CHAPTER 5

United Nations High Commissioner for Refugees: Human Rights Obligations and Presence in Host States

5.1 Introduction

Whether because of a lack of capacity and resources or a lack of political will from the host state, UNHCR has assumed progressively more state-like functions with regard to refugee protection. UNHCR invariably functions as a surrogate state; not only does it act to ensure the population’s well-being by engaging security, arranging food distribution, and organizing health and educational facilities, it also establishes camp bylaws and curfews, and controls entry to and exit from the camp.1 Indeed, UNHCR and its implementing partners assume public powers that would normally be exercised by the host state. At the same time, as UNHCR is an invited guest of the host state, its host may at any time halt operations or even expel the organization. Thus, recognizing that the host state has primary responsibility for the protection of people on its territory, this chapter explores the extent of UNHCR’s human rights obligations.2

Two categories of questions arise in this context. The first is: What human rights obligations, if any, does UNHCR bear under international law? This undertaking begins with scrutiny of UNHCR’s legal personality and explores whether or not it is independent from or linked to the personality of the UN. I then explore whether any specific human rights obligations arise from UNHCR’s legal personality, its mandate as found in the UNHCR Statute, acts of the UN General Assembly and the Security Council, as well as from UNHCR’s own institutional practice. Specifically, I consider the eventual obligations of UNHCR to maintain the civilian and humanitarian character of refugee camps and to provide physical safety and security to refugees and others of concern in its camps. The second category of issues concerns the presence of UNHCR in the host state: Under what legal basis is UNHCR present on

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2 UNHCR’s international responsibility is addressed in Chapters 6 and 7.


the territory of states and under what basis does it administer camps in this territory?

5.2 UNHCR’s Legal Personality and Autonomy

5.2.1 UNHCR as an “International Organization”

While it has historically been asserted that states were the only subjects of international law, today it is generally accepted that other entities, particularly international organizations, also possess international legal personality. Before considering UNHCR’s international law obligations and responsibilities, the first question to resolve is thus whether UNHCR has legal personality in international law. The possession of such legal personality allows it to engage with or be bound by international law.

UNHCR’s legal personality can be drawn from its qualification as an international organization in international law. The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLTSIO) defines an international organization as an “intergovernmental organization,” thus excluding those organizations established by states through organs other than their governments and those which include as members entities other than states. As is also evident, the definition contained in the Vienna Convention seems to exclude organizations created by, for instance, the General Assembly. Under this definition, then, UNHCR, as a subsidiary organ to the General Assembly, would be excluded.

The ILC’s Articles on the Responsibility of International Organizations (ARIO) define an international organization as

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