IMPLEMENTING INTERNATIONAL HUMAN RIGHTS LAW ON BEHALF OF ASYLUM SEEKERS AND REFUGEES: THE RECORD OF THE NORDIC COUNTRIES

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The work of the Office of the United Nations High Commissioner for Refugees (UNHCR) can be seen as intrinsically linked with human rights as those it helps are, by definition, victims of serious human rights violations. However it was only in the early 1990s that UNHCR began to actively cooperate with the UN human rights mechanisms through sharing information, lobbying experts and promoting complementary legal standards. UNHCR’s current involvement with UN-based human rights bodies nevertheless continues to be cautiously limited. This may be due to the fact, to cite one reason amongst many, that UNHCR has been accused of having become “highly politicised and... limited by states’ concerns regarding sovereignty”. To put it bluntly, “if UNHCR vociferously criticises states, UNHCR risks being thrown out of the country and losing its access to refugees”.¹ A less dramatic occurrence is that UNHCR’s advice to states, particularly when it is critical of asylum laws and practices linked to violations of refugee protection and human rights principles, can simply be ignored. Yet another consideration is that if UNHCR expresses concern about the asylum policies and practices of key supporting states it may find itself saddled with additional political and financial difficulties when support from those same states is reduced or withdrawn.

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¹ Tracey Glover and Simon Russell, Coordination with UNHCR and States, (University of Michigan, December 2001). The quotation is drawn from a discussion on why UNHCR has had difficulties criticising states for non-compliance with the 1951 Refugee Convention, here applied *a fortiori* to the very same difficulties with alleged human rights abuses; available online at <www.icva.org>. See also Michael Barutciski, ‘A Critical View of UNHCR’s Mandate Dilemmas’, 14:2/3 International Journal of Refugee Law, (2002).
Notwithstanding political and organisational limitations, in recent years UNHCR has adopted a constructive engagement with selected human rights fora. A 1997 UNHCR policy paper laid down that “UNHCR is part of the UN’s effort to promote respect for human rights”, and by 1998 the Office formally stated that “there is a natural complementarity between the protection work of UNHCR and the international system for the protection of human rights”. UNHCR has become increasingly aware that “the protection of refugees operates within a structure of individual rights and duties and state responsibilities […] human rights law is a prime source of existing refugee protection principles and structures; at the same time it works to complement them”.

Nowadays, UNHCR is active with various human rights bodies and this paper is to be seen as a contribution to the necessary dialogue between UNHCR and the UN human rights mechanisms on how best to use the UN system to advance advocacy on refugee protection. The choice of scope for the present article is explained by the fact that the five Nordic countries represent a sub-region which shares a common geography, and to an extent, similar political systems and values. Moreover, the Nordic countries commonly present themselves, often rightly, as forerunners in the human rights field. A common feature in Nordic foreign and human rights policy is promoting internationalism and support for multilateral institutions, including UNHCR. In this and other ways the Nordic states have been viewed as role models in the human rights field. For the same reason, the Nordics should arguably be receptive to criticism and recommendations from the different UN organs, including

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2 As concerns structural limitations on the Office of the UNHCR, 98 per cent of UNHCR’s estimated USD 750 million annual budget is financed from the voluntarily contributions of some 12 industrialised states. The Nordic countries contribute approximately 16 per cent towards UNHCR’s annual budget. UNHCR is governed by an Executive Committee of some 60 states, several of which are not parties to the international refugee instruments and thus consider that they have no formal legal obligation to provide protection to asylum seekers and refugees. A final observation is that the refugee issue has become increasingly politicised in recent years, which has put added pressure on UNHCR to address what are in some cases extraordinary demands by states to get involved in unprecedented, large-scale operations in conflict zones as well as seek ‘solutions’ to refugee problems which would not formally require states, especially western industrialised states, to continue to receive significant numbers of asylum seekers on their territories. Indeed, UNHCR, to a greater extent than other UN human rights bodies, has to “constantly tread the fine (and at times shifting) line between being diplomatic, pragmatic and principled”. (Brian Gorlick, ‘Refugee Protection in Troubled Times: Reflections on Institutional and Legal Developments at the Crossroads’, in N. Steiner et al. (eds.), Problems of Protection: The UNHCR, Refugees, and Human Rights, (Routledge, New York and London, 2003).  
5 Ibid.  
6 To wit: Denmark, Finland, Iceland, Norway and Sweden.  
7 See e.g. the Swedish government communication 2003/04:20 entitled ‘Human Rights in Swedish Foreign Policy’, available online at <www.humanrights.gov.se>.