

# Protection by Action

by **Jean-Pierre Hocké**

The Office of the United Nations High Commissioner for Refugees (UNHCR) was set up in 1951 with the main function of providing protection for refugees. This mandate corresponded to the task immediately confronting it, that of solving the refugee problem affecting Europe in the aftermath of the Second World War.

During the past 35 years, the international community—and consequently the refugee problem—has undergone profound changes. UNHCR, which is an integral part of the international community and, as an organ of the United Nations General Assembly is an operational component of the UN system, has likewise evolved so as to be able to accomplish its mission in all circumstances in a constantly changing world.

In concept, the UNHCR is the same today as it was in 1951; it remains the guardian of the universal principle of asylum as defined by the international community. The protection of refugees remains the cornerstone of this humanitarian institution and the essence of the mandate with which the international community has entrusted me as its head.

It is therefore not the principle itself on which the UNHCR was founded, but the implementation of this principle that has changed over the past 35 years and will continue to change in the future.

From the mid-fifties, the hub of the refugee problem began to shift from the industrialized to the developing countries. This new context—the concentration of refugees in the poorest countries—brought about a situation in which protection could no longer be ensured or would even lose all purpose unless it was combined with assistance. This dual protection/assistance approach has enabled UNHCR to match up to the new challenges that emerged with decolonization and that now take the form of a worldwide refugee population of some 12 million, with the familiar crisis areas of Afghanistan, the Horn of Africa, southern Africa, Central America and South-East Asia.

Acting on its conviction that legislation, by definition, inevitably lags behind practice and that codification is but the *de jure* recognition of a *de facto* reality, the UNHCR owes its success in meeting this challenge to the skill with which it has combined protection and assistance in what I would call “operational efficiency”.

To be *operational* does not mean distributing relief. It means being *present* in the broadest sense of the word, being right there where refugees are in need and giving protection a practical rather than a purely theoretical connotation by providing material assistance as well.

Being operational means integrating protection and assistance in a single process of *protection by action*.

For this purpose the Protection Division has been renamed Division of Refugee Law and Doctrine and the UNHCR operational bodies—the Regional Bureaux—have been made responsible for the practical application of protection, thus reaffirming the principle that the UNHCR can truly fulfil its mandate only if the protection and assistance functions are inextricably linked.

This mandate is universal, despite that fact that not all States have yet acceded to the Conventions, for beyond these instruments the asylum principle is recognized, if not in every constitution, at least in the body of laws, rules and customs governing even the simplest of societies. It is precisely because the rights of refugees constitute an integral part of human rights legislation, and because persecution and violence create the same victims, that UNHCR has not only the right but also the duty to act wherever its humanitarian mandate demands that it be present.

UNHCR’s presence is, of course, determined not in a vacuum but in a political context.

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The refugee problem—which may be called a man-made disaster—is a result of war, political crises and violence. It follows that any practical, and therefore operational, humanitarian action must fulfil two conditions: firstly, it must take into account every element of the political equation that led to the crisis and, secondly, it must avoid becoming a prisoner of that equation. Successful humanitarian action thus hinges on political neutrality and avoidance of confrontation. Although there can be no humanitarian solution without a political one, humanitarian action can and must be taken pending a political solution. In this respect, humanitarian action, precisely because it is apolitical, can help to shape and foster a political solution.

For humanitarian action, political neutrality is therefore both a prerequisite to success and a means of influencing political decisions which, by their very nature and virtually by definition, are in contradiction with humanitarian goals. It is rare that reasons of state stem from considerations unrelated to the balance of power.

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In this context, humanitarian action inevitably becomes a permanent struggle. Too often, UNHCR alone raises its voice against flagrant violations of the right of asylum. Too often also, the authorities concerned turn a deaf ear to its appeals. Unilateral measures are undoubtedly the prerogative of States, but when applied to refugees in particular, they are diametrically opposed to the ideal of international solidarity which inspired the founders of humanitarian law, that great affirmation of human rights.

Faced with this reality, UNHCR must not only endeavour to ensure that States respect refugees' rights, but also, beyond the daily struggle, strive to foster awareness of what is at stake. I am deeply convinced that respect for humanitarian ideals is actually in the political interest of States, for the violation of these ideals invariably turns against the protagonists of reasons of state and ill serves those who have shortsightedly sacrificed their principles in deference to immediate expediency.

In such situations, the respective mandates of UNHCR and the ICRC meet and complement each other. Refugees and prisoners are often created by the same event. Faced with human rights violations—in whatever guise they occur—it behoves the humanitarian front, composed not only of our two organizations, but also of all the voluntary agencies, and indeed all men and women of goodwill, to unite and speak out.

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The *Review* has published several articles by Mr. Hocké on protection and assistance to victims of armed conflicts, during his time in office with the ICRC.