated, as did an increasingly restrictivist trend in terms of states' asylum policies, and most countries started by then to actively support repatriation operations, as seen in chapter five. With such repatriation movements and an emphasis on country of origin operations, the link between UNHCR operations and activities with IDPs also intensified and the organisation was increasingly drawn into involvement with this category of concern. After the end of the Cold War the issue became very politicised and rose to the top of the international humanitarian agenda due to two main aspects. Firstly, the new international environment opened the possibility for an attack on the concept of sovereignty that shielded human rights violations, in particular as far as humanitarian issues were concerned.

²⁸¹ Some of these operations were: Bangladesh 1971; South Sudan 1972; Mozambique and Cyprus; Angola, Vietnam and Laos 1975; Horn of Africa, Ethiopia and Uganda 1979; Zimbabwe 1980; Chad 1981; Lebanon 1982 (Kourula, 1997: 185).

Secondly, a series of crises in the beginning of the 1990s led to controversial involvements where all the contradictions regarding world politics conceptions arose, as well as contradictions of the UNHCR's mandate and role in terms of expansion of activities with new groups.

The main implication of these developments for the activity of the UNHCR was that from the 1990s on there was a discussion around its involvement with IDPs, not only in terms of emergency assistance and relief but also in terms of international protection. A closer reflection on the problems of internally displaced persons was prompted by the war in former Yugoslavia (Plender, 1996: 124), which produced not only many refugees fleeing to Western European countries, but also many internally displaced persons see (see Van Hövell, 1996). Still in 1994 there was considerable enthusiasm for the idea of significant reform to adjust the role of the UNHCR to a predictable involvement with IDPs (see UNHCR, 1995a), but such clarity concerning policy direction never emerged (Cohen, 2002a). This brought stronger problems and dilemmas, in particular concerning the nature of involvement as characterised by more assistance activities or including a strong protection component, in an environment where protection activities are difficult to implement due to the impediments of sovereignty, since they constitute human rights enforcement. In practice an ambivalent situation emerged where the UNHCR claimed to be responsible for IDPs but in actual numbers a gap was observed between the numbers of persons listed as of concern and the global IDP numbers, thus reflecting the organisation's selective interest in this group.

UNHCR has over the years exhibited varying levels of commitment to IDPs in different situations; in most, but not all cases there was a link with refugee/returnee programmes (Jamal, 2000). In many occasions where there is a strong operational link between IDP and refugee/returnee needs, a specific authorisation from the GA or request of the Secretary-General does not exist and in a considerable number of cases there is no clear notion within the organisation of how IDPs were incorporated in a specific programme. In a limited number of cases there was no link with existing groups of concern but activities in those situations were generally restricted to assistance and not protection.²⁸²

²⁸² This information results partly from data provided in (UNHCR, 1994a) and systematised for this research, as well as subsequent work done in 2002 with the purpose of collecting data for updating the 1994 publication.

6.3.1. Internally displaced persons and persons at risk: a functional or dysfunctional expansion?

In some cases assistance to IDPs took place by request from the General Assembly, as when the UNHCR was asked to co-ordinate humanitarian assistance to internally displaced persons resulting from the conflict in Cyprus.²⁸³ In other cases this was prompted by the fact that assistance to returnees was associated with assistance to IDPs, in particular in Africa, and for that reason the special operations mechanism was developed.²⁸⁴

The main rationale for involvement of the organisation is the link between refugee/returnees and IDP needs.²⁸⁵ Thus, assistance to IDPs was justified on the basis that such action could contribute to the prevention or solution of refugee problems (UNY, 1993: 1073), and still today this argument holds as the rationale for UNHCR's involvement in the protection of this group, in particular when the causes of displacement are the same or when the promotion of durable solutions precludes the establishment of distinctions between the refugees and IDPs.²⁸⁶ However, it should be noted that for a number of operations where there is no link with refugees or other categories clearly within the mandate, UNHCR's involvement with IDPs has been limited to provision of humanitarian assistance.

In certain specific situations the UNHCR has refused to become involved. One of these situations is when an involvement with IDPs in the country of origin may wrongly give the impression to refugees that UNHCR will provide them protection and assistance as IDPs if they return. This may result in an unfounded perception that conditions in the country of origin are suitable for return not only among refugees but in particular with governments of asylum countries (e.g. Burundi). Another situation is when activities within a country of origin may compromise asylum in neighbouring countries (such was the case in Afghanistan pre-September 11). Some observers are of the opinion that when there is a functional link between the returnee/refugee assistance and

²⁸³ Security Council Resolution 362 of 13 December 1974.

²⁸⁴ UNHCR has been assisting countries of origin since the Algerian War of Independence in 1964 but on an informal basis (Shacknove, 1993: 528, footnote 31)

²⁸⁵ General Assembly resolution 48/116, of 20 December 1993 legitimises thus the link between IDPs and refugees: "Reaffirms its support for the High Commissioner's efforts, [...], to provide humanitarian assistance and protection to persons displaced within their own country in specific situations calling for the particular expertise of the Office, especially where such efforts could contribute to the prevention or solution of the refugee problems...".

²⁸⁶ "In many situations, effective reintegration of returnees requires assistance to be extended also to the internally displaced in the same locality or community." UNHCR, "Internally Displaced Persons: The Role of the UNHCR", 6 March, 2000.

IDP needs the UNHCR has no real option but to become involved with these populations as well.²⁸⁷

Going even further: persons at risk of displacement

In 1992 the UNHCR began to provide assistance not only to refugees, returnees and displaced persons, but also, in the case of the former Yugoslavia, to people under direct threat of expulsion or persecution in the form of "ethnic cleansing" (UNY, 1993: 1077). In this sense, UNHCR's protection and assistance roles have been extended to local residents, war-affected civilians and besieged populations, especially in circumstances where it was neither feasible nor reasonable to treat them differently from other categories of concern to UNHCR (Tuerk, 1999: 159). Again the functional link was argued as justification for involvement. The cross-mandate approach is a good instance of this move towards institutionalising approaches that solved the functional problem of the interconnectedness of the needs of the different populations in complex emergencies (on this see UNHCR, 1995b).

The concept of persons at risk raises a whole set of questions. In the first place, the designation is "*persons threatened with displacement or otherwise at risk*", which implies that the element of displacement may not even be in question, and introduces the traditional humanitarian concern over the security of people from an attack in general, whether this will entail their displacement or not. This brings to the issue a new perspective about the measures to be taken in order to ensure this kind of protection, and is connected with the creation of safe zones in the country, which are supposed to be protected by the international community. These are typically human rights activities and were for a limited period argued as within the competencies of the UNHCR based on a holistic notion of "human security", in which the former High Commissioner Ogata was also actively engaged. However, these categories represented such dysfunctionality and decreasing returns for the organisation, accompanied by significant criticisms, that the organisation stopped claiming to have a role with such populations.

UNHCR's involvement regarding persons threatened with displacement or otherwise at risk has been primarily of a humanitarian or preventive nature and has largely meant exercising a good offices function or a special humanitarian co-ordination responsibility to channel international

²⁸⁷ Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).

assistance to provide protection. In the words of Barutciski, "These new UNHCR activities have made it possible for the organisation to address internal situations in States where there is potential for displacement and thereby modify the international refugee regime. UNHCR's new concern with interventionism is best exemplified by the concept of "preventive protection" [...] that was made a policy objective soon after High Commissioner Ogata took office in 1991." (1996: 55-56). This concept has been criticised since it may be used for compromising the right to seek asylum (Frelick, 1992: 453), and this caution lies behind subsequent caution on the part of the organisation in accepting the formalisation of a mandate for IDPs.

6.3.2. UNHCR's "interest" in IDPs: a mandate or a policy?

As suggested in chapter two, the process by which successive expansion of activities has been endorsed by UNHCR's principals has been through the incorporation of situational approval of new activities in omnibus resolutions that address the general work of the organisation over the year.²⁸⁸ To what extent this constitutes a redefinition of the mandate of the organisation has been subject of discussion among academics, but the fact is that the UNHCR has pretty much decided on its own whether or not it did have a mandate for IDPs: while initially documents did not question that it was a legitimate activity and part of its competences, subsequent documents have been careful to underline that the organisation does not have such a mandate, although it does have a legitimate concern. Given that several UN General Assembly Resolutions and Executive Committee Conclusions have established a legal foundation for UNHCR involvement in IDP situations, it can be concluded that the organisation has taken in its own hands the interpretation of the mandatory or recommendatory value of such resolutions. What is interesting to note here is the use of "framing" as a tool to retain autonomy, i.e., when initially there was enthusiasm for a mandate for IDPs, the legitimacy of the resolutions amounted, in the organisation's discourse to a mandate. When, due to processes that will be analysed in this chapter, it was concluded that a mandate was not beneficial for the organisation's goals, the discourse turned from "mandate" to an "interest". Hence, the former Director of International Protection's emphasised the non-mandatory character of UNHCR's role with IDPs: "UNHCR's involvement with the IDPs is circumscribed by a combination of policy, legal and operational considerations, which has served

²⁸⁸ The main GA resolutions that address the mandate of the UNHCR in this issue-area are UNGA A/Res/2956, of 12 December 1972; A/Res/48/116, of 20 December 1993; A/Res/49/169, of 25 February 1995. They are all omnibus resolutions, approving the activities on the annual report of the High Commissioner.

as benchmarks for its role in this area.” (McNamara, 1998b: 56).²⁸⁹ From here follows that in some situations the UNHCR will become involved with IDPs and in others not and that the assessment is independent of the legal rights of the populations at stake. It is rather a political and operational decision that bears in mind resources, relevance and link to original mandate.

6.3.3. The decision-making process within the UNHCR

As was seen above, the IDP issue-area is not part of the UNHCR’s mandate, and involvement in new situations is subject to policy deliberation. A specific decision therefore depends more on the overall policy trend and operational context than on issues of principle or of need per se. Since decision-making in this area is not simple and straightforward, it is worth it to step into the black box of decision-making and analyse the different constraints at work. IDP policy is divided into the policy itself that sets the parameters of action, and the specific decision-making instances that combined contribute to forming the policy. Figure 8 presents a model of UNHCR decision-making on IDPs, which is divided into policy decisions/outputs and case decisions. Policy/long-term decisions are decision-making instances which, together, frame specific decisions on IDPs and provide guidelines for involvement of the organisation in case-by-case decisions. My focus in this research is only on the general or long-term policy decisions that define the broad scope of the policy, and case-by-case decisions will only be useful inasmuch as they provide learning tools for the organisation.²⁹⁰

The latter may be triggered by situations of emergency, at the request of appropriate organs of the UN, or in situations where a government requests assistance. Decisions on involvement have different ways of starting, depending on whether it is an important and sudden crisis or whether it is a start of an operation linked with refugees. In the first case (the top-down approach), negotiations will start immediately at a more political level between the High Commissioner and interested stakeholders, like governments of the concerned states and representatives of donor states, other agencies, etc. In those cases, a team will gather to make contingency planning and

²⁸⁹ Such is also exemplified by instances of refusal, such as “...when despite requests, UNHCR has declined to assume a leading role in assisting IDPs, as occurred in Cambodia and Venezuela. It must also be noted that UNHCR has no role where internal displacement results from natural disasters.” (McNamara, 1998b: 55).

²⁹⁰ Some attention is here given to criteria for involvement in specific situations but only as examples of case situations. Disengagement from existing operations is also an interesting element of decision-making but not addressed systematically in this research since it belongs also to the case-by-case decisions. In fact, there is no clear policy on disengagement nor on when displacement ends, and much of the criteria is taken by analogy to the refugee context (Bettocchi and Freitas, 2003).

provide the High Commissioner with inputs regarding what are the operational constraints and the protection concerns.²⁹¹ The nature and extent of the involvement will also be dependent on specific conditions on the ground, namely in terms of needs and of funds available.²⁹² Other ways of starting involvement with IDPs may be bottom up: the field office may realise that a specific situation needs to be addressed and ask media or NGOs to make it known or it may try to get donor governments themselves to become interested and raise the issue.²⁹³

The issue of IDPs more broadly might come up in an ExCom discussion, with a group of states saying that IDPs in a certain country are not being looked after and that UNHCR should be looking at that, which was what Mr. Holbrooke tried to do in Angola in 1999/2000, saying the UNHCR should take the lead, because it was a complicated situation. It may also be because the Secretary-General asks the UNHCR, as he did in Bosnia, for example, to take the lead. It might happen because the host state has asked, like they did in Ecuador in the early 1990s and Cambodia, where UNHCR refused involvement with IDPs (Stedman and Tanner, 2003: 174). It can come from different ways, but there is no question that donors have a very strong influence, in particular when there are powerful interests.²⁹⁴

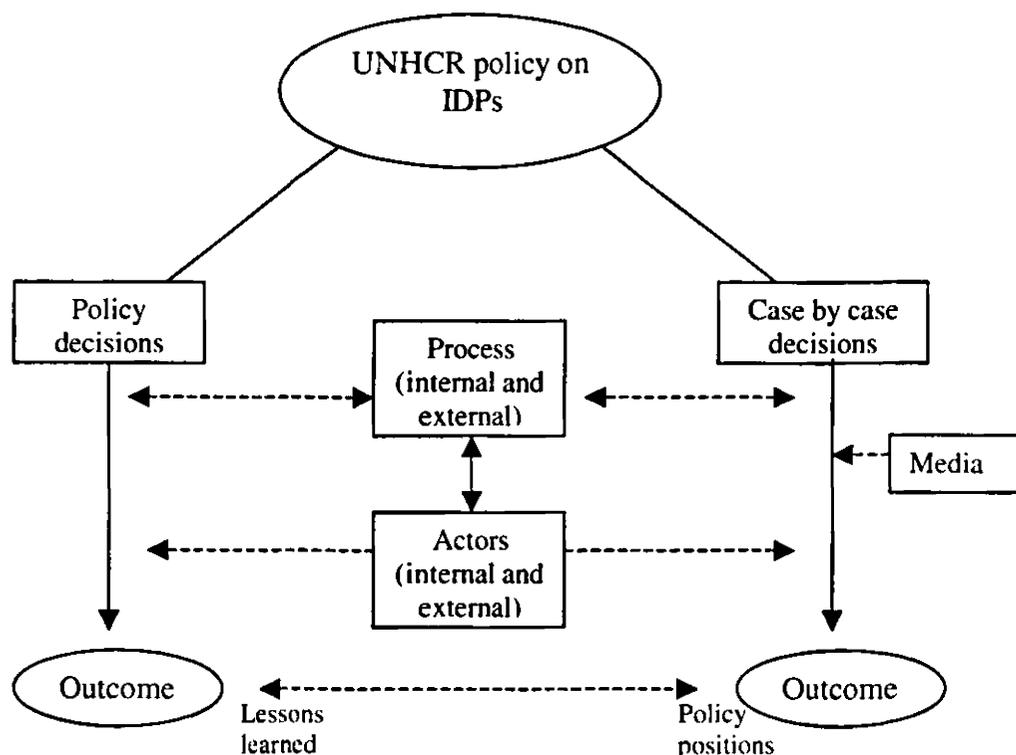
²⁹¹ Involvement of the UNHCR in a new situation is first informed by a policy recommendation that is made after a meeting of different Divisions at headquarters level and based on information from the field. A second step is to allocate resources with the relevant budget sections, after which the implementation phase takes place. See IOM/FOM 111/99 of 12 December 1999 "Procedures for approval by the High Commissioner of UNHCR operational involvement in a new situation."

²⁹² For more on the debate between needs-driven or funds-driven humanitarian operations, see (Darcy and Hofmann, 2003)

²⁹³ Interview with UNHCR Officer, Mr. Arafat Jamal, (Geneva, 25/10/2000).

²⁹⁴ Interview with Mr. Dennis McNamara (Geneva, 30/11/2000).

Figure 8 – Patterns of influence on UNHCR IDP policy



Note: The dashed arrows are the patterns of influence that this research intends to analyse.

Both types of decisions are affected by elements of process and by actors. Process includes factors or constraints that are considered by the decision-maker, while actors may exert direct or indirect influence, in which case they function as a constraint in the line of process. Both process and actors have internal and external dimensions to the organisation or to IDP policy itself, i.e., those constraints that derive from within the work of the UNHCR and those that are external to it and belong to the international environment, as well as the actors that have a direct influence in decision-making and those that have only an indirect influence. The explanatory focus in this section of the research will only be on the interplay between the internal actors, i.e., between the states (principals) and the UNHCR staff (agent) and on the “policy decisions” side of the scheme, since “case-by-case” decision-making have distinct dynamics of influence, that would be worth another dissertation. However, it also involves a descriptive focus that will be both on internal and external constraints in the IDP issue-area and on external actors that have an influence in decisions, such as other actors in the humanitarian system (UN organs and agencies, NGOs). Such

is required for understanding all the constraints at stake in UNHCR's position concerning the mandate.

6.4. Formalisation of the mandate?

Given the observation of restrictive asylum policies and apparently clear purposes of containment of refugee movements as preferences of an increasing number of states, as well as the development of alternative forms of protection that include internal protection as an alternative to asylum, it would be expected that states imposed a mandate for IDPs on the UNHCR. There have been several external pressures for UNHCR to take responsibility for IDPs over the years, which will be addressed further on. In this section I will address in more detail the pressures that occurred during the year 2000, when IDPs were subject of heated debate within the organisation.

This section explores the mechanisms of oversight and guidance used by states on the organisation and how they have been unintentionally providing leeway for UNHCR decision-making in the IDP issue-area. It assesses state preference co-ordination at a multilateral level, or its absence and also touches on the issue of internal preference formation at the state level for bilateral outputs. Finally it observes an example of an apparent P-A problem, to conclude that the extent to which it was really a P-A problem can be questioned if we step into the black box of state decision-making.

6.4.1. Agenda-setting

Diplomatic level events also constitute states' contributions to pressure UNHCR policy on IDPs. The most significant example of the autonomous role of the bureaucrat acting on its own initiative, was the case of former U.S. Ambassador Holbrooke's visit to Angola in January 2000 after which he publicly urged the international community to be more assertive with IDPs worldwide and requested the UNHCR to assume the full mandate for IDPs. In several other public occasions this sort of pressure was reiterated, pressing the UNHCR to be the agency responsible for IDPs.²⁹⁵

²⁹⁵ For examples, see the statement made by Ambassador Holbrooke to the Security Council on January, 13 2000, and the one to the ECOSOC on July 20, 2000. Also articles in newspapers such as "A Borderline Difference" in The Washington Post, May, 8, 2000.

This move raised again the issue of IDPs to the top of the humanitarian agenda, in particular within the UNHCR, where intensive debate was generated. Mr. Holbrooke's "crusade" for UNHCR's role with IDPs had started in East-Timor where he was very critical to UNHCR's activities there. He then went to Angola, where the IDP situation was appalling and unacceptable by any standards, and he still found that the UNHCR was the best agency to deal with the problem. He started promoting, or advocating the idea that UNHCR should have responsibility for IDPs. Some UNHCR staff note the presence of "certain political expediencies" that may have been behind the call for UNHCR responsibility.²⁹⁶ In fact, UNHCR operated in a highly competitive world with sister agencies and NGOs, and although they work as partners, a significant part of the funding goes directly to NGOs through bilateral funding mechanisms that are diverted from the multilateral organisations like the UNHCR, that then lose co-ordination capacity. Mr. Holbrooke knew that this is a very competitive world and if something wasn't done, IDPs would fall between the crack.²⁹⁷ All this implies that Mr. Holbrooke wanted to boost UNHCR resources and funding possibilities for IDPs, perhaps through increased funding specifically to IDP issues.

6.4.2. Debates I – ECOSOC Humanitarian Segment 2000

UNHCR decisions regarding the policy towards IDPs do not happen in an external political vacuum. Since efforts for IDPs are undertaken by many and diverse actors at the international level, and given that states take positions on several related issues, I will separate the positions at a general level of the GA and in particular ECOSOC, and those taken within the more narrow context of ExCom.²⁹⁸

The debate triggered by Ambassador Holbrooke resulted in the first strong reactions to the institutionalisation of an international responsibility for IDPs, with some states, reacting forcefully against. Indeed, this debate brought to light the resistant forces of sovereignty through the debates in ECOSOC's humanitarian segment of July 2000. ECOSOC's humanitarian segment is supposed to have a fundamental role in the co-ordination and policy guidance in humanitarian

²⁹⁶ Interview with UNHCR Officer, Mr. Jacobo El-Hillo. (Geneva, 07/12/2000).

²⁹⁷ Interview with UNHCR Officer, Mr. Jacobo El-Hillo. (Geneva, 07/12/2000).

²⁹⁸ Information for this section was drawn from informal internal UNHCR reports and discussions with staff.

affairs and the 2000 meeting was particularly important because it was devoted to strengthening the co-ordination of humanitarian response.

However, these discussions showed the critical reactions to the normative acquis for IDPs developed by the SRSG on IDPs, Francis Deng, as well as the incapacity of the international community to even agree on conclusions regarding the work of the UNHCR with IDPs. Such debate shows the cleavages between G-77 countries and developed countries, mainly over a matter of principle and as far as protection is concerned, since many of the countries in question actually welcome the international assistance. The problem is more acute when the issue is protection and those states are firmly determined not to have external intervention to protect their own citizens from their governments, perhaps motivated by other recent examples in the international scene, that were well covered by the media.²⁹⁹ Reservations concerning the international legal framework for IDPs, namely the Guiding Principles issued by Francis Deng in 1998 were started by Mexico, reputedly a “sovereignty sensitive” country (Bagshaw, 1998), contending that the reference to the Guiding Principles in the Commission’s resolution was standard-setting-by-the-back-door.

These “sovereignty-sensitive” countries and have systematically obstructed the development of a regime to address the issue of internal displacement through in some cases the presentation of reservations regarding the Guiding Principles on Internal Displacement, issued by the Representative of the Secretary-General on IDPs, Mr. Francis Deng.³⁰⁰ In the meeting of ECOSOC’s Humanitarian Segment in July 2000, Lybia and Egypt raised strong reservations concerning the legal status of the Guiding Principles, arguing that they had not been formally approved by the GA and therefore should not be used or distributed as guidelines to the field, since this was a sovereign matter of the responsibility of the authorities of the country. These countries, including Sudan – a country that blatantly allows the violation of the human rights of its citizens - emphasised the lack of an agreed upon definition of IDPs and lack of international legitimacy of the Guiding Principles. They were joined in these reservations by the Russian Federation, which implied that the development of that sort of guidelines could lead to growing mistrust and to difficulties of co-operation in this field. The same delegation did not have the

²⁹⁹ A study focusing on the determinants of emergency assistance has concluded that media attention is less important than security concerns of the donor country for the region and the strength of humanitarian organisations in the country (Olsen and others, 2003).

³⁰⁰ Interview with UNHCR Officer, Ms. Pirkko Kourula (Geneva, 22/11/2000).

same reservations when it came to supporting the assistance that the international community – namely the UNHCR – was providing to IDPs, which shows the particularly sensitive nature of the protection function compared to assistance activities. The developed countries, namely the EU and associated states, Australia, Canada, Japan and the U.S. all expressed strong support for the Guiding Principles. In the discussions for the conclusions to be issued at the end of the Humanitarian Segment's meeting the EU tried to include the language from the guidelines on humanitarian and emergency assistance present in GA resolution A/46/182 of 19 December 1991, but this was rejected by the G77 since it was claimed that they did not refer to IDPs.

The overriding concern behind the position of the G-77 is that they do not want to provide UN organizations, in particular the Security Council or certain of its Member States, with any pretext for humanitarian intervention without the concurrence of the affected State. The EU, generally supported by Canada, the United States, Japan, Australia and New Zealand, came to the table with a different set of concerns and assumptions. Their primary thrust was the need for humanitarian action to assist IDPs, including protection of their fundamental human rights. The colonial cleavages were reflected throughout these discussions and highlighted the sensitivity of some countries to the maintenance of national sovereignty and territorial integrity. However, the cleavages were not only along these lines, since they also emerged in the debate concerning the three options for responsibility on IDPs: lead agency, new agency or collaborative approach. The United States, through Ambassador Holbrooke, expressed its strong preference for the lead agency concept, arguing that the collaborative approach entailed lack of effective leadership and did not necessarily ensure co-ordination. Countries like Japan were of the view that such responsibility should be assessed on a case-by-case basis and that the agency with most experience should be in charge. France, representing the EU considered that the collaborative approach should be pursued and reinforced.

This meeting became notorious due to the widespread disagreement concerning also the attribution of a responsibility for IDPs, with virtually the only point of agreement being that their protection was the primary responsibility of the national authorities. This was emphasised in particular by the G77, who stressed the need of request and/or authorisation of the government of the affected country for any assistance activities. The representatives of the EU and Australia did not see this in the same light, arguing that in situations where national governments did not have the capacity to provide sufficient assistance, it was the responsibility of the international community to find ways to help. Such situations were mentioned in the Secretary-General's report

and contested by India.³⁰¹ The meeting ended after many hours of negotiation that reached sometimes almost undiplomatic tones, and no consensus on the conclusions was possible. It was adjourned without conclusions.

A structural source of divergences when defining UNHCR's mandate and role in this area is the issue of sovereignty and intervention/human rights: "While the United States, its European allies and the Secretary-General argued that human rights should take precedence over sovereignty, a host of countries including China, India, Malaysia, Iraq, North Korea and Libya insisted that sovereignty remains paramount and that human rights are an internal affair.(...) Iraqi and Libyan officials dismissed humanitarian-based intervention as a new form of colonialism."³⁰² This is recognised by the staff itself as an impediment when reflecting on their activities with IDPs, given that states place sovereignty concerns very high in the definition of policies.³⁰³

6.4.3. Debates II - The Executive Committee

The issue of IDP policy is strongly related to the expansion of UNHCR's role and whether it should be involved in activities that are not part of its core mandate. As seen in chapter five, some countries, namely Switzerland and Germany put strong pressure on UNHCR to go back to original mandate. Other states called for more focus on core functions and prioritisation of activities at times when funding is decreasing.

The IDP issue is rarely raised in ExCom because officially the UNHCR does not have a mandate, which prevents much debate happening on the issue. Sometimes they are raised either by governments or NGOs, but mainly they are not really addressed.³⁰⁴ This provides leeway for the organisation to define its policy direction and then submit it for mere approval, for example, ExCom endorsement of activity with IDPs.³⁰⁵

³⁰¹ Some countries, like India don't even recognise the designation IDPs, they insist on the designation "persons of concern". Interview with representative of government of Pakistan (Geneva, 20/11/2000).

³⁰² Erwan Jourand, "Human Rights vs. Sovereignty? Contentious U.N. debate ends", in The Deseret News, October 3, 1999, reporting on the annual GA meetings of 1999.

³⁰³ Interview with UNHCR Officer, Mr. Guillermo Bettocchi (Geneva, 27/09/2000).

³⁰⁴ Interview with co-ordinator of ICVA, Ed Schenkenberg (Geneva, 30/11/2000).

³⁰⁵ ExCom Conclusion N. 75 of 1994, Internally Displaced Persons and ExCom Conclusion N. 87 of 1999, General Conclusion on International Protection

Developed countries are highly unlikely to have IDP problems, therefore it is not expected that another state would argue IDP problems as an excuse to intervene in a developed country. With developing countries, the situation is not the same and governments often hesitate to recognise that they are unable to provide protection to their own citizens in need, although many would gladly receive international assistance for them. In particular authoritative governments are highly unwilling to recognise that kind of problems, and will not easily authorise international intervention (for example, Sudan).

Developed countries are in general favourable to the development of a regime on IDPs, despite the fact that it may constitute an erosion of the norm of sovereignty. Those states perceive it as in their interest to develop mechanisms that will allow them or some institution to intervene in countries whose weak sovereignty may produce masses of refugees that will land on the shores of other countries, thus "threatening peace and international security". The cases of Bosnia and Kosovo have shown how important these problems can become.

Yet, even if for different reasons, most states have so far been very cautious in the area of IDPs: what has been observed until recently is the scarcity of government-defined positions regarding international responsibility for protection and assistance of IDPs, and above all the inexistence of clear coalitions among countries to defend a specific policy line, as opinions regarding the best solution are not consensual, and the tension between the norm of sovereignty and the right to intervention is still prevailing.³⁰⁶

Although the issue has lowered in profile in recent meetings of the Executive Committee and of the Standing Committee, except if intimately related to a discussion about other categories, some representatives venture to state their own positions on the issue even if they don't have specific instructions. This is due to the fact that many state representatives receive instructions from different ministries, which in some cases have not yet fine-tuned their positions (when they have them at all), which leaves them without an official position. It is the case in the European Union (Rudge, 2002), Japan³⁰⁷, and the U.S. (McElhinny, 2000; Natsios, 1995: 13; Kunder, 1999; US General Accounting Office, 2001). The representative of Switzerland, for example was very

³⁰⁶ An example of this has been the difficulty of certain "sovereignty-sensitive" countries to accept the Guiding Principles on Internal Displacement by the UN Secretary-General's Representative for IDPs. Francis Deng (see above the ECOSOC discussions in the Humanitarian Segment, July 2000).

³⁰⁷ Interview with the representative of the government of Japan (Geneva, 05/12/2000).

active in insisting that UNHCR stayed out of the IDP issue-area during informal donors' meetings. However, when interviewed conceded that they did not yet have a policy on the issue and argued that there were different ministries involved in the issue-area and these had not yet coordinated positions into specific instructions.³⁰⁸

The result has been that within the UNHCR the patterns of state alignment regarding what kind of involvement the organisation should have with IDPs have become dependent on the moral or practical considerations that the state representatives can derive from the issue, combined with few policy guidelines.

In fact, the different countries push for different policies within ExCom and the organisation has to handle all demands as coherently as possible. They also have different behaviour depending on whether they are having bilateral discussions with the organisation or whether they are in a group.³⁰⁹

In addition, as some of the UNHCR/Secretariat representatives who have been in Geneva pointed out, the process in New York is much more contentious than in Geneva where humanitarian rather than political aspects of debates are dominant. This left staff wondering whether the missions in New York and Geneva communicate with each other on some of these issues, or, if there is some way to encourage such communication if it is not happening. It also suggests that in the long run, contentious humanitarian issues might be more fruitfully addressed in the Geneva sessions of ECOSOC rather than those in New York. The UNHCR thus has ground for trying to explore the divergences and bringing discussions to where it has more space to mediate and find points of consensus. It should be noted that although it exploits situations of divergence, it seeks to obtain consensus albeit driven to its own preferences. Its mediator function is helpful in that sense.

This has given considerable leeway to the UNHCR for defining criteria and making decisions, while making it more vulnerable to specific case-by-case preferences. This politicisation derives from the absence of a mandate in the words of the representative of the government of Pakistan.³¹⁰

³⁰⁸ Interview with representative of the government of Switzerland (Geneva, 15/12/2000).

³⁰⁹ Interview with UNHCR Officer, Mr. Mustapha Djemali, (Geneva, 24/11/2000).

³¹⁰ Interview with representative of government of Pakistan (Geneva, 20/11/2000).

6.4.4. Global consultations and the core mandate debate

The Global Consultations were proposed by the UNHCR itself in a meeting of the Standing Committee in July 2000. The stated purpose of the initiative was to clarify the scope and content of international refugee protection.³¹¹ Implicit was a call for the recommitment of states to the principles stated in the 1951 Convention and the 1967 Protocol. The Global Consultations initiative emerged out of the concern of the UNHCR for a worrying tendency of states and even outside observers (Guest, 1991: 587; Dacyl, 1995) to consider the 1951 Convention framework as inadequate to current refugee challenges, and regarding calls that were emerging for an alternative protection regime to replace the Convention.³¹² This is partly evidenced by the concern of the Division of International Protection in sending instructions to field offices advising on arguments to counter this tendency.³¹³ There was a two-way expectation for the Global Consultations: the staff expected states to express their positions on the direction that the organisation should take, given their neglect for commitments to asylum and also funding shortages in the organisation's budget. States expected the organisation to clarify its role, given the contradictory pressures from many directions to broaden and to go back to core. The Global Consultations were mainly an instrument for achieving increasing convergence, among all actors involved but states in particular, concerning the interpretation of the existing refugee regime and the different concepts it enshrines.

The debate on core or broadened mandate and role

One of the issues that dominated the preparations for the Global Consultations was some states' pressure for the UNHCR to go back to its core functions. Faced with this one is left wondering how come they ask the organisation to supervise them more, if they are detracting from their commitments to international refugee protection? In interview, Roberta Cohen expressed some bewilderment at the contradiction in states' positions: "it is curious because on the one hand these are the states that are inhospitable to refugees and on the other hand they tell [UNHCR] to pay

³¹¹ "Revitalizing the Refugee Protection Regime: The Road Ahead as the 1951 Convention turns 50". Statement by Ms. Erika Feller, Director, Department of International Protection, to the 51st Session of ExCom, Geneva, 04/10/2000.

³¹² Already in 1998 a number of Western governments had questioned the relevance of the 1951 Convention to today's pattern of forced displacement. See (UNHCR (Department of International Protection), 2000a)

³¹³ IOM/07/1999 – FOM/07/1999 – Relevance of the 1951 Convention in the contemporary context. A book was also issued in 1999 mostly with articles by UNHCR staff, discussing the relevance of the Convention and in their majority arguing for its continued relevance (Nicholson and Twomey, 1999).

more attention to refugee protection, so there's a kind of... it doesn't make a lot of sense to me."³¹⁴ This shows the ambiguity in the position of states and the lack of coherence of policies at the internal level itself concerning the articulation of the many areas of competence of the organisation.

There are three possible explanations: one is that states do not see "core" as the legal supervisory function but as the co-ordination function of implementing partners, like NGOs and other humanitarian agencies in operational settings. In this sense it would mean that the organisation should have less direct implementation activities and work more through implementing partners. This has strong implications in a context of increasing bilateralisation of aid for humanitarian emergencies and the proliferation of national agencies (with stronger or weaker links to the governments) dedicated to this activity. A second possibility is that those states that are trying to keep their commitments to international standards of refugee protection are worried about the increasing "free-riding" of other states, creating a pull-push factor for refugees, who then look for less restrictive countries to access the refugee status. This overloads the countries that are still committed and creates incentives for them to request more supervision of the Convention on the part of the UNHCR over states that do not fulfil their commitments. This is where part of the moral authority of the UNHCR derives, as mediator of international co-operation and authority to discourage free-riding. Such differences could also be exploited by the organisation to pursue higher standards instead of waiting for common policies to be agreed on the minimum common denominator. A third explanation would lie on states' true concern for the effectiveness of the organisation in the spirit of the original principles and goals for which it was created.

Sending UNHCR "back" – the meaning of "core" mandate

Much of the debate that took place during the preparations for the Global Consultations in 2000 had an implicit disconnection of understandings of what was international protection. China, for example, raised the issue of the degree to which protection was a legal issue or an operational and efficacy issue.³¹⁵ Although the Secretariat tried to keep discussions within the core activities, the questions kept drifting to areas outside the mandate such as IDPs and illegal migration. Many countries, especially those with significant refugee populations in the developing world privilege

³¹⁴ Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).

³¹⁵ Statement of the representative of the government of China (Geneva, 05/10/2000).

the operational approach of the UNHCR.³¹⁶ Algeria for example was worried that there would be too much focus on protection and not enough on assistance.³¹⁷ Poor countries tend to want more assistance than protection. The balance between the two activities constitutes a delicate search for the staff, which risks disregarding the actual needs of the populations it is assisting. Some industrialised countries, like Japan insisted on UNHCR remaining strongly operational and playing the main role not only in strategic planning but also in implementation.³¹⁸ This may be linked to the fact that Japan does not have many NGOs to fund bilaterally and was investing a lot in multilateralism and in the UNHCR.

Although there were many references to core mandate, it is not clear whether core mandate is understood basically in terms of legal international protection or in terms of facilitating the co-ordination of the provision of emergency relief. It should be noted that co-ordination functions are not incompatible with core functions, as Pitterman puts it, "The mandate of the UNHCR is explicitly to help coordinate relief and other types of assistance, not to engage actively in operational activities." (Pitterman, 1985: 54). This would sustain the interpretation of states' calls for going back to core, with bilateral policies of funding to their own agencies they also need co-ordination and expertise at a higher level, which the UNHCR can provide. The problem in the system is that without the resources the organisation also sees its power to co-ordinate diminished.

Also the calls that were made for more prioritisation based on core functions seemed to imply different views of core functions to prioritise. Sweden for example, called for more uniform views on the issues of international protection and to achieve a global basic agreement. However, it called for international law adjustment to the new environment and needs (Sweden), while other delegations emphasised the centrality of the 1951 Convention (Finland and Denmark).³¹⁹

In late 1990s some countries, namely Switzerland and Germany were putting particular pressure on the organisation to go back to core mandate.³²⁰ Switzerland was concerned with bringing the UNHCR back to core mandate and besides reaffirmation of the Convention, called for proper

³¹⁶ Usually these are the least represented countries in meetings where issues are discussed in more detail and the real process of influence takes place, which are the informal meetings, due to resource constraints. Interview with the representative of the government of Uganda. (Geneva, 27/11/2000).

³¹⁷ Statement by the representative of the government of Algeria (Geneva, 13/11/2000).

³¹⁸ Statement by the representative of the government of Japan (Geneva, 06/10/2000).

³¹⁹ Statements by the representatives of governments of Sweden, Finland and Denmark. (Geneva, 04/10/2000)

³²⁰ Interview with UNHCR Officer, Mr. Guillermo Bettocchi (Geneva, 27/09/2000).

mechanisms for its implementation and supervision.³²¹ In light of the second possibility pointed out above for explaining this sort of concern, it is natural that Switzerland, a country in central Europe that is not participating in the process of harmonisation of asylum policies would be concerned with neighbours shying from their responsibilities and that “asylum shopping” would lead to more asylum-seekers knocking on Switzerland’s doors.

Also the U.S. State Department’s Bureau of Population, Refugees and Migration (PRM) moved since 2000 from an expansive view of UNHCR’s role in humanitarian crises to a narrower one (Cohen, 2002b).

Agenda-setting

There were significant divisions between delegations at ExCom concerning the declaration of the 50th Anniversary that impinged on the general orientation of the organisation. While some delegations wanted to make as broad a declaration as possible, including all sorts of rights and activities, other delegations were very cautious on the issue and in particular concerning what one representative designated as “problematic activities”. Further, even the position of the organisation tended to restrict the scope of the declaration, as the Secretariat noted that the UNHCR was not a development organisation, hinting that the declaration should not contain too many references to such type of activities.

.....
Despite the pressures from states that had called for further broadening the functions of the organisation, in the Global Consultations the organisation’s mandate work with IDPs was not subject of discussion and remained an ad hoc decision-making item.³²² The director of international protection said the UNHCR should be careful about the broadening. There was a significant concern in insisting on the reaffirmation of protection and avoid the risk of “stumbling into areas outside the mandate”.

Although there was a convergence of policies and guidelines towards voluntary repatriation, some debate did emerge during the preparation for the GCs around the activities of return and

³²¹ During the Global Consultations there were some hoping that an agreement would be reached on a new supervisory mechanism to oversee the implementation by states of the Convention (Ferris, 2001).

³²² Statement of Ms. Erika Feller, Director of International Protection, to the 51st Session of ExCom (04/10/2000).

reintegration, as non-core functions. The staff responded that in the absence of appropriate structures they felt the need to intervene, which is a clearly functional interpretation of its mission.

Impact of the Global Consultations in the long run

.....
According to the representative of Portugal, "return to core mandate is difficult. Operational adjustment is already well established"³²³. This shows the lock-in dimension and difficulty in reversing the path-dependent process. Another interesting example is the fact that since then the UNHCR has not only been involved in several emergencies of great complexity but also implemented instruments for operational involvement such as a Plan of Action that was issued in 2000 by the Executive Office for improved emergency response and contingency planning, developed in response to shortcomings identified in UNHCR's response to the Kosovo emergency. This shows that the organisation's previous path of operational involvement will remain a constraint in the policy orientation of the UNHCR despite calls from several quarters for a return to core mandate. The recent involvement in the emergency in South Asia caused by the earthquake and the Tsunami is an illustration of the underlying predisposition to continue to expand functionally.

6.4.5. Demystifying pressure: apparent P-A problem in the Angola case

The UNHCR had been asked by the Angolan government to become involved with IDPs several times since 1994 and in 1998 the organisation agreed to have a limited involvement. There were several reasons for UNHCR's lack of interest in this involvement: little overlap between returnee programmes and IDP areas; UNHCR did not have a specific mandate of the Secretary-General or GA to assist Angolan IDPs; access was very difficult; there were significant shortages in resources which donors were not willing to support; there were strong co-ordination problems namely UNHCR's relation with OCHA was problematic.³²⁴

³²³ Interview with representative of the government of Portugal (Geneva, 17/11/2000).

³²⁴ Some of the information was taken from an unpublished paper by Kassim Diagne (2000) "UNHCR and internally displaced persons in Africa" and other parts were taken from an interview with UNHCR Officer, Mr. Arafat Jamal. (Geneva, 25/10/2000).

UNHCR had been reducing involvement in Angola also due to security reasons and because the ongoing conflict prevented repatriation that would justify the link with assistance to IDPs.³²⁵ According to a UNHCR Officer, "The restart in 2000 is an original decision that is unlike most other interventions, which don't come from specific decision-making processes, but that are just taken given the circumstances (repatriation operations that induce assistance also to IDPs). This decision does not come in the same line and is specifically an executive decision of the High Commissioner, as a response to Holbrooke's intervention in the Security Council."³²⁶ This decision raised considerable internal opposition, including from the regional director for South Africa since the limits of the value of the operation were very strong. For that reason, six months after the start of the operation an evaluation mission was dispatched to Angola to assess the involvement, the wider context, the value-added of UNHCR's involvement and what shape future involvement should have. It concluded that the operation should continue for one more year but that further evaluation should take place after that (Jamal and Bettocchi, 2002). The recommendation was in reality based on the consideration of the impact of withdrawal on the organisation's credibility and on the work that had already been done, and there was some emphasis on preparing the phasing out of the operation.³²⁷

Although Mr. Holbrooke did succeed in obtaining a response from the UNHCR and in having it again involved in Angola, the reality is that the U.S. government did not have a policy on IDPs, and Ambassador Holbrooke has been acting mainly out of his own long-standing personal concerns, values and commitment to the IDP issue, while at the same time lobbying his own government to shape an IDP policy that would adequately address the issues.³²⁸ The interesting aspect in this is that Mr. Holbrooke was acting out of his own personal commitment to the issue, which is a long-standing one, and did not stem from a specific instruction from the U.S. government.³²⁹ In fact, he did not have the support of a large part of the Congress on this.³³⁰

³²⁵ Staff considerations are increasingly important in the recent years as the debate stirs up regarding the appropriateness of UNHCR involvement in situations where security is less than guaranteed and staff run serious risks, as is seen by the increase in numbers of humanitarian workers that have been killed in their work. IDP situations are predominantly situations where there is a tendency for increased danger, as often they take place among in-country conflicts. External actors noted that security played a very important role in "limiting the willingness of the organisation to intervene." Interview with representative of government of Pakistan (20/11/2000).

³²⁶ Interview with UNHCR Officer, Mr. Arafat Jamal, (Geneva, 25/10/2000).

³²⁷ This information is based on an unpublished previous draft of the final report of the mission, to the Operations Review Board, written in November 2000.

³²⁸ (McElhinny, 2000); (Kunder, 1999) and interview with representative of U.S. Government (Geneva, 28/11/2000).

³²⁹ Interview with representative of the U.S. government (Geneva, 28/11/2000).

³³⁰ Interview with UNHCR Officer, Mr. Arafat Jamal, (Geneva, 25/10/2000).

However, the impression made was so strong that other countries were convinced that this was the U.S. official position.³³¹

Ambassador Holbrooke put pressure and was able to mobilise U.S. funds to secure involvement of the UNHCR. However the influence it had on UNHCR's position on the issue was limited.³³² The leadership's priority was staff security and the situation was very volatile. UNHCR did implement a pilot project that would be subject to revision after an initial period. Further the very limited scope of this project showed the unwillingness to fully abide, along with the impossibility of openly refusing funds.³³³ There were concerns that other donors were sceptical of the operation and the funds provided by the U.S. would not cover the whole needs of the operation.

6.5. Organisational response

Bearing in mind functionalist theories' contributions regarding the importance of spill-over and task expansion for the survival and development of an IGO, and given the observation of such tradition in the UNHCR, it would be expected that the organisation would welcome the achievement of yet another set of tasks, i.e., a mandate for IDPs. However, the UNHCR started from the 1990s sending contradictory signals, by consistently refusing to take up the responsibility for IDPs, even if it did seem willing to expand its role and to provide leadership and co-ordination in the UN system. The response to the humanitarian challenges of the 1990s could not be avoided since the organisation had already entered the specific path of involvement in this type of operational work but it resisted a formalisation of such development that was being pressed both by its historical evolution and by certain states.

This section explores the response by the organisation and the preference formation that led to the repeated refusal to seek a mandate for IDPs. It will assess the instruments used by the organisation to make use of the leeway at its disposal and to manage it to retain its goal of flexibility in decision-making concerning IDPs.

³³¹ Interview with representative of the government of Portugal (Geneva, 17/11/2000).

³³² Interview with representative of the government of Portugal (Geneva, 17/11/2000).

³³³ The involvement with IDPs in Angola started with a limited programme for 300.000 IDPs in three provinces of Angola (see Special Funding Appeal for UNHCR's Supplementary Programme to Provide Emergency Assistance to Internally Displaced Persons in Angola, June-December 2000, issued in July 2000)

6.5.1. History of resistance to external pressures

Although during the 1980s the issue of protection of IDPs was not high on the international agenda, in 1986 a report of the Independent Commission on International Humanitarian Issues repeatedly called for a clarification of UNHCR's role in assisting and protecting IDPs and for the GA "to provide for adequate institutional arrangements on behalf of internally displaced people." (Independent Commission on International Humanitarian Issues, 1986: 129). This was one of the first sources of external pressure on the UNHCR for the clarification of its role.

In 1993, the Netherlands proposed that the UNHCR be assigned general competence for IDPs, which was supported by Francis Deng in that year's report, but neither the UNHCR nor the Executive Committee endorsed the idea (Cohen, 1998: 6).³³⁴ Although, High Commissioner Ogata at the time was very enthusiastic about the idea, such move would create strong animosities with other agencies within the humanitarian system and the impression that the UNHCR was "empire-building", which in the view of one UNHCR officer, they were.³³⁵ In 1997, at the time of the UN reform, the reaction was to a large extent the same, when the UNHCR was approached on the issue. Although the UNHCR was ready to assume a more proactive role in humanitarian assistance, it remained careful when it came to the mandate for IDPs because it was a rather complicated issue.³³⁶ Such expanded role would virtually turn the UNHCR into a mega-humanitarian agency, which was supported by Maurice Strong, a senior advisor to the SG, in charge of UN reform in 1997, and countries like Canada, but which raised many concerns among the other UN agencies. At the time of the plan for UN reform it was suggested that UNHCR take over DHA's functions. The idea was criticised because it would become a political role and incompatible with impartiality needed for UNHCR to coordinate humanitarian operations (Macrae, 1997). Much of this institutional fighting removed the impetus of the reform programme of 1997.³³⁷ In 1998's July meeting of ECOSOC on complex emergencies, Burundi's Humanitarian Coordinator suggested that a single agency should be charged with overall responsibility for IDPs, largely hinting that UNHCR should take the mandate.³³⁸ In January 2000, U.S. Ambassador Holbrooke strongly urged the international system to come up with a solution to the problem of

³³⁴ This call was at the time made by Ruud Lubbers, now head of the organisation. Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).

³³⁵ Interview with UNHCR Officer, Mr. Arafat Jamal, (Geneva, 25/10/2000). This idea is not shared by all staff.

³³⁶ Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).

³³⁷ Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).

³³⁸ Press Release ECOSOC/5780, 16 July 1998

IDPs and clearly exhorted the UNHCR to take on the responsibility for this population, based on its expertise and on the practical irrelevance of a distinction between refugees and internally displaced persons, who he designates as "internal refugees" (US/UN Press Release #95, 2000). Several NGOs, like Human Right Watch, Doctors Without Borders and IRC also supported this proposal.

Although the Ambassador Holbrooke's approach apparently found "something of a sympathetic response in the High Commissioner" (Goodwin-Gill, 2000a: 5), her main concerns being the resource implications and whether or not there was political support for the proposal (McElhinny, 2000), in all situations the reaction of the UNHCR was to diplomatically wash away the suggestion as unfeasible for a single humanitarian organisation, while affirming its commitment to the cause. Subsequently to each situation, the UNHCR has issued internal policy papers, containing the conditions and criteria for its involvement.³³⁹

6.5.2. Instruments of autonomy: imposition of criteria

Specific criteria have been developed spelling out the conditions for UNHCR involvement, based namely on the relevance of the situation to UNHCR's mandate and expertise; on the formal requirements established by UN General Assembly resolutions; and on the availability of adequate additional resources.³⁴⁰ Other policy and operational issues to be considered include the impact of the involvement on refugee protection; the preservation of the non-political and humanitarian nature of UNHCR's mandate; and the complementarity of UNHCR's activities with the mandates and skills of other agencies, including the ICRC. It should be noted in particular that most of the situations where the UNHCR was requested to provide its good offices in IDP situations with no connection with the mandate, it was only required to provide humanitarian assistance and no protection functions are included. The possibility of a mandate for IDPs would entail a protection responsibility, which in many cases constitutes a very delicate issue that can bring problems to the organisation, as seen above.

³³⁹ IOM/FOM/33/93 of 28 April 1993; IOM/87/97-FOM/91/97, of 2 December 1997; "Internally Displaced Persons: The Role of the UNHCR", 6 March, 2000

³⁴⁰ UNHCR (1994) Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons . (EC/SCP/87).

Thus, in 1993 the first policy paper was issued establishing criteria for UNHCR's involvement.³⁴¹ By 1995, the attitude was a proactive one with strong commitment to playing a leadership role in IDP situations, viewing such involvement as part of a broad strategy of prevention and root causes for refugee flows: "These guidelines, which were issued in April 1993, identified a number of scenarios in which UNHCR should give favourable consideration to assuming primary responsibility for international action on behalf of the internally displaced."³⁴²

In the 1997 policy document, UNGA resolution 48/116 of December 1993, and ExCom Conclusion N° 75 of 1994 are quoted as the legal basis for the criteria defined in the document. The fact is that both resolution and conclusion were issued as an endorsement of the criteria that the organisation had already previously devised, in the internal policy paper of 1993. This shows that often it is in the interest of the organisation to dress its own initiatives in the legitimating mechanisms provided by states, while it is making its own decisions over its mandate.³⁴³

In the 1997 document an important improvement was obtained in terms of an at least apparent autonomy, which was that "[w]here, for example, UNHCR is established in a location where the internally displaced are mixed with refugees or returnee populations, or where UNHCR contemplates expansion of existing activities in order to better respond to the needs of the internally displaced, a specific request from the United Nations or express authorisation from the State will **not** normally be a precondition for UNHCR's involvement."³⁴⁴ According to Garling, this exemption of request from the UN reiterates "...the UNHCR's need to assert its institutional independence by affirming its right to intervene directly with government and other protagonists." (Garling, 2000: 6). However, such condition turned into the opposite in the following policy paper, where consent of the state is a requisite for involvement.³⁴⁵ This shows the impact of learning from experiences where consent was lacking and the UNHCR had difficulties in forcing access unless closely associated with external military forces.

³⁴¹ It should be noted that the criteria devised by the UNHCR are considerably flexible, thus allowing the organisation some latitude to manage it. I will not be concerned analysing the specific criteria, much of which is quite technical, but rather restrict the analysis to the evaluation of the broad decision-making conditions regarding the act of defining the mandate (rule-creating).

³⁴² "Internally Displaced Persons: UNHCR's perspective", Paper prepared by UNHCR for the Symposium on Internally Displaced Persons, Chavannes-des-Bogis, 23-25 October 1995.

³⁴³ This source of legitimacy has been systematically used for framing the mandate of the UNHCR for IDPs around a set of criteria that was devised by the organisation itself (see for example Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees to ECOSOC Humanitarian Segment, 19-20 July 2000).

³⁴⁴ IOM/87/97-FOM/91/97, of 2 December 1997, paragraph 8 (emphasis added)

³⁴⁵ UNHCR, "Internally Displaced Persons: The Role of the UNHCR", 6 March, 2000

Access to the affected areas is only possible if the government not only authorises, but in many cases if it facilitates access. As Plender concludes, "Perhaps the chief difficulty of a legal character presented by the provision of humanitarian assistance to displaced persons is the question whether the consent of the host state is a *sine qua non*. Both as a matter of law and as a matter of practice, its consent is normally required. [...] Recent international practice, does not, however, support the proposition that humanitarian assistance can never be supplied without the consent of the host state." (1996: 128). This realisation comes through in the 2000 version of the policy paper, which no longer includes the possibility of circumventing the need for a request or consent to the State. In fact, General Assembly resolution 48/116 of December 1993 sets out two mandatory requirements for UNHCR action with IDPs that were not in the 1993 paper: a specific request from the Secretary-General or a competent principal organ of the United Nations, and the consent of the concerned State (McNamara, 1996).

All three policy-papers basically outline UNHCR's own conditions for involvement, which include technical and operational criteria and, although not explicitly, include the possibility of defining in each situation who is to be considered "IDPs of concern", meaning not all IDPs in a given country will benefit from UNHCR's activities. These papers are very similar in content, with only few substantial differences between them.

The consistent caution with which the UNHCR has reacted seems to substantiate the interpretation that these policy papers serve to affirm UNHCR's wish to retain autonomy in deciding when and where it will get involved without formalising a responsibility or completely withdrawing from the issue area. In the words of Garling, these criteria "...allow the UNHCR flexibility without imposing formal mandatory obligations [and] have allowed UNHCR considerable discretion in deciding when and how to intervene on behalf of internally displaced groups." (Garling, 2000: 7). The criteria could further serve to "...protect UNHCR from entering situations where there was no real political will to resolve an internal displacement crisis, and which might thus render its solutions expertise irrelevant and its available resources inadequate." (Garling, 2000: 6)

More recently, under the leadership of High Commissioner Ruud Lubbers, this pattern of autonomous establishment of criteria continued through a public statement made by the High Commissioner in Oslo on 23 May 2001, which has been further developed in the "Operational

Guidelines for UNHCR's involvement in IDP situations" (September 2001).³⁴⁶ The inter-agency element is considered fundamental as a policy consideration, and UNHCR policy is seen in the context of the inter-agency co-ordination mechanisms that have been developed in the past few years, namely through the Emergency Relief Coordinator (ERC) and the IDP unit in OCHA. As mentioned in a letter from the High Commissioner to the ERC, Mr. Oshima, "whenever relevant, the UNHCR is willing to provide input for this collaborative effort in its areas of expertise". UNHCR has also shown readiness to undertake a more significant role, even to become the lead agency in specific IDP operations, if the situation so merits and its criteria is met.³⁴⁷

Currently the High Commissioner is trying to implement the additional funding as a specific condition for involvement and, unlike Mrs. Ogata, Mr. Lubbers is much more concerned about the funding.³⁴⁸ This is partly because he started office at times of severe funding shortfalls but also partly a reflection of learning from past experiences of difficulties in funding these specific programmes. This condition implies that if the organisation decides to become involved in a particular situation, guaranteed funding will give it more leeway to perform its duties adequately, but often entails an increased danger of politicisation if funds are explicitly allocated to categories that are not even explicitly part of the mandate while other "core" groups of concern are left out. This has also given rise to the demands for the organisation to go back to core mandate.

Although staff admits that funding should be separate because there should be additional funds for IDP operations, they also recognise that such would constitute further earmarking, which is not desirable.³⁴⁹

6.5.3. Preference definition

The definition of preferences concerning the IDP mandate at the internal level of the UNHCR has not been an easy process. Initially there were problems calculating the returns from such mandate and the beneficial or negative impact it would have on the organisation as a whole. These difficulties were increased by the internal divisions on the issue. Together with this, the initial

³⁴⁶ IOM 77/2001 – FOM 75/2001, "Operational Guidelines for UNHCR's Involvement with Internally Displaced Persons (IDPs), 24 September 2001.

³⁴⁷ Letter from Rudd Lubbers to Kenzo Oshima, dated 20 August 2002.

³⁴⁸ Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).

³⁴⁹ Interview with UNHCR Officer, Ms. Pirkko Kourula (Geneva, 22/11/2000).

buffering of contradictions inherent to a role with IDPs were for some time buffered, which created inconsistent responses to the demands in the issue-area. A clear goal for flexibility in decision-making was set when it became clear that the complicated and sensitive nature of the issue-area, the adverse external environment and the undefined internal environment would form a difficult combination to support a mandate for IDPs and hence produce decreasing returns from this next expansion.

6.5.3.1. Calculation of returns

The sensitive nature of the issue-area, as well as the contrasting positions of the external actors led to the conclusion that a mandate for IDPs might not be in the best interests of the UNHCR. In this section I will show how the organisation managed these external inputs with the internal conditions. The UNHCR had developed a history of involvement with IDPs, which was consistent with its previous pattern of expansion, as explored in chapter five. It had acquired enormous expertise in the area and its relevance as a humanitarian actor for a long time unquestioned. Its own organisational structure had incorporated the possibility of this type of involvement, namely through the creation of an Emergency Response System geared for complex situations of humanitarian emergencies in 2000. The pattern of evolution, based on a functional link with the refugee/returnee operations shows that it was difficult for the organisation to go back on its pattern of involvement with IDPs. However, a number of contrasting goals emerged from this pattern of involvement, which made it difficult to sustain clear goals for expansion into the issue-area, namely how to balance autonomous goals of political neutrality and independence with relevance that it needed to keep obtaining the huge funds it needed, or how to balance the institution of asylum with in-country protection activities.

Drawbacks on autonomy – historical path and calculations of returns

As seen above, since 1972 the UNHCR has been involved with IDPs. It has broken ground on that sort of involvement and set a precedent of involvement. It also developed considerable expertise for handling such situations. The closeness of the needs of IDPs and refugees/returnees created an initial pressure for added involvement, which it chose to accept and from then on the precedent would direct the policy.

The following passage illustrates the extent to which the UNHCR was “dragged” into a particular type of involvement and it may be concluded that such derived not only from external pressures of states but also from the internal dynamics that already existed and required further innovation: “UNHCR's involvement in these new situations and activities has not resulted from a strategic planning process or a major policy decision. In situations such as northern Iraq and former Yugoslavia, UNHCR has become unexpectedly (and to some extent reluctantly) caught up in massive and unconventional humanitarian operations, requiring a high level of inventiveness and innovation on the part of the organization and its personnel.” (UNHCR, 1993b: § 38).

Internal divisions and leadership management

In order to understand the ambiguous position and the criticised lack of predictability in UNHCR's involvement with IDPs, it is important to take the conclusions from the previous chapter, on the internal structure and dynamics of decision within the organisation and apply them to this specific case.

Three types of stated positions are at work within the UNHCR regarding the best policy for IDPs: there are those who support a role with IDPs, primarily on the grounds that very often it is operationally problematic and morally untenable to distinguish the IDPs and refugees or other populations of concern; there are those who think the UNHCR has been drifting away from the core mandate, to which it should go back; and there are those who consider it should have an involvement on a case by case basis, which seems to be the dominant position.³⁵⁰ Those divisions are more clearly at work in case-by-case decisions, in particular when the link with refugee operations is not clear, as was the case in intervention in Colombia, where a considerable work of persuasion and coalition building at the internal and external level was stimulated by regional bureaus. Further, in situations of scarce funding, often protection officers in the field see the resources that would have been allocated to refugees being diverted to operational activities with IDPs, and this creates a questioning of the relevance of such operations when the ones concerning core mandate activities are not being adequately addressed.³⁵¹

³⁵⁰ Interview with Ms. Pirkko Kourula (Geneva, 22/11/2000), Mr. Steven Corliss (Geneva, 30/11/2000), Mr. Dennis McNamara (Geneva, 30/11/2000), Mr. Yacoub El-Hillo (Geneva, 07/12/2000): Mr. Marc Vincent (Geneva, 07/12/2000).

³⁵¹ Although funds for IDPs are raised in separate appeals, the structures that are allocated to IDP operations are the already existing ones.

The structural organisational divisions analysed in chapter five are reflected in the internal positions on IDP policy, among what are designated the traditionalists and the progressists, i.e., between those who think that involvement is overstressing the resources, and those that think that more involvement is what will attract more resources.³⁵² This was termed by a UNHCR officer as the division between the pragmatists and the principled, between those “who supported an operational involvement, who argued that that’s the way to go and that that is where the money is, and those who supported a core mandate approach.”³⁵³

When it was necessary to break the tendency towards increasing expansion, High Commissioner Ogata (1991-2000) took strong control of the situation, balancing the internal divergences. Her absolute predominance in the decisions regarding IDPs was evident, and also regarding important policy decisions in general. From the interviews done, it can be concluded that she has a very strong personality, and follows basically her own opinion³⁵⁴. As was seen above, Mrs. Ogata’s kept on a pragmatic and pro-active policy line, quite open to expansion of the organisation into the operational level.³⁵⁵ She has been an active conveyor of concepts such as human security and the right to intervention, and in this line a predisposition for an involvement with IDPs follows naturally, in particular since such involvement has often meant the lead role for the co-ordination of humanitarian efforts. Her leadership was marked by her perseverance in pursuing the goals she thought were best, which paved the way for an organisational culture marked by the need to *convince* the High Commissioner of the appropriateness or not of certain interventions.³⁵⁶ Despite such determination, Mrs Ogata’s mandate seems to have been marked by an inconsistency and obscurity of policy-making towards IDPs, which mirror the deep internal problems and general contradictions that a role with IDPs entails. The only significant form of consistency was not to give in to the temptation of striving for the mandate, which she succeeded, halting the path-dependent expansion and taking advantage of the window of opportunity left by states’ profound disagreement on the issue.

³⁵² Interview with UNHCR Assistant High Commissioner, Mr. Frederick Barton (Geneva, 13/12/2000).

³⁵³ Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).

³⁵⁴ Interviews with UNHCR Officers, Mr. Steven Corliss, (Geneva, 30/11/2000) and Mr. Jeff Crisp (Geneva, 11/12/2000).

³⁵⁵ The leadership that is relevant for this analysis is that of Mrs. Sadako Ogata, who was High Commissioner since the early 1990s and has led the evolution of UNHCR’s policy on IDPs since then, until she left office, at the end of 2000.

³⁵⁶ The dynamics of decision-making within the organisation are marked by persuasion between sub-units, eventually targeting the High Commissioner.

Although it has been argued for an increased role of the DIP in decision-making, the 2000 paper's internal origins are unclear, in the words of Goodwin-Gill "...though couched in quasi-legal language and purporting to make a "case" for additional activity, it does not present much of a "Department of International Protection" perspective." (Goodwin-Gill, 2000a). This last policy paper contrasts with the previous ones in that it was actually finished by the High Commissioner, and unlike the others is not issued by DIP, and is presented in the form of an external paper.³⁵⁷ It can thus be interpreted as a deliberately political and symbolic output that does not add much to clarify UNHCR's commitment to IDPs. In 2000, when the issue was raised in the UN SC, the High Commissioner issued a memorandum to the staff where she made explicit the urgent nature of the process of internal review of the situation and that she would personally take over such review.³⁵⁸

This also reflects different management conceptions. At the time of High Commissioner Ruud Lubbers' beginning of term (2001), the house was still severely divided over whether to concentrate on the core mandate or continue investing on involvement with IDPs. Although the High Commissioner made several efforts to prioritise activities and leave IDPs aside, many operations went on for different reasons and there was in the end no significant change of policy despite many pressures from some states for the organisation to go back to core mandate. This shows the weight of the path-dependent process of decision-making where the previous line of involvement could not be completely reversed, although there was an autonomous move (from the historical determinism) for breaking the path-dependent process that could lead to further consolidation of expansion and an institutionalisation of a formal mandate for IDPs.

Besides having to manage the internal divisions the High Commissioner also had to manage contrasting goals that derive from the involvement with IDPs and directly impinge on the autonomous capacity of the organisation.

The goal of independence: political neutrality and impartiality

This prerogative, as seen previously, is one of the core attributes of autonomy of the organisation. In the same measure, only through maintaining autonomy and capacity to make choices consistent with its mandate can the UNHCR be perceived as politically neutral and impartial. Otherwise, not

³⁵⁷ UNHCR. "Internally Displaced Persons: The Role of the UNHCR". 6 March 2000

³⁵⁸ IOM/12/2000 – FOM/13/2000 – UNHCR and Internally Displaced People

only the credibility but also the moral authority of the organisation can be put to check. Still, some activities have a conflicting impact on such neutrality. For example, preventive action, linked to root-causes approaches and to human rights enforcement are seen by some observers as political activities. Barutciski (1996) argues that the palliative function of protection through repatriation and resettlement was consistent with drawing attention to human rights abuses in countries of origin: "Yet it was understood that confronting the causes of displacement was a political function reserved for other international actors." (Barutciski, 1996: 53). According to the same author, "The consequences of this incursion into the role of the UN human rights machinery are crucial in terms of the supposed non-political character of UNHCR's work." (1996: 56). This entails a possible further reduction in the international commitment to asylum in a context of restrictive policies. Contrary to this view, other observers argue that the UNHCR should face the reality that it cannot be impartial in order to adequately implement its mandate of protection, namely through political lobbying for non-political purposes (Forsythe, 2001; Ito, 2001).

Balancing relevance: The Cambodia case

The need to stay relevant to states derives from the funding dependency. Since it directed activities towards operational emergency assistance, the organisation needed substantial funds to keep its programmes alive and in order to retain the confidence of states, from a point on it opted for embarking on operations that would be seen as addressing states' major concerns. Although it can refuse involvement with IDPs and has on occasion done so, if there are important interests at stake it risks losing relevance in the eyes of states.

An example of the problems deriving from the reluctance in performing certain of the new activities when faced with clear states' interests in those activities was shown in the case of Cambodia in 1980. Many displaced populations were stranded at the border between Thailand and Cambodia, but violence and violations of human rights prevented them from leaving Cambodia (Gordenker, 1987). This was part of what was designated "humane deterrence" policies, that spread to the whole South-East Asia at the time (Zieck, 1997) and had devastating consequences for the refugee regime (McNamara, 1989). When requested to become involved with IDPs in Cambodia, the organisation declined to assume a leading role or even become involved with this population (McNamara, 1998b: 55). The result was that "...as a long-term alternative to UNHCR, the United States and Japan took the lead in creating the United Nations Border Relief Operation. UNHCR's reticence in Cambodia did not garner acclaim but instead generated much criticism,

especially from the United States, its largest financial supporter, and one of the two major powers with a stake in seeing assistance reach the Thai border." (Stedman, 2003: 175). The UNHCR kept on expanding and working with IDPs and in the area, but given the criticism and alternatives found, the temptation to stick to the principles became less strong.

6.5.3.2. Decreasing returns and the need to break the path

Although it is often noted that the UNHCR has difficulty in learning from past experience, which partly justifies its path-dependent evolution over so many years and buffering inconsistent demands, the IDP issue-area shows that some learning occurred and caution was incorporated in the deliberation. The criticisms resulting from several involvements with IDPs, together with some pressures to go back to core mandate and funding shortages, led to a re-evaluation of the returns of a mandate in the IDP issue-area based on the constraints it would pose, and resulted in the maintenance of an interest in the area but not full commitment and above all the goal of decision-making flexibility.

Learning: from commitment to caution

As seen above, from the mid-1990s on the UNHCR started disengaging softly from the IDP issue-area, without totally renouncing it. This is reflected in the way the organisation has been framing its policy in the area. Initially the UNHCR literature on the issue was not very clear concerning its responsibilities regarding IDPs and was keen to portray them within the sphere of competence. As time went by such willingness withered and the organisation started making explicit that the UNHCR was not responsible for all IDP situations but only for some. This shows the effect of learning and the need to be cautious and retract from too much impetus concerning this tricky area of activity. This results in part from a learning process that linked the disadvantages and poor performances in the past to the contradictions inherent to a responsibility for international protection and assistance to IDPs. That was when the organisation was able to overcome (at least partly) the identified "attention allocation problem", that buffered the inconsistencies deriving from its expansion, which gave rise to dysfunctions and reduced effectiveness in discharging its mandate.

In this context it is important to consider the value of learning from involvement in previous situations, which has taught UNHCR to be much more cautious when dealing with complex situations. As Landgren notes, "UNHCR's official statements on the value of safety zones have been extremely cautious." (Landgren, 1995: 456). Quite a number of reflections were made in particular from the involvement in Bosnia (see for example Van Hövell, 1996; UNHCR, 1994b), the CIS (see for example Franco, 1996), Africa (see for example Okoth-Obbo, 1996). Such learning may account for the shifting willingness to take up formal responsibility for an issue where consequences may be so disastrous as in Bosnia or Rwanda. "All of these experiences have in their different ways marked UNHCR's institutional memory and operational practice with regard to IDPs." (Garling, 2000). Indeed, an important consideration is the expectation of effectiveness: one of the main goals of any organisation is to be effective, and the complexity of IDP situations has often led to an image of inefficiency of the UNHCR, even in situations where it was the lack of political will of states that was behind the frustrated efforts of the organisation.³⁵⁹

Besides losing sight of its core mandate and at times actually endangering the institution of asylum through containment of refugees in the countries of origin, the UNHCR has also been accused of risking its non-political image by becoming involved in situations where it is very difficult to distinguish the populations to assist, and often may be perceived as assisting and protecting combatants and rival factions, thus stimulating the conflict even further. The nature of IDP situations also makes it extremely difficult to ensure actual protection to the populations, and the UNHCR has tried to underline more its assistance role in IDP situations, while the rest of the inter-institutional system is pushing for increased protection by the organisation.

In the early months of the 2001 war in Afghanistan, for example, the UNHCR chose to stick close to its mandate, with the High Commissioner clearly refusing involvement with IDPs when faced with pressure by the Prime-Minister of Pakistan. The organisation declined to work directly with IDPs in camps near the borders or to set up new ones based on security grounds and on the integrity of the mandate, a clear reference to the need to maintain open borders to enable people to seek asylum. This was according to Cohen (2002c), due to the existing strong criticism of too much overall involvement with IDPs, the problems that had emerged in the Kosovo operation as well as in other operations where UNHCR was perceived as having failed such as for example in

³⁵⁹ Dennis McNamara, former Director of International Protection has consistently drawn attention to this problem and to UNHCR's dependence on states for the effective performance of its role with IDPs. See, for ex. (McNamara, 1998a)

Zaire in 1994 (Van Brabant, 1999), and the position of some at headquarters who supported a more narrow focus for the organisation.³⁶⁰ At the same time this also led to some disenchantment by donors of the UNHCR and they started pressing for the return to core mandate activities.³⁶¹

However, it is very difficult to please all the actors that surround the activities of the UNHCR, all the more so when its major concern should be to provide effective services to the populations in need. Very often particular choices of the organisation are criticised, such as its involvement in Bosnia in 1992. However, when it was cautious in the case of IDPs in Rwanda in 1994, concerned that its mandate would not allow it to commit its energies fully to IDP programmes and stopped its activity at the border during the crisis, it was accused by some observers of institutional rigidity (Minear and Kent, 1998: 77). The same happened at the time of the Kosovo operation where its intention of strictly upholding the first asylum option with the government of Macedonia led to a lack of preparation for addressing the needs of those who were stranded on the other side of the border. This involves difficult ethical choices for the organisation which will and has been repeated, and for which it will be target of criticism no matter which option is taken (see Suhrke and others, 2000).

Internally, and to better define UNHCR's contribution to the UN collaborative approach, a workshop was organised in 2002 to analyse the lessons learned from UNHCR's intervention in IDP operations (UNHCR/EPAU, 2002). The workshop brought together a broad range of participants, not only UNHCR staff working in IDP operations but also participants from other organisations. The workshop noted that a defining characteristic of all UNHCR operations on behalf of the displaced should be the pursuit of durable solutions, to which protection and assistance should be intrinsically linked. The need for clear criteria for UNHCR's involvement, based on an objective assessment of the IDP situation and its relationship with persons of concern to the Office, was emphasised. However, not much more clarity emerged concerning predictability of future involvements.

The goal of flexibility

³⁶⁰ A number of critical evaluations were made of UNHCR's performance during the 1999 Kosovo emergency, the most significant of which was (Suhrke and others, 2000). For a critical position concerning this report and supporting UNHCR's policy stance during the emergency, see (ECRE, 2000).

³⁶¹ Interview with Ms. Roberta Cohen. Brookings Institution (telephone interview, 18/11/2002).

The designation "persons of concern" is a clear indicator of the need for flexibility, since new categories of people keep being added to the range of concerns of the UNHCR. Thus, many of the inclusions and exclusions are defined on an ad hoc basis, instead of through a permanent mechanism that establishes fixed criteria for which groups are to be assisted.

It was observed that although formally outside the mandate, under good offices and special operations mechanisms, the UNHCR has for a long time been addressing the needs of internally displaced persons, in part due to the difficulty of distinguishing them from mandated groups of concern regarding their needs in terms of assistance and protection. Although they don't fall under the general competence of the Office, "...there is a selective and limited mandate to provide protection and humanitarian assistance and to seek solutions for these categories under certain conditions." (Tuerk, 1999: 115). The flexibility is underlined by different staff: "The approach taken by the GA underscores the need for flexible responses without providing UNHCR with any obligatory or automatic responsibility for IDPs." (McNamara, 1998b: 55). In an official communication the mandate is described as conditional and discretionary.³⁶² For example, in the case of Kenya in 1997 UNHCR refrained from becoming involved with IDPs since that might jeopardise its capacity to ensure the international protection to refugees in the country. The capacity to remain selective was seen within some areas of the organisation as precluding the formalisation of the mandate.

All this flexibility allows for a greater margin to decide where to intervene but also entails more vulnerability to constraints other than the legal ones. As Winter (1988: 88) noted already during the 1980s, "[t]he system is inherently legal, but it is much more than that. It is political with a small p."

The diversity of IDP situations and their multiple relations with refugee issues as well as the specificity of the different operational environments create the need to make decisions on a case-by-case basis. Decisions depend on operational and policy considerations, which have been consolidated into a list of criteria designed to enhance predictability as to when the UNHCR will become involved in an IDP situation. A decision is taken after an objective assessment of IDP needs is made and their relationship with UNHCR's mandate established, as well as consideration of the capacity of other humanitarian organisations who are present in the country concerned, and

³⁶² "Internally Displaced Persons: UNHCR's perspective". Paper prepared by UNHCR for the Symposium on Internally Displaced Persons, Chavannes-des-Bogis, 23-25 October 1995.

the potential added value of UNHCR's contribution. The main thrust of UNHCR involvement with IDPs regards the particular expertise and experience in protection aspects, using as a framework the Guiding Principles on Internal Displacement, and the possibility of promoting durable solutions for the internally displaced.

Another important source of dilemmas and contradictions in UNHCR's position concerning IDPs at the end of the 1990s were the statements of increased interest in involvement with IDPs and the scaling down in operations and need to prioritise activities. The prioritisation review issued in early 1999 had emphasised the difficulties placed by assistance to non-refugees and how to justify further appeals for resources to those populations when there were not enough resources for the refugees under the mandate. Directors were then requested to fully justify involvement with such populations and identify where involvement could be reduced. However, as an example of the contradictions and ambivalence, Irene Khan, stated in an interview in 2000 that the new policy on IDPs represented a "greater willingness to be engaged with internally displaced people, to advocate on their behalf, to take a more proactive approach." (UNHCR (Department of International Protection), 2000b: 2).

As it does not have mandated obligations, but rather has simply stated "an interest in the protection and welfare [of IDPs]", the UNHCR can be held accountable for the decisions on involvement with IDPs.³⁶³ In such context it has been accused of the ad hoc approach it has taken and of the lack of predictability as to when it will become involved (Cohen, 2002a). It has also been criticised by the expansion of activities grounded on art. 9° of the Statute, which should only be applicable to the refugee-specific context and by expressing an "interest" "...in ways that suggest a sufficient legal connection, but which identify only a passing or functional link." (Goodwin-Gill, 2000b: 28). As noted above, the development of a regime at the inter-institutional level pressures the UNHCR into an increased accountability in explaining its decisions to the rest of the system, and the 2000 paper may well have been delivered as a response to such pressures as well as to Ambassador Holbrooke's.³⁶⁴

³⁶³ UNHCR, "Internally Displaced Persons: The Role of the UNHCR", 6 March 2000

³⁶⁴ For example, some of the main concerns raised when considering Holbrooke's proposal have been that the expanded role of the UNHCR would be resisted by other UN agencies (McElhinny, 2000). This claim has not been confirmed by Irene Khan in an interview in Prima Facie: The Newsletter of the UNHCR's Department of International Protection, Issue May 2000.

6.6. Conclusion

During this latest period there have been divergences among the preferences of states concerning the general definition of the orientation of the UNHCR. While some intended it to go back to core mandate, others were of the view that the organisation should continue to provide for an increasing number of populations of concern, in the coverage of increasing numbers of situations, in the provision of new forms of protection and in particular of material assistance and emergency relief with the concomitant heavily operational involvement. The diverging views of the different members of the Executive Committee concerning the type of management for the organisation and general direction led to the maintenance of a flexibility that was particularly relevant in the case of IDP policy. As suggested at the outset, the organisation's drift led to a dysfunctional evolution that would be detrimental to the UNHCR in case of a formalisation of a mandate. It was able to enforce its preferences given the divergences of the principals, translated into ill-defined and unclear outputs.

The expansion of the UNHCR, in particular in the area of IDPs was not led by a clear political direction, i.e., the crucial choices made early on and through its development of task-expansion happened more according to a reactive response to the developments and spill-over than as a result of clear policy directions. However, they derive largely of initial autonomous decision processes.

In the early 1990s, with the end of the Cold War and Mrs. Ogata's proactive intentions, there was a momentum where policy choices were guided by an ideological motivation of leading the UN system along the path of proclaiming the right to intervention, but the drawbacks and pitfalls were not sufficiently taken into account and such strategy soon became caught up in the contingencies of the complex role that the organisation by then had in its hands.³⁶⁵ There were also contradictions between the role with IDPs and the protection of the institution of asylum, leaving the organisation vulnerable to pressures and limiting its autonomy for policy choice.

A careful analysis of returns from an expansion of a mandate towards the IDP issue-area considers the following elements: funding problems and lack of political will of states; internal

³⁶⁵ For an early assessment of the contradictions in conceptual and operational terms of this move, see (Minear and others, 1991)

organisational divisions; the dilemmas inherent to an involvement in situations that in practice are the internal affairs of sovereign states; the dysfunctions such a role also entails for the organisation's core mandate. All considered, the only way to retain decision-making autonomy and leverage was to refuse a mandate for IDPs, since that was possible due to states' lack of agreement on the best solution.

When such pitfalls were acknowledged the organisation resorted to being selective regarding which situations it would become involved and developing a goal of retaining flexibility for the decisions on its own mandate, which the lack of clear state guidance on the issue has enabled. The systematic issuance of policy papers devising criteria for involvement has solidified UNHCR's autonomous position and given it the flexibility for case-by-case decision-making. With the establishment of a set of criteria on UNHCR's involvement in complex emergencies, it effectively retains autonomy in these decisions. This benefits the organisation in that it provides flexibility, but is also an ad hoc and "politicisable" system of decision-making, making the organisation more vulnerable to occasional bilateral manipulation where donor states have consistent preferences.

It should be noted that although this research and other studies performed on the issue have found that there are no clear state-level policies on the issue in the West and also among many developing countries, the absence of agreement on international responsibility for IDPs may also be in states' interests since such agreement would imply added responsibilities for them and a need to apply new principles in a universal way. However, this is the assumption on the structuring of preferences, while the actual analysis of the preference formation itself asserts that there are no clear preferences, so such interest-based logic for non-decision making cannot be deduced. The inconsistent policies at state level or even absence of policies on the issue and divergences among principals enabled the leeway of the organisation but this bears a longer-term impact because in the meantime the inter-institutional system has developed and states became more distant from this deeply bureaucratic humanitarian system's decision-making process. However, at the same time that it is less exposed to state politics, the system is more vulnerable to battles for turf and leadership that significantly hamper effectiveness of the humanitarian response. To this states have been reacting with increasing measures to control the humanitarian system through a convergence of funding policies and strategies for humanitarianism, exemplified through the Montreux group of donors.

The strongest impact of the end of the Cold War was that it entailed the possibility of attributing international responsibility to an entity that would be in charge of ensuring effective response to all populations in need of international assistance and protection. However, change did not occur to such a large extent that sovereignty would be totally set aside. Further, the concerns raised by several states turned this possibility into a staunch debate over the legitimacy for such international responsibility, not so much at the level of the provision of assistance but significantly so at the level of international protection.

Among the elements of process that are influential in the IDP policy area, the post-Cold War evolution of the international environment should be particularly noted, including issues such as the new type of conflicts, the nature of sovereignty and the development of a complex humanitarian system made up of different actors with different degrees of influence and relations with the UNHCR, but which have a strong bearing on its activity, as humanitarian action is increasingly complex and co-ordination is a primary concern (although not always a priority). Hence, actors such as other IGOs, be they from the UN system, or just international organisations like the International Committee of the Red Cross (ICRC), or organisations such as the OAU and other regional organisations, or humanitarian NGOs, be they field partners of the UNHCR, or advocacy NGOs that lobby actors in the area, all these may have a degree of influence in the considerations of the decision-maker within the house.

Although external changes do not result automatically in increased IGO autonomy, this case shows the High Commissioner's skilful exploitation of a permissive environment characterised by the absence of clear state policies or preferences on a new international issue-area and which materialized in the issuance of vague policy papers, designed to affirm the organisational goal of flexibility and policy discretion in this area (Freitas, 2004). This policy goal was all the more pressing since the organisation is itself so divided on the issue of involvement with IDPs.

Chapter 7. Conclusions

The present research illustrates some of the dilemmas of humanitarian aid in an international environment that is constituted by many different actors with diverse perceptions of the world and of their own interests. While inserted in a specific theoretical framework that is rich in significant debates, the dissertation tried to assemble the myriad of empirical considerations and interpretations that surround the actors involved in the definition of the international protection of populations in need of humanitarian concern.

On a theoretical level the research aimed at contributing to the debate on institutional change and on the actors that dominate the process, while on an empirical level it tried to apply the existing knowledge on institutional change to explain variation in policy direction of the UNHCR throughout more than 50 years of activity, and determine which actors account for it. These two objectives were fused into the common goal of explaining and understanding observed variation in UNHCR autonomy for defining mandate and role. On a more specific note, the research aimed at providing some reflections for two important empirical debates that underlie concerns in the literature but also in the practical area of humanitarianism: allocating responsibility and accountability for policies, and reflecting on certain aspects of the practical development of IDP policy at the international level.

The specific puzzle that initially drove the research was the observation that the UNHCR had considerable leeway for determining criteria for involvement in specific situations related to IDP groups and for the definition of the limits of its mandate in this area. In view of this, I tried to establish the conditions for variation in IGO autonomy. Starting from the premise that states are the organisation's principals and are therefore entitled to make all decisions concerning the mandate as well as to significantly instruct the bureaucracy concerning its broad policy lines, it was the goal of this dissertation to explore the reasons why such did not always happen in the evolution of the UNHCR. A second line of goals was to explore what, in circumstances of absence of states' predominance, determined policy direction in the organisation.

This puzzle presents interesting challenges related to both empirical and theoretical concerns outlined above. Empirically it has implications on the explanation of policy direction of the organisation and in particular on the way IDP policy has been shaped. IDP policy can be seen as a

reflection of the dilemmas that plague UNHCR decision-making concerning its functions, namely whether it should expand or contract. Two major observations characterise this issue-area in the UNHCR: the fact that states did not impose a mandate for IDPs and the fact that the organisation has repeatedly refused to obtain such mandate. Both observations represent indications of organisational autonomy, but as seen in chapter two these observations do not fit into some theoretical expectations drawn from the literature explored in chapter one. The question then emerges of how to explain policy direction in empirical terms, between the degree to which it is controlled by states and the degree to which it is the result of independent calculations of the agent, constrained by internal factors and by its own previous evolution. Hence, at the theoretical level, conclusions were expected concerning the relation between states and IGOs, as well as the impact of historical process on policy choices. The literature overview has shown the limited value of neo-liberal institutionalist explanations that are most commonly used to explain policy in the UNHCR. This dissertation proposed a combination of rational-choice institutionalism that addresses the relation between actors in a hierarchical situation, i.e., whether institutional change is the result of states' preferences or bureaucratic manoeuvring, and historical institutionalism that addresses the constraining power of past organisational decisions on organisational capacity to make policy choices and to change the course of decision-making. Basically this research is about how the UNHCR exploited leeway and managed the historical opportunities and constraints that came its way. The following table summarises the main findings.

Table 4 – Factors influencing the autonomy of the UNHCR and main aspects of UNHCR policy areas over the four clusters

	Delegation	Expansion	Voluntary repatriation	IDPs
	Range of activities defined in the Statute	Increase in range of policy options. Relative autonomy	Tendential decrease in range of policy options. Relative control	Stabilisation of range of policy options. Relative autonomy
	Minimum convergence explains agreement on Statute and Convention. Divergence explains substantive autonomy defined in Statute	Divergence explains conflicting inputs and autonomous evolution of UNHCR through good-offices mechanisms	Convergence of asylum policies toward restrictivism and focus on voluntary repatriation	Divergence of positions concerning IDP policy and general policy direction
agent drift (historical institutionalism)	NA	Crucial decision to expand. Initial lock-in with increasing returns from >	Lock-in resulting from systematic expansion. Decreasing returns	Lock-out of increasing expansion, retaining autonomy for

	Delegation	Expansion	Voluntary repatriation	IDPs
		autonomy with functional expansion	for autonomy with dysfunctional expansion	decision-making. Damage control strategy
Groups of concern	Minimum agreement on refugee definition leaving scope for interpretation	UNHCR taking initiative on assistance to persons in refugee-like situations and early involvement with IDPs	Focus of preferences of states on returnee populations and temporary or alternative protection mechanisms	Increasing activities with IDPs and others at risk in new situations
Geographical expansion	Europe	Africa	Latin America and Asia	Internal dimension of state system
Solutions promoted	Local integration Resettlement Repatriation	Little emphasis on repatriation and more on local integration due to divergences of states concerning which should be promoted	Focus on repatriation leaving little option to the organisation but to promote early repatriation.	Selective IDP involvement, criteria clearly defining link to repatriation operations
Activities	Rule-supervision; rule-creation; co-ordination	Rule-supervision; rule-creation; co-ordination; beginning operational involvement	Direct operational activities, development activities. Funding dependency.	Relief activities, human rights monitoring, preventive action

7.1. The evolution of the international environment

This section briefly discusses the role of the international environment within the present analytical framework and then illustrates how the consideration of this element has been important in contextualising the data.

The theoretical discussions revolved around a more systematic consideration of the environment in the P-A framework. Such is useful to emphasise the perspective of change and how the dynamic adjustment to change affects the P-A relation, enabling a combination of rational choice and historical institutionalist perspectives. This was reflected in the historical institutionalist proposition where the evolution of the activities of the agent and of its preferences was considered. Although the international environment provided an important reference to define the limits of preference variation and agent drift, the goal of the research was not to explain preference formation. Rather, preference variation constituted explanation for autonomy and the environment was a useful element to describe the context of such variation.

The consideration of the international environment within an analytical model brings us to the debates within IR over the use of middle-range theories that were mentioned in chapter one. If the environment is the main causal variable in some IR approaches, how is it possible to incorporate it within an analytical model that focuses on a more micro-level, such as the relation between principals and agents within an international setting? Can different levels of analysis be combined within a chain of causal mechanisms, as suggested by Scharpf (1997). In this research I have opted for isolating the preferences of states as the explanatory variable. However, those preferences are embedded within a general context of the international environment. Considering that the environment is not the only element that determines preference formation, I have therefore not aimed at explaining the process of preference definition, rather describing preferences in order to reach a measure of convergence/divergence among states. This is why the main theoretical framework presented was principal-agent and historical institutionalism, while IR theories were introduced in connexion with the debates surrounding the work of the UNHCR. The approach in this research presents an alternative perspective that focuses on a more micro-level as states' preference aggregation and the organisation's historical evolution in a context of change which is taken account of in each chapter devoted to the different policy clusters.

The international environment was conceived in this dissertation as an important element of context, providing parameters of action around which preferences aggregate and adjust. For this reason I decided to isolate it in each of the policy clusters analysed, with a view to providing contextual information on the factors that shaped the system as a whole. An international organisation does not exist in a vacuum, rather it is surrounded by other actors with stronger or weaker degrees of influence in its decisions. Further, political and factual developments in the world also constrain the organisation and the direction of its activities once it starts adjusting to its environment. The decision to adjust or to remain attached to the original mandate may not depend only on the organisation, and that is partly what this research has explored. However, when there are significant changes in the international environment, the very survival of the organisation may be challenged and in those cases the bureaucracy normally strives to promote such adjustment. Those organisations that stick to their strict original mandates retain the authority included in their constitutional documents but risk losing relevance in a changing international environment. Conversely, those that opt for adjusting retain and may even increase their relevance in the international environment but also risk falling into power-dominated relations once they base decisions on policy/political considerations rather than on legal/mandate considerations. The need for institutional change and adjustment will depend on the dimension of change in the

international environment and on the nature of the mandate of the organisation. The international environment provides an element for the contextualisation of the development of actor preferences and needs.

The UNHCR was created in the aftermath of World War II with the explicit purpose of enabling international co-operation to solve an objective problem that was the existence of large numbers of refugees in Europe for which no solution had been found. At the time of delegation and during much of its existence, a bipolar conflict that divided the world into two political blocs, the West and the East, structured states' foreign policy concerns. Unlike what occurs today, refugee movements were much more an external concern, and hence a foreign policy issue, than an internal concern related to internal affairs and border control. Policies were shaped accordingly and this dictated the nature of the UNHCR's mandate. Some years later there were a series of political changes in other continents, in particular in Africa that dramatically altered not only the nature of the problem that the UNHCR was supposed to tackle but also the international political context. Decolonisation movements and ensuing conflict of an intra and inter-state nature became acute and generated many more refugees and massive displacement in general. Alongside this, there was an upsurge in state formation and many new members joined the United Nations. For most, a major concern was to find ways of dealing with the huge numbers of forcibly displaced populations entering their borders, in some cases affecting whole regions. These new states, many of which had dramatic development problems, brought a new source of preferences for decisions in the UN. The concomitant differences of positions generated from the cleavage North/South accentuated the already existing cleavage East/West. Throughout the 1980s, the incipient process of globalisation started having an impact on worldwide communications and transportation, thus diminishing distances and bringing peoples and states together. This rosy description of globalisation however, did not apply to the world's refugees, who saw increasingly restrictive asylum policies on the part of the increasingly integrated developed world. The restrictive trend was soon replicated throughout the globalised world. Slowly, East and West, North and South were beginning to converge on a number of areas. Such convergence increased at the end of the 1980s with the end of the Cold War, which brought about even more rosy possibilities for the globalised world, but also fears of hordes of refugees entering the wide open borders of the integrated world. It also brought a renewed concern for human rights and some flirting with the possibility of legitimate humanitarian intervention in a world where the increase of internal conflicts directly targeting populations rose the known numbers of internally displaced persons to nearly 25 million in 52 countries in 2003 (Global IDP Project, 2004). At least on discourse,

involvement in the internal affairs of a state became a duty for the international community in this world of universal rights that now extend to a global right to an all-encompassing human security, although it is not yet sure who is to enforce it. Even if all actors agree on the universal dimension of human rights, many however, remain attached to their sovereign concerns while others have failed for some time to develop clear positions on where they stand when it comes to defining policies concerning internal affairs of other states. In the meantime the international community as a whole, largely under the initiative of the global civil society has been taking up a policy space where states' divergences have stalled them as influential actors, and slowly constructing a new regime for those that are displaced within their own country.

7.2. Factors determining the relation between states and IGOs

States create organisations and fund them, which generates a hierarchical situation of control. They agree to delegate competences on an agent, who is designed to fulfil tasks for the provision of certain services that are important to a significant number of states and that require their co-operation through a multilateral framework. By setting up and then funding the activities of the organisation, states keep it alive and are also interested in retaining it effective in terms of the objectives for which it was created. For that reason it is legitimate for these principals to exercise control and establish a set of oversight mechanisms.

At the same time the evolution and change in the international environment raises new problems that are often not foreseen originally and an adjustment has to take place. The increasing international political space since World War II has given rise to an enormous amount of new tasks that are not performed directly by states but by international organisations, whose functions expand to accommodate to the new circumstances. This gives new opportunities to the organisations for a number of factors. In new issue-areas where an organisation is expanding, it is more likely that the bureaucracy develops positions on its activity earlier than do states. Factors that contribute to this are expertise and existing institutional structures to define policies in the areas of activity. This gives the organisation a degree of leeway regardless of the structural power or decision-making influence of states. This is a reflection of why rational choice institutionalism is more adequate than neo-liberalism in explaining the present case, since the latter relies heavily on the structural positioning of actors and doesn't allow for much readjustment or hierarchical flexibility based on other indicators than power.

The relation between the two actors is here structured on the basis of a flexible P-A approach, where two essential elements of the relation between states and IGOs are combined in the analytical model to assess the variation in autonomy and control: the hierarchical relation between the two actors and implications of the adjustment to change in the environment where the relation is embedded. This enables the relaxation of assumptions of fixed preferences and the consideration that the preferences of states may be undefined or at least non-converging and both preferences of states and of the organisation may drift from the strict original intentions.

7.2.1. Hierarchy

The act of delegation presupposes a degree of legitimate authority that is passed on from states to the organisation. It results from a minimum agreement among different states on common needs and common ways to address them. It was seen in chapter three that the strong divergences of perception of needs as well as of preferences of the different states involved in the set up of the international refugee regime led to a degree of flexibility in the scope of activities of the UNHCR. Although initially limited in its functions and duration, such limitations could be subject of revision. This however, was not the result of a strategic deliberation among states but the result of the difficulties in agreeing on certain issues. Thus the embedded limitations argument (chapter one) does not apply as an explanation for the evolution of the UNHCR for two reasons: the shape of the constitutional document did not fully envisage the dimensions nor direction of expansion of the organisation and the flexibility introduced did not derive from clear preferences of the drafters in that direction. Rather, the current development represents a particular interpretation of the mission that the organisation autonomously embarked on and increasingly developed in a path-dependent way (chapters four-five).

In the case of the UNHCR the evolution and adjustment to the new needs on the ground through expansion was helped by the question of legitimacy. The reduced number of states that had created the international refugee regime had decisional authority over their own commitments to asylum but not on the international efforts to define strict guidelines concerning assistance to refugees in other parts of the world and concerning new groups that were not explicitly included in the regime. A clear distinction was introduced between the national and the international level of responsibility. Indeed, forms of protection of refugees in situations of mass influxes derived

from the praxis of the organisation rather than from deliberation of states up until the 1969 OAU Convention. This is so not only for the initial process of expansion, where involvement in a new country entailed only the request of the state in question and a decision of the UNHCR to appeal for funds. Once it was given regular permission to do so and obtained funding, the scope of activities in that country was left to the programme management. The question concerning the legitimate authority for making decisions and devising guidelines on the policy orientation of the organisation applies again and especially so to the IDP issue-area, since it remains an internal affair of the sovereign state. Any form of permanent or automatic delegation of responsibility would be difficult to justify. In fact, it is such a sensitive policy area that states could not agree on whether it is legitimate to have international agreements on the issue and many states were opposed to deliberations in the UN in that regard. This provides margin also for leaving the decisions on what type of involvement to pursue in the hands of the bureaucracy, thus distorting the hierarchical relation of principal control.

However, states retain many instruments of control, in particular the possibility of providing indications of preferences and guidelines as well as the funding mechanisms. Concerning the guidelines, these derive directly from the agreement among states, since GA resolutions are approved by majority and ExCom Conclusions by consensus. When such is not possible, again decision-making ends up being left to the criteria of the bureaucracy, based on the mission interpretation. This provides an important source of limitation on principals' mechanisms of control that this research has addressed: the existence of multiple principals, providing contrasting outputs that result from diverging preferences, or ill-defined outputs that result from ambiguous preferences. Funding is a much more direct source of control and the tendency for earmarking funds for specific programmes is particularly constraining to the agent. However the bureaucracy has the possibility of making several funding appeals and contacting donors on a bilateral level for specific projects it wants to implement. On the other hand, if it does not see it within its interests to become involved in specific situations for which earmarked funding is available, its margin of manoeuvre is diminished. It can however pursue a limited programme as it did in the case of Angola, explored in chapter six, when funding is provided by only one or a few donors, that have an interest in the specific project. In sum, convergence of donors be it in terms of guidelines and mandate definition or in terms of funding, is proven detrimental to the autonomy of the bureaucracy, while a divergence entails a margin of leeway that the bureaucracy can take to its own advantage, and if prolonged in time can mean a lasting shift in the hierarchical relation by consolidating relatively autonomous decision-making procedures. In these situations the

organisation can take the opportunity to push for construction or aggregation of preferences based on the maximum common denominator instead of the minimum levels that usually result. On the other hand, the situation of deeply contrasting preferences among the principals can also represent a poisoned gift, since the organisation will have to very skilfully manage the contrasting demands that each principal places on it.

7.2.2. Adjustment to the environment

I searched in this dissertation for drift of preferences and this was related to the integration of the international environment in the P-A relation. Preferences of both actors adjust to changes in the environment and the dynamic between the two is constantly evolving (mutual drift). Preference adjustment may occur in different directions, either retaining the original goals or principles (functional adjustment), or in contrast, drift in a direction that conflicts with the original goals (dysfunctional adjustment). In the analysis of the evolution of the UNHCR and of its autonomy, these aspects were taken into consideration.

The continuity thesis outlined in chapter one fits into the functional adjustment to change and to the new needs of refugees on the ground. However it was observed that such continuity became from a point on dysfunctional. The necessary adjustment to such change may also imply a dysfunctional evolution of the organisation that may entail inconsistencies with existing policy orientations, incompatibilities with other dimensions of the mandate, ambiguities and acute dilemmas for the organisation. The effects of initial latent contradictions of new functions with the original ones and the implications of a structural adjustment of the organisation to operational functions were not immediately perceived within the UNHCR and inconsistent demands generated from expansion were buffered until they started arising negative reactions. They also did not take into account the drift in states' preferences that would eventually converge to make use of those dysfunctions for their own interests.

This stronger consideration of the environment and of preference drift adds to the P-A framework the dynamic perspective and introduces the historical institutionalist ground in the analysis. Namely it enables the inclusion of change in the analytical framework as well as the impact of processes on subsequent decisions.

7.3. Nature of autonomy

Although this research uses a P-A framework to establish the parameters of the analysis, it does not aim at drawing conclusions at the level of strong autonomy. This means that it was not my intention to take situations where there was a clear conflict of preferences between the organisation and the states. This combination of factors that frame the current analysis justifies also the choice of mandate and role of the UNHCR as object of analysis, and broad policy-areas for units of analysis as opposed to programming decisions where there may be a stronger bilateral influence of certain states and more likelihood of contrast of preferences between some of these and the organisation. This happens frequently in bilateral contexts and the outcome may vary depending on a number of factors. Since the scope of this analysis was to explain autonomy in defining broad policy direction and organisational mandates – in sum, institutional change -, it can only be considered within the context of multilateralism and therefore the analysis was focused on the spread or aggregation of states' policy preferences. Hence, what is aimed at is explaining relative autonomy, measured in terms of the capacity of the organisation to make independent policy choices on a wider range of areas as possible; and what the organisation does with the leeway it obtains. An important part of that autonomy is made of substantive dimensions that the organisation has to retain or promote in order to preserve such independence for decision-making.

7.3.1. Relative autonomy and relative control

In this research it was seen that the UNHCR was able to survive and expand its operations despite the opposition concerning its mandate of some states, namely of the Eastern bloc, and in the absence of specific guidelines of the majority of states in such direction. The good offices concept emerged in the sequence of such type of initiative and to cover other instances of autonomy where the organisation took the lead in preparing projects for implementation that were not strictly within its sphere of competence. Although there was no consensual opposition, the initial moves were the initiative of the UNHCR, which means that it was able to expand operations independently of specific state pressures and retained the capacity to implement all dimensions of its mandate, hence effectively enlarging the range of policy options (chapter four). Thus, organisational policy-making happened without the ex-ante pressure for a certain policy direction and with subsequent endorsement of the activity, amounting to increased capacity to make policy choices, which can be seen as a situation of relative autonomy.

When states converged their preference towards less asylum and more country of origin and operational activities, the UNHCR did not have much alternative but to follow suit and its capacity to implement the core functions of rule-supervision and denouncing states' restrictive measures on asylum became more limited (chapter five). In this case we were in the presence of relative control, where organisational policy-making suffers ex-ante pressure for a certain policy direction and state policies that limit its capacity to fully implement its range of competences.³⁶⁶ However, this limitation was not only due to the state preference convergence but also constrained by UNHCR's own autonomous previous expansion in that direction.

Finally, in the case of IDP policy, again the UNHCR showed signs of relative autonomy when, faced with acute disagreements among states concerning how to handle the issue at the international level, it was able to resist important bilateral pressures to expand and formalise a mandate in the area, when it was not advantageous for the organisation (chapter six). However, a close analysis of the preference formation process in this area also shows that even the pressures on a bilateral level constituted only an apparent P-A problem, since preferences were not clearly defined and moves in this area were isolated initiatives of the diplomats, not consistent bilateral policies, let alone converging positions among states.

7.3.2. Substantive dimensions of autonomy

Three substantive dimensions of autonomy were identified that were to a certain extent incorporated in the UNHCR's design and to another extent the organisation has had to manage in the course of its evolution: authority, independence and relevance. While these were initially constants, the evolution of the UNHCR turned them into variables or rather, organisational goals that were not given and had to be balanced. On occasion the pursuit of one conflicted with the attainment of another in the extent to which they conferred autonomy for the organisation. Two assumptions guide the perspective on how the UNHCR pursues its autonomy: a basic assumption sustains that the major goal of the organisation is to do the best possible for the populations of concern, which on occasion is a consideration that is not immediately apparent nor possible to

³⁶⁶ Among these would be upholding the institution of asylum, supervising international responsibilities at the national level and promoting or advocating for the creation of norms that ensure the full protection of refugee rights, as well as implementation at operational level of uniform criteria and fair procedures for all populations of concern.

measure. This goal underlies other constraints, and a secondary assumption is that the maintenance of features of autonomy constitutes a core organisational goal.

The UNHCR's authority originally resides in its supervisory and rule-creation functions and the power to provide policy inputs to states, be it within the context of rule-supervision or within the context of assisting in the implementation of refugee policies and programmes at the legal or operational level in refugee-hosting countries. Authority of the UNHCR has taken many different dimensions, including the one of diplomatic actor, as seen in chapters four and five. Although positive in terms of authority, enabling interference in the political process of post-conflict agreements and negotiation of better conditions for the provision of humanitarian assistance, the implications of this role have impinged negatively on the organisation's image of independence and political neutrality and impartiality (chapter five and six). Such non-political nature was also inscribed in the UNHCR's Statute, but the extent to which the organisation was able to retain it has varied over time. Its independence also gave it part of the relevance as a mediator on issues of a very sensitive nature that could constitute threats to international peace and security. There should be in principle no interference from political actors in the decisions and implementation of the organisation's mandate.

What very often has happened and has curtailed some of the independence of the UNHCR is when there is a difficult balance between the relevance and authority of the organisation, and the maintenance of the non-political mandate, as was seen in the Cambodia example in chapter five. On other occasions it has gone along with the political interests and has been relevant to those interests but jeopardized its independence, which has often been the case when it assists programmes of voluntary repatriation in less than ideal conditions.

The relevance of the organisation derives originally from the functions described in the constitutional document and these provide it with authority. However, with significant change in the international system also the sources of relevance of the organisation have changed and the UNHCR has since then been balancing the interplay between these three substantive dimensions. Expanding and obtaining more functions in principle will mean more authority/autonomy. Initially such was the case and in certain aspects still is, with the UNHCR being one of the most commended aid agencies and praised for its benefits to the world. However, it also made it overly centred on relevance, with a negative impact on independence and authority for rule-supervision.

It should further be asked what the referent object for relevance is: principals (states), clients (public opinions) or beneficiaries (populations of concern)? The UNHCR has to manage contrasting needs and preferences of these three actors, although in this research only states' preferences have been explored, since they have direct influence in the management of the organisation.

7.4. Disjunctures of policy preferences

As argued in this dissertation, the relative autonomy of the UNHCR is made possible by situations where there is lack of convergence of state preferences. This may be due to outright disagreement among states concerning specific policy options or to lack of specific preferences defined by states. Situations of convergence of preferences will lead to more specific decisions and guidelines concerning organisational policy direction. Hence, the measure of spread of policy preferences ranges from convergence to divergence.

7.4.1. Spread of states' preferences: convergence/divergence lines

This section summarises the observations on the nature and direction of states' preference drift, as well as the level of aggregation of states' preferences. States' divergences or ambiguous positions occurred partly in the delegation phase (chapter three), during the first expansion phase (chapter 4) and in the case of IDP policy (chapter six). They converged in the minimum standards necessary to reach an agreement on the delegation phase (chapter three): in such context, the setup of the UNHCR is the result of the possible agreement among converging and diverging preferences. State preferences also converged on the voluntary repatriation and country or origin paradigm and early signs of convergence are emerging on alternative forms of protection (chapter five). Recent calls for the UNHCR to go back to core activities that were observed in the preparations for the Global Consultations do not seem to stem from clear convergences of preference, since many states depend on operational activities of the UNHCR and there isn't even a common understanding of what is really "core" (chapter six).

The delegation process was a complex one, filled with cleavages among states concerning the nature of delegation, the competences of the new institution and the scope of its activities. The

Statute of the Office of the High Commissioner for Refugees represents the consensus that was possible among the diverging perspectives of the Eastern and Western countries and even within the Western bloc. An agreement was reached for a new organisation to act under the direction of the GA, but divergences determined both relevance and shape of the international refugee regime and an organisational mandate containing some flexibility. Divergences determined. The sensitive nature of the issues required an independent institution and lack of agreement among states led to a degree of flexibility generated by the existence of grey areas unintended by states. This was the result of lack of compromise rather than deliberate strategy to address future problems. The validity of the regime was left hanging, which explains the time limit for the Office and the limited geographical and temporal scope of application of the 1951 Convention. The sensitive nature of the issue-area also determined a double framework with a Convention incorporating the compromises and responsibilities to be carried out by the individual and sovereign states, and an independent institutional setup of a multilateral nature, responsible for the implementation of the international dimension of protection and supervision of the commitments taken up by states.

The initial period of the activities of the UNHCR was set in the same political context of the Cold War and largely determined by the strong divisions concerning which solutions to promote. As seen in chapter four, the Eastern bloc was strongly opposed to all other activities that were not related to the voluntary repatriation of European refugees to the countries of origin, and the High Commissioner often resisted on the basis that the voluntary nature of return was questionable. It also refused to promote activities for returnees in the initial period. It was not forced to do more in that sense due to the disagreements among states. On other occasions the organisation took the initiative of expanding activities to areas that were not within its mandate, with subsequent endorsement by states. As seen in chapter four, this possibility first emerged out of an incapacity of states to agree on categories of populations, on competences and on solutions, and therefore the UNHCR took the lead in promoting a remedy. From then on organisational expansion proceeded into the decade of the 1980s, when asylum policies in the West became much more restrictive. During this decade and in particular in the 1990s, there was a stronger emphasis by states on UNHCR's functions in promoting voluntary repatriation and reintegration of returnees as well as work inside the country of origin in what was designated as complex emergencies that mix different sorts of population flows. To this predominantly operational type of activity was offset the supervisory and legal assistance activity that was reduced namely through several internal initiatives for restructuring the organisation, adjusting it to the operational requirements. Over the years it became decentralised, namely the protection function, with the main departments at

headquarters being the regional bureaus and the operational divisions. As seen above, concerning the IDP issue-area and the important question of whether the UNHCR should have a mandate for these populations, there were significant divergences among states.

7.4.2. Policy direction: UNHCR, a hassle or an asset?

The fact that states' preferences did not remain the same over time created fluctuations where they converged and diverged on specific aspects. The points of divergence didn't define policy direction of the UNHCR, but those of convergence did, and it is possible to establish the pattern of principal preference drift as compared to the original goals of the delegation: while initially refugees were useful instruments of foreign policy for states that created the regime and their rights were cherished and upheld consensually among the West, the changes in the international political environment and in the nature of international refugee movements led to a drift of preferences towards restrictive asylum policies that undermined the regime that they set up and which the UNHCR is supposed to uphold. Although the UNHCR has progressed constructively towards addressing the new nature of the problems and states' concerns, it retained also as goals the principles it was set up to protect and this created inconsistencies that undermine its capacity to act.

From here emerged two ultimately conflicting policy directions: the legalistic one and the operational one. Although these two can be perfectly complementary and harmless, if used for the wrong purposes they can generate significant dysfunctions and distortions of the activity of the UNHCR, thus undermining its autonomy and authority. If a caricature is allowed, it can be said that the legal policy direction of the UNHCR corresponds to the "hassle" function, where the organisation, where the organisation exercising its functions constitutes a nuisance for the pursuit of states' preferences for restrictive policies and containment of refugee flows, and on the other hand the operational policy line would correspond to the "asset" function, where the organisation's services in the prevention and containment of refugee movements provides a relevant contribution to, if not eliminating at least dissimulating the problem, without at the same time focusing too much on the parallel regimes for refugee movements that start emerging.

7.4.3. Rational-choice institutionalism

The extent to which all these policy directions are indeed directed by states, as the instrumentalisation argument would have it (chapter one) has been object of assessment in this research. It was found that although there are emerging converging restrictive policies on the side of states, these are not part of an inherent strategy composed of clear preferences towards one specific goal of manipulating the UNHCR for containment. However, initiatives are converging towards that direction and in great part taking advantage of a situation that was created by the organisation when it autonomously chose to embark on the operational expansion. Although there is no "strategy", there is an emerging trend, with at the same time incoherent action of states and absence of clear policies on some issue-areas that could be exploited by the organisation on the basis of principles. The problem is that the organisation's historical conduct has not been consistent with strictly upholding the principles and it opted for a more pragmatic approach (the hassle or asset dilemma) that also constrains its options through a structural dependence on funds and an emphasis on high operational expertise.

Rational goals, ambiguities and inconsistencies have been coexisting in the international response to forced displacement. These have contributed to structure the variations in organisational autonomy and on the responsibility for the direction of organisational change, with the UNHCR taking advantage of moments of less clear goals and less co-ordination among principals, but being controlled in moments of aggregation and more coherence among those principals. It was also seen that some "non-decisions", or areas where states did not even have policy positions were not the result of a strategic lack of political will or lack of importance of the issue-area, but the result of lack of institutional structures at state level to define preferences in an issue-area (chapter six) where states did not previously have decisional authority at the international level. Also the inherent ambivalence of the IDP issue-area generates incapacity to manage the conflicting goals and principles at stake into a coherent framework that can then be negotiated with other actors. The organisation, despite being dominated in circumstances of clear goals, has managed to skilfully exploit the window of opportunity left by these ambiguities, incoherences and inconsistencies. An approach to P-A should therefore include the consideration of the actors holding unclear and flexible preferences and also that principals are not necessarily unitary actors, having each their preferences. These are then aggregated in different ways and have a specific impact of IGOs leeway. This applies in particular to the issue of multiple principals, but also has a bearing on individual ones, often holding unclear or mixed preferences due to complex internal policy definition processes. These considerations are helped by the historical institutionalist approach.

7.5. Organisational evolution: determination or determinism?

The exploration in this research shows that neither states nor the organisation is a unitary actor. As pointed out by Simon (1964), within an organisation decisions are often framed by unclear or multiple goals. Mostly the aggregate set of goals and constraints define an option for a particular course of action. In the present research the external pressures of states and the previous course of action of the organisation explain current direction of policy, including that on IDPs. The contradictions inherent to the evolution of the UNHCR over the years as well as the flexibility instilled in its mandate led to an ambiguity of organisational preferences that resulted in goals being developed through experience (see March, 1988: 15). Hence, over the years, the UNHCR maintained the pursuit of the basic goal of doing the best possible for those who needed international protection. The means found for doing so were the most obvious and in principle expansion was consistent with them and introduced ambitions in the organisation of contributing to improve conditions in the world, leading the co-ordination of those efforts and remaining active and relevant for the international response to refugee movements. What the UNHCR bureaucracy did not foresee was that just as the needs on the ground had changed from the immediate post-World War II context, so did the preferences of its principals in ways that were not so consistent with the original commitments on which the refugee regime was grounded. This section assesses the value of introducing an analysis of organisational evolution in the P-A relation to extract how constrained the UNHCR was by its own previous evolution in its choices of policy direction.

7.5.1. Nature of evolution – lock in

It was observed that early decisions to expand initially increased considerably the margin of autonomy of the UNHCR not only in terms of the range of policy options to pursue its mandated functions and new tasks, but also in substantive terms increased the authority and relevance of the organisation without undermining its independence (chapter four). However, the systematic reproduction of the expansionist pattern of decision-making narrowed policy options in the sense that overtime the UNHCR increasingly chose the operational path in detriment to the legal and supervisory one. While this was initially not a constraint, it did tilt the organisation's decisions in one direction. Initially it didn't present dysfunctional evolution and the organisation perceived

expansion as producing positive feedback and increasing returns in terms of funding, prestige and relevance.

By its evolution towards operational and geographic expansion and broadening of the categories of concern, the UNHCR enhanced its range of policy options: it started managing more funds and became responsible for more and more populations, thus becoming indispensable to many states. However, this established a pattern of decision-making that led the organisation into an increasingly operational and expansionist path. This was eventually reflected in the organisational structure and with such adjustment it would be hard to go back on those activities and start refusing involvement of an operational nature. Further, the good offices activities were subsequently endorsed by states and many of the functions deriving from this mechanism were also included in the formal range of competences of the UNHCR. This meant an effective lock-in of the organisation into a specific pattern of decisions that was not yet dysfunctional because it did not limit its activities in its original areas of responsibility. Hence, the UNHCR was able to maintain its rule-supervisory functions. However, when in the 1980s there is a convergence of states' policies towards restrictivism and containment policies, the UNHCR is already heavily dependent on funding for its worldwide programmes that was provided by a small number of states, and was less able to react to breaches in states' international commitments to asylum.

7.5.2. Calculation of returns – lock out

The previous section dealt with the findings regarding the influence of early decisions for expansion on the subsequent repetition of patterns of decisions. This process may not be limitative of the independence of the organisation, although it tilts choices towards one end of the spectrum of policy options. This is particularly important in areas of activity that are plagued with ambiguities and dilemmas. However, this may still be a functional evolution, understood as expansion that increases the range of policy options, hence the autonomy and authority, producing increasing returns to the agent: more relevance, expertise and funding.

When states converge in their preferences and provide guidelines or funding in one of those policy directions, then further expansion of the organisation along those lines will entail that part of its mandate is not fulfilled and in that case we are in the presence of a dysfunctional evolution, where expansion decreases the range of policy options and hence the returns for the organisation's

capacity to enforce the basic goal: the result is a conflict between different activities, image of ineffectiveness or of shirking and mismanagement of funds (chapter five).

This effectively limited the UNHCR's range of policy options, since it became restricted in choosing to implement its core mandate. In this case the expansion of the organisation can be seen as dysfunctional, defined as organisational expansion in situations of convergence of states' preferences that limit the range of policy options available to the organisation and undermine areas of its activity. For example, the convergence of states on alternative forms of protection, such as the internal flight alternative, that imply the existence of areas of protection inside the country of origin where the UNHCR is also involved, may introduce fundamental contradictions with the institution of asylum and leave the organisation powerless in the face of manipulation.

Although the bureaucracy for some time ignored these implications and buffered the inconsistent demands and conflicting dimensions not only of its expanded functions but also of the different dimensions of the autonomy it sought, this pattern of evolution eventually became clearly dysfunctional. This realisation generated a need to halt the tendency towards incorporating more expansion due to the perceived decreasing returns. The three core dimensions of substantive autonomy started conflicting. Flexibility for decision-making was seen as the way out.

This conflation of considerations was put in motion by the dysfunctions that were incremented by states' convergence towards restrictivism, producing an organisational preference for halting expansion (lock-out). This is what happened in the case of the IDP issue-area, where the internal divergences concerning the UNHCR's policy options, together with the calculation of returns of a formalisation of the mandate, led to a series of determined refusals to take such a step. Flexible decision processes in this area would enable the UNHCR to cherry-pick involvement in those IDP situations that would be less detrimental to the pursuit of all dimensions of its mandate. Faced with the lack of agreement among states, it took the window of opportunity to retain such autonomous decision-making capacity. In the calculations of returns the organisation also considers its interaction with other actors in the humanitarian system, such as other UN inter-governmental bodies, as well as NGOs, that are implementing partners in many cases, in others active lobbyists for particular causes or concerns.

The organisation is driven by the overall need of balancing the constraints on its existence and survival through remaining relevant and credible while at the same time retaining a degree of

autonomy that enables it to refuse certain situations when they prove too manipulative and politicised.

7.5.3. Historical institutionalism

Historical institutionalism provides a series of instruments that address institutional adjustment to change in the environment and has proven essential in this dissertation to evaluate how the organisation defined its evolution over time, with a degree of independence from states but to a large extent constrained also by its own previous decisions. The use of path-dependent suggestions and their implications in terms of internal inconsistencies of the actor has proven useful for establishing limits to organisational autonomy in managing different goals. Path-dependence is not only about historical determinism. It implies the rational consideration of options by the actors involved and the nature of calculations on returns that they may obtain from such choices. The main argument is that such calculations become constrained by the past evolution: decisions become reproduced and not “chosen”. New approaches to path-dependence suggest that in certain circumstances the active involvement of the actors may counter this tendency, and break the evolutionary path. In the case under analysis here it was suggested that some agency was inherent to the historical process: the bureaucracy initially ignored the dysfunctional implications of its evolution and buffered its inconsistent demands, but it was also able to face them when the nature of returns became negative and its leadership did take a window of opportunity to break or at least halt the tendency for expansion: determinism of the historical process but also determination of a rational agent. This suggests the usefulness of combining the new-institutionalisms in particular in explaining case situations where different sources of constraints (not only principal-agent dynamics) are at stake.

7.6. Between a rock and a hard place: managing conflicting goals

Currently the UNHCR has to manage countless dilemmas and contradictions that create difficulties in establishing what is the policy direction to follow in the long-run. As was concluded from this research the possibilities of significantly altering the course it has been following are slim, but the UNHCR can exploit divergences among states once it defines clear and consistent goals. For the time being it has to consider the implications of the relation between different

substantive goals; define which policy direction is in its best interests and manage both the conflicting goals of states and the needs of the beneficiaries. All courses of action imply gains and losses.

Concerning the global options in terms of policy direction, it should be noted that when the crucial initial choices towards operational expansion were made the organisation had no way of knowing how the international environment would further evolve nor how the preferences of states would develop. However, two broad policy directions are identified that establish the "hassle or asset" dilemma: in order not to be politicised nor dependent on funding the organisation would have to opt for remaining faithful to its originally limited range of functions, directed mostly at rule-supervision and co-ordination, in a state-centric context dominated by national policies rather than an international level. This would mean that with change in the international environment the organisation would be confined to a role of "hassle" to states, criticising and condemning the instruments they came up with to face the new challenges and without providing assistance to help in facing those challenges. The question arises of what added value that option would have for the refugees themselves. It would also in due course challenge the very survival of the organisation, given the dramatic changes in the international environment but also in the preferences of the states. The UNHCR then opted for being relevant to states, the "asset" option, and proactively seeking to improve the conditions for refugees directly. It had its downsides such as the funding dependency and the possibility of some losses in terms of the core functions, but at the same time it did contribute positively in many respects to alleviate suffering and also to create conditions at the international level for the definition of policies and addressing the concerns of the populations in need. The authority of the UNHCR as a humanitarian agency in developing countries was in many contexts vital for guaranteeing that essential rights were upheld and to influence states in developing policies as open and inclusive as possible.

The IDP issue-area is paradigmatic of the different dilemmas crossing the UNHCR decision-maker that derive from the broad policy direction that it has taken over the years but also from the direction of changes in the international environment and the conflation of preferences of its principals. Two existing approaches had created a common expectation concerning UNHCR's activity with IDPs: that a mandate would be imposed on the organisation by states eager to promote containment of refugee flows beyond the borders of the countries of origin, and that the organisation would proactively strive to obtain such a mandate within a logic of organisational expansion and mission creep. The reasons why such did not happen have been explored over the

research and can be traced to the organisation's calculations of returns for such an expanded mandate and the possibility of taking the window of opportunity left by states' lack of agreement and decisional authority in this new international issue-area. Thus, the UNHCR sought to pursue its own independent preferences for flexibility that were the result of such calculations. Refusing the IDP mandate was an act of lock-out from previous historical evolution and at the same time of autonomisation from states by establishing independent criteria in an area of the mandate and avoiding the next foreseeable step in organisational expansion that would further lock it in a decisional path – a mandate would not enable the UNHCR to refuse involvement in specific situations.

Although there is little possibility of reversing the effects of a dysfunctional evolution, there are strong possibilities for the organisation if it finds adequate ways of managing these conflicting interests. The Global Consultations were an important step towards facing the dysfunctions and overcome the attention allocation problem that ignored the contradictions in terms of the impact on the policy direction. But it does not set the organisation totally on a new path.

7.7. Concluding remarks: constraints and opportunities

What is the relevance of the conclusions of this research for the general analysis of international governance, or the relation between states and IGOs? The relevance is related to the capacity of assessing in the longer term the durability or stickiness of an observed change in the hierarchical relation of control (P-A problem), which is enabled by the use of the historical perspective and which the isolated observation of a P-A problem does not enable. By identifying forms by which the UNHCR is able to fill in policy space with its own preferences and then direct the line of preference definition of states in view of such constraints, it shows that the organisation effectively takes up decision-making powers that were not foreseen at the outset.

There are three ways of seeing the conclusions presented here. One way is the identification of conditions of scope for the emergence of autonomous behaviour. This also paves the way for explaining organisational behaviour itself and direction of institutional change. Thirdly there is the possibility of identifying an independent effect of organisational behaviour on institutional change and on the conditions of scope themselves. Linked to this possibility of organisational behaviour affecting the preferences of states, the research also conceives that states are not unitary

actors with clear and fixed preferences, and that the domestic apparatus should be taken into account when delineating explanations for observed outcomes.

The value of the autonomy observed is circumstantial and limited to a relative autonomy, i.e., the possibility of the organisation making independent choices and maintaining its goals. The possibility of exploiting effectively windows of opportunity in particular in new international issue-areas for which no clear policy positions have been devised, is a good prospect for the creation of more durable autonomy. However, states' preference construction then again fills in the policy space. The possibility for agents to retain enforcement of their preferences and principles is to take these opportunities to influence the process of state preference definition while it is in construction. The organisation thus fills in the policy space by implementing autonomous preferences in the delineation of the regime in construction. While there is not yet a relocation of authority in the case of the IDP issue-area I would say that there is a diffusion of decisional authority among different actors in the international system and states do not necessarily control its direction.

This research has addressed empirical constraints and opportunities for the UNHCR. Namely it analysed what the organisation is doing, why it is doing it and what other options it could follow. This impinges on the discussions around the core and broad mandate and to what extent the UNHCR should be restructured. During the Global Consultations some possibility was raised of the creation of independent supervisory mechanisms that would not be constrained by funding and particularistic preferences, thus separating the legal and operational functions of the UNHCR. While this possibility would certainly add authority to the supervision of states' commitments, it is not very realistic since an agreement would have to be reached among states concerning the nature of new commitments. However, it is not expected that states would set up a new mechanism to supervise the commitment to a Convention that has strong limitations in their view, that they have been disrespecting and whose relevance in the present world has been questioned. The harmonisation of policies at the EU level shows that new agreements on the protection of refugees in the current world are made on the basis of the least common denominator. For these reasons a new supervisory mechanism does not seem a viable option.

From the findings in this research it can be concluded that the UNHCR is responsible for much of its policy direction but such policy direction has been evolving over many years and became a process difficult to unlock. It now has to manage the different dimensions of autonomy and the

inconsistencies that the dysfunctional evolution has created. It is vulnerable to state interference, and should be more transparent about what it can and cannot do and the measure to which states pose constraints, even if it risks reducing other sources of autonomy such as the capacity to obtain funds or willingness to enforce programmes of a wide scale in specific situations of acute need.

It is in this context that is necessary to rethink the existing approaches to the assistance and protection of IDPs. This dissertation has analysed the response of states in relation to one particular agency, the UNHCR. However, the rest of the inter-institutional humanitarian system is also concerned with and responsible for the evolution of the policy for IDPs at the global level and at the UNHCR level. Two major concerns should be highlighted: how the coherence approach or the convergence of states in terms of funding and addressing humanitarian policy affects the capacity of the different organisations to fulfil their mandates in a neutral and impartial way; and how the turf battles between the different organisations in the system may hamper efforts to deliver effective services to those in need. Much of this will depend on who actually fills in the decision-making gap that emerges with a new international issue-area that was not previously of international concern nor part of the foreign policy concerns of other states: the protection of populations in the territory of their country of origin, whose responsibility is still formally of the state of origin. The emergence of this new international issue-area and the way it will evolve are fascinating issues of research. The present dissertation addresses only one fraction of the myriad implications for the international system that arise from the endeavours for the development of an international responsibility for the protection and assistance of IDPs.

Some of the theoretical implications of this research also provide interesting reflections for future research. I would like to end this dissertation by drawing attention to them.

It was observed that the UNHCR's activity over the years had a strong impact on the international environment by promoting and spreading norms throughout the world. Its operational action also contributed to blurring the borders of sovereignty and highlighting the universal dimension of human rights. At the same time the possibility that humanitarian organisations would provide more assistance inside the countries of origin has given states a new legitimacy for changing their views on refugee protection and insisting on prevention strategies, sometimes irrespective of their effectiveness in terms of international protection. Therefore it can be concluded that the UNHCR is also responsible for changes in states' preferences both in positive and negative directions. Further look into the conditions and direction of such influence are interesting contributions to

research in the area of sociological institutionalist approaches. What emerges is the role of the multilateral institution by its own activity over the years in enabling the definition of positions of states through its practical activity on the ground, which paved the way for legitimising certain types of activities around which states later converged. This fits in with organisational approaches that focus on the impact of organisational activity in shaping the nature of demands and even the nature of the field (Scott, 1995). Finnemore, among other constructivists have called for more research focusing on the impact of norms but also international organisations on state actors (Finnemore, 1993), with institutions being taken "simultaneously as causes and effects" (Martin and Simmons, 1998: 743). Although it was not the primary goal of the present research, there is room for assessment in subsequent research of to what extent the activity of the UNHCR has contributed to the evolution of states' preferences and positions concerning humanitarian and asylum policy and in what direction such has happened. It may here be suggested that it has contributed in a positive and negative direction.

Another important aspect that was observed in this research and incorporated in the analytical model was the dynamic between lock-in and lock-out of a path-dependent evolution, within a historical institutionalist research programme. Since such consideration also includes the agency of the actors involved, it is a fruitful area to implement the linkage of historical and sociological approaches and further bridge them with rational-choice. Broadly this was the goal of this research but it was applied to a single case and the general goal was to apply existing theories to explain my puzzle, not to generate strong predictions and generalisations. However, such attempt would be very interesting within a more circumscribed and controlled context, less plagued with empirical contradictions and dilemmas that had to be incorporated in the analysis of the present case.

A third area of research to which this dissertation alerts and that could further contribute to bridging existing institutionalisms are the concepts of consistency and coherence. The findings of this research suggest that these two concepts should be further explored. Coherence was partly explored in the aggregation of multiple preferences of principals and represents the possibility of a group of actors exerting more influence and effectiveness if strategies are designed in consultation and in a co-ordinated manner. Consistency was explored at unit level, and refers to the co-ordination of different policy areas at state level, to produce consistent policy outputs. This research has preliminarily shown that incoherent policies on the sides of principals gives more leeway to the agent and also do inconsistent policies at state level. Conversely it also showed that

organisational inconsistency left it in the hands of a deterministic evolution and of drifting preferences of principals. It would be interesting to further explore how coherence and consistency as explicit policy agendas that have been developing at the international level impact on actor influence on areas of international concern and international decision-making processes. This research objective is all the more pertinent, as the increasing trend among donors is to develop such coherence. It remains to be seen on what grounds or structuring preferences the coherent policies will be based: legitimising containment; effective delivery of humanitarian action avoiding the selectivity bias; respecting the rights of the populations in need? All these are questions that impinge on the constraints and opportunities that shape UNHCR activity but also on the theoretical debates between interests and norms, between logics of consequences and appropriateness that fit into the current debates in the international relations discipline.

Appendix A: HIGH COMMISSIONER SPEECHES

G. J. van Heuven Goedhart (1951-1956)

- Statement by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees to the ECOSOC, 3 September 1951.
- Statement made by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees to the 470th Meeting of the Third Committee of the General Assembly on 9 December 1952.
- Statement made by Dr. G. J. van Heuven Goedhart, United Nations High Commissioner for Refugees in the Third Committee of the Tenth General Assembly in New York on 4 October, 1955.
- Address of Dr. G. J. van Heuven Goedhart: "Refugee Problems and their Solutions" Oslo, 12 December 1955.

August Lindt (1956-1960)

- Statement by Dr. August Lindt, United Nations High Commissioner for Refugees in the 41st meeting of UNREF Executive Committee, 6 June 1957.
- Statement by Dr. August Lindt, United Nations High Commissioner for Refugees to the ECOSOC, July 1960.

Felix Schnyder (1960-1965)

- Closing address by Mr. Felix Schnyder, High Commissioner for Refugees to the Third Committee of the GA, at its sixteenth session, 6 December 1961.
- Statement by Mr. Felix Schnyder, United Nations High Commissioner for Refugees to the Third Committee of the GA at its twentieth session, 1965.

Sadrudin Aga Khan (1965-1977)

- Statement by Prince Sadrudin Aga Khan, United Nations High Commissioner for Refugees to the Third Committee of the General Assembly, 14 November 1977.

Poul Hartling (1978-1985)

- Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the General Assembly, 13 November 1978.
- Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 10 November 1980.
- Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 12 November 1984.
- Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees to the Third Committee of the GA, 11 November 1985.

Jean-Pierre Hocké (1986-1989)

- Statement by Mr. Jean-Pierre Hocké, United Nations High Commissioner for Refugees to the Third Committee of the GA, 7 November 1986.

Sadako Ogata (1990-2000)

- Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees "Human Security: a Refugee Perspective", in Ministerial Meeting on Human Security Issues of the 'Lysoen Process' Group of Governments, 19/5/1999.
- Opening Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees at the Fifty-first Session of the Executive Committee of the High Commissioner's Programme (Geneva), 02/10/2000.
- Statement of Farewell to the UNHCR by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, Geneva, 20 December 2000.
- Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees to ECOSOC Humanitarian Segment, 19-20 July 2000.

Ruud Lubbers (2001-)

- Statement by Mr. Ruud Lubbers, United Nations High Commissioner for Refugees High Commissioner in Oslo on 23 May 2001.

Appendix B: INTERVIEWEES

- Interview with representative of the government of Portugal (Geneva, 17/11/2000).
- Interview with UNHCR Officer, Ms. Pirkko Kourula (Geneva, 22/11/2000).
- Interview with UNHCR Officer, Mr. Neills Wright (Geneva, 03/10/2002).
- Interview with UNHCR Officer, Mr. Jacob El-Hillo, (Geneva, 07/12/2000).
- Interview with UNHCR Officer, Mr. Jeff Crisp (Geneva, 11/12/2000).
- Interview with UNHCR Officer, Mr. Arafat Jamal, (Geneva, 25/10/2000).
- Interview with UNHCR Officer, Ms. Irene Khan, (Geneva 13/11/2000).
- Interview with Ms. Roberta Cohen, Brookings Institution (telephone interview, 18/11/2002).
- Interview with the representative of the government of Uganda, (Geneva, 27/11/2000).
- Interview with the representative of the government of Japan (Geneva, 05/12/2000).
- Interview with UNHCR Officer, Mr. Guillermo Bettocchi (Geneva, 27/09/2000).
- Interview with representative of the government of Switzerland (Geneva, 15/12/2000).
- Interview with UNHCR Officer, Mr. Mustapha Djemali, (Geneva, 24/11/2000).
- Interview with Mr. Dennis McNamara (Geneva, 30/11/2000).
- Interview with representative of government of Pakistan (Geneva, 20/11/2000).
- Interview with co-ordinator of ICVA, Ed Schenkenberg (Geneva, 30/11/2000).
- Interview with representative of U.S. government (Geneva, 28/11/2000).
- Interview with UNHCR Officer, Mr. Steven Corliss (Geneva, 30/11/2000).
- Interview with NRC Officer, Mr. Marc Vincent (Geneva, 07/12/2000).
- Interview with UNHCR Assistant High Commissioner, Mr. Frederick Barton (Geneva, 13/12/2000).

Appendix C: UNHCR DOCUMENTS

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- UNHCR, “UNHCR’s New Headquarters Structure” 3/2/1999 Geneva, Briefing Paper.
- 1992 General Conclusion on International Protection (N. 68)
- Change Management Group. “Final Report - Project Delphi” 1996: Geneva, UNHCR
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- Conclusions of the Executive Committee N. 19, 1980 (Temporary Refuge).
- Conclusions of the Executive Committee N° 40 (XXXVI), 1985 – Voluntary Repatriation, § e
- Conclusions of the Executive Committee N° 68 (XLIII), 1992 – General Conclusion on International Protection.
- Conclusions of the Executive Committee N. 75 of 1994, Internally Displaced Persons
- Conclusions of the Executive Committee N. 87 of 1999, General Conclusion on International Protection
- Letter from Rudd Lubbers to Kenzo Oshima, dated 20 August 2002.
- Report on Pre-ExCom Consultations with Non-Governmental Organisations, 24-26 September 2003, Geneva.
- Special Funding Appeal for UNHCR’s Supplementary Programme to Provide Emergency Assistance to Internally Displaced Persons in Angola, June-December 2000, issued in July 2000)
- UNHCR (2000) Internally Displaced Persons: The Role of the UNHCR, Position Paper, March 6, 2000.
- UNHCR (Centre for Documentation and Research), “*Reintegration in the transition from war to peace*”, Geneva, 1997
- UNHCR IOM/95/1981 – FOM/95/1981 Conclusions on international protection adopted by the Executive Committee at its 32nd Session

- UNHCR IOM 26/1983 – FOM 22/1983 Meaning and Use of the term “International Protection”
- UNHCR IOM/5/1987 - FOM/5/1987 Voluntary Repatriation: Principles and Guidelines for Action, 10 February 1987
- UNHCR IOM/36/1991 – FOM/37/1991 Working Group on solutions and protection: progress report
- UNHCR IOM/28/1992 – FOM/29/1992 – Current Asylum Issues.
- UNHCR IOM/FOM/33/93 of 28 April 1993
- UNHCR IOM/55/1997 – FOM/62/1997 – Restructuring the Division of International Protection
- UNHCR IOM/87/97-FOM/91/97, of 2 December 1997;
- UNHCR IOM/07/1999 – FOM/07/1999 – Relevance of the 1951 Convention in the contemporary context.
- UNHCR IOM/12/2000 – FOM/13/2000 – UNHCR and Internally Displaced People
- UNHCR IOM 77/2001 – FOM 75/2001, “Operational Guidelines for UNHCR’s Involvement with Internally Displaced Persons (IDPs), 24 September 2001.

Appendix D: UN DOCUMENTS

- "Refugees and stateless persons. Australia: amendment to the draft resolution of France and the U.S. (A/C.3/L.29)", UN Document A/C.3/L.31 of 15 November 1949.
- "Refugees and stateless persons. Draft resolution of France and the U.S.", UN Document A/C.3/L.29 of 13 November 1949.
- "Refugees and stateless persons. Israel: amendment to the draft resolution of France and the U.S. (A/C.3/L.29)", UN Document A/C.3/L.33 of 15 November 1949
- "Refugees and stateless persons. United Kingdom: amendment to the draft resolution of France and the U.S. (A/C.3/L.29)", UN Document A/C.3/L.32 of 15 November 1949.
- 1967 Protocol to the Convention on the Status of Refugees
- 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention).
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- Constitution of the IRO, General Assembly Resolution 62 (I), 15 December 1946.
- Convention Relating to the Status of Refugees of 28 July 1951
- ECOSOC Resolution 393 (XIII), of 10 September 1951.
- General Assembly Resolution A/45, of 12 February 1946.
- General Assembly Resolution A/971, of 7 September 1949.
- General Assembly Resolution 429 (V) Draft Convention relating to the Status of Refugees, of 14 December 1950.
- General Assembly Resolution 638 (VII), of 20 December 1952
- General Assembly Resolution 1039 A and B (XI), of 23 January 1957.
- General Assembly Resolution 1166 (XII) of 26 November 1957
- General Assembly Resolution 1167 (XII), of 26 November 1957.
- General Assembly Resolution 1389 (XIV), of 6 November 1959.
- General Assembly Resolution 1388 (XIV) of 20 November 1959.
- General Assembly Resolution 1499 (XV) of 5 December 1960.

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- General Assembly Resolution 2198 (XXI), of 16 December 1966.
- General Assembly Resolution 2426 (XXIII) of 18 December 1968.
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- General Assembly Resolution 29 (XXXVII), of 11 March 1981.
- General Assembly Resolution A/RES/36/148, of 16 December 1981.
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- General Assembly Resolution A/RES/39/106 of 14 December 1984
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- General Assembly Resolution A/RES/49/169, of 25 February 1995.
- Oslo Declaration and Plan of Action, adopted at the Global NGO and UNHCR Partnership in Action Conference (Oslo, 6 to 9 June 1994)
- Provisional Summary Records of Meetings 256th to 264th held at Lake Success, New York between 4 and 14 November 1949, A/C.3/SR.256 to A/C.3/SR.264.
- Refugees and displaced persons: France draft resolution UN document A/C.3/529, 2 November 1949.
- Report by the General Council of the IRO A/C.3/528 of 20 October 1949
- Report of the Ad Hoc Committee on Statelessness and Related Problems (E/AC.32/5 - E/1618), 17 February 1950.
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- Report of the United Nations High Commissioner for Refugees, 1959.
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