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## UNHCR and Decolonization in Africa

### Expansion and Emancipation, 1950s to 1970s

In December 1949, the United Nations General Assembly decided to »establish, as of January 1951«<sup>1</sup> the Office of the United Nations High Commissioner for Refugees (UNHCR), to succeed the International Refugee Organization (IRO)<sup>2</sup> as the UN agency concerned with refugees. UNHCR has subsequently grown to become a universal organization that currently addresses the needs of millions of refugees. In contrast to its current status, the UN Refugee Agency started as a non-operational organization, with limited resources and staff. This article deals with this fundamental process of *expansion* and a cautious *emancipation* from original limitations and investigates the role played by the African decolonization process in this regard.

Originally created for a period of three years<sup>3</sup>, the scope of its activities and duties was clearly circumscribed. It was not meant to become an international relief agency but it was tasked to provide »international protection« and to seek »permanent solutions for the problem of refugees« falling under its specific mandate, as defined in its Statute<sup>4</sup> and the 1951 Refugee Convention.<sup>5</sup> Two fundamental limitations resulted from the refugee concept contained in the Convention: The refugee definition was limited to persons who became refugees »as a result of events occurring before 1 January 1951«.<sup>6</sup> Moreover, when becoming party to the Convention, states had the possibility of making a declaration limiting their obligation to refugees resulting from events occurring in Europe.<sup>7</sup>

Moreover, although the work of the High Commissioner was directed to be strictly »humanitarian and social« as well as »entirely non-political«<sup>8</sup>, its structure and orientation reflected the international political environment in which it developed: the immediate post-war years and the early Cold War period. Early on, the Soviet Union and its satellites decided to boycott the new UN agency, thus allowing for a total domination of the Western block. In this context, UNHCR was assigned two main objectives: to facilitate the resettlement of refugees in Europe still remaining in camps as a result of World War II and to protect and assist refugees who had fled from Communist-dominated countries in Europe.

Thus, at its creation, UNHCR was a rather weak organization, with a clear Western and European focus and a limited mandate. However, from the late 1950s, the UN Refugee

1 UNGA Res. 319(IV) of 3 December 1949.

2 The IRO had been created in 1947 to deal with the massive refugee problem created by World War II. For more information, see *Louise W. Holborn, The International Refugee Organization: a Specialized Agency of the United Nations, its History and Work, 1946–1952*, London 1956.

3 UNGA Res. 319(IV), para. 5. The Office was prolonged via successive resolutions, in particular UNGA Res. 727(VIII) of 23 October 1953 and UNGA Res. 1165(XII) of 26 November 1957.

4 UNGA Res. 428(V) of 14 December 1950: »Statute of the Office of the United Nations High Commissioner for Refugees«. Also available at URL <<http://www.unhcr.org/protect/PROTECTION/3b66c39e1.pdf>> [30.01.2008].

5 1951 Convention and Protocol Relating to the Status of Refugees, available at URL <<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>> [30.01.2008].

6 For an interesting discussion on the drafting of the refugee definition contained in Article 1 and the time clause, see *Kazimierz Bem, The Coming of a ›Blank Cheque‹ – Europe, the 1951 Convention, and the 1967 Protocol*, in: *International Journal of Refugee Law* 16, 2004, pp. 609–627.

7 1951 Refugee Convention, Article 1A and 1B.

8 UNHCR Statute, Chapter I, para. 2.

Agency experienced a gradual *expansion* of its activities and mandate. It managed to overcome the original temporal and geographical limitations and to broaden the refugee eligibility criteria to become a truly universal organization. Some authors such as Gil Loescher have convincingly argued that while UNHCR policy and practice have always been influenced by major states' interests, this trend also reflected a process of institutional *emancipation*, particularly driven by ambitious High Commissioners.<sup>9</sup> However, this article will show that other factors were at play, particularly the decolonization process and United Nations General Assembly politics.

Indeed, the UN General Assembly and the Economic and Social Council (ECOSOC) also played an important role, especially because UNHCR was required to follow their policy directives.<sup>10</sup> Many General Assembly resolutions paved the way for the UNHCR *emancipation* and *expansion*, but this influence did not always point to directions that the Office of the High Commissioner was naturally inclined to follow. UNHCR officials generally believed in the universality of their mandate (even in the 1950s) and were therefore eager to expand, strengthen and thereby ensure the durability of their organization.

The first part of this article deals with the General Assembly resolutions that allowed it to intervene beyond Europe. As will be shown, these were rather welcomed as possible ways to guarantee the continuation of UNHCR activities on a durable basis. However, this process also exposed the organization to new challenges in the developing world, especially in Africa. There, the situation on the ground and the UN General Assembly directives sometimes conflicted with the UNHCR original legal underpinnings and mandate as understood by its officials. In particular, from the early 1960s, they had to find ways to reconcile the refugee definition contained in the Statute and the 1951 Refugee Convention as well as the humanitarian, social and »entirely non-political« approach with the General Assembly directives concerning the decolonization process and assistance to liberation movements.

The second part of this article focuses on this process of adjustment between UNHCR »values« and a legal approach on the one hand, and the political and practical reality on the other hand. It led to intense debates and a certain delay in applying UN resolutions, but in the end, UNHCR was successful with its expansion policy. Thanks to the flexibility its legal instruments and the willingness of many officials to follow and strengthen the »winds of change«<sup>11</sup>, the UN Refugee Agency came to play an important role in assisting African liberation movements in the latter stages of the decolonization process. Of course, the Office of the High Commissioner for Refugees upheld its non-political role and was therefore not directly involved in the decolonization struggles. It rather dealt with the significant consequences and »side effects« of these conflicts.

The literature on UNHCR history is still relatively thin and often outdated<sup>12</sup> although recent initiatives have revitalized historical studies on the UN Refugee Agency.<sup>13</sup> Nevertheless, this article will refer to a few relevant authors' accounts which deal with the con-

9 Gil Loescher, *The UNHCR and World Politics: a Perilous Path*, Oxford 2001, pp. 8–9; Gil Loescher, *The UNHCR and World Politics: State Interests Vs. Institutional Autonomy*, in: *International Migration Review* 35, 2001, pp. 33–56; Michael Barnett/Martha Finnemore, *Rules for the World: International Organizations in Global Politics*, Ithaca/London 2004, pp. 73–74.

10 UNHCR Statute, Chapter I, para. 3.

11 The authors refer here to British Prime Minister Harold Macmillan' famous »Wind of Change« speech made before the South African Parliament, on February 3, 1960.

12 See for example Louise W. Holborn, *Refugees: a Problem of our Time: the Work of the United Nations High Commissioner for Refugees, 1951–1972*, Vol. 1 & 2, Metuchen 1975.

13 For information on these initiatives, see the descriptions of the »UNHCR and the Global Cold War« project and its follow-up project on the »Records of the Office of the High Commissioner«: <<http://graduateinstitute.ch/globalmigration/Home/page1933.html>> [9.7.2008]; See also *Refugee Survey Quarterly* 27, 1, 2008.

nection between decolonization and UNHCR expansion. In particular, Gil Loescher's historical overview and Cecilia Ruthström-Ruin's interesting study of UNHCR activities during the Algerian war will serve as good starting points.<sup>14</sup> Both authors emphasize the original UNHCR legal limitations and the extraordinary institutional growth that began in the 1960s, but do not address sufficiently the internal debates and the difficulties inherent to this process. In particular, Loescher and Ruthström-Ruin do not explain how UNHCR managed to reconcile its non-political nature with the necessity to provide assistance to liberation movements, such highly political groups usually involved in armed struggles.

#### I. THE END OF THE EUROCENTRIC PERIOD

The first phase of UNHCR expansion took place in Europe, in the aftermath of the 1956 Hungarian uprising when this organization became the ›lead agency‹ to direct the international emergency operation for those refugees.<sup>15</sup> Such a development was not preordained and the involvement of the Office of the High Commissioner actually marked a departure from established practices and earlier interpretations of its mandate. First, given the 1951 Convention ›time clause‹, some came to consider that this group of displaced persons did not fall under the mandate of the High Commissioner. Nevertheless, the view prevailed that the flight of the Hungarians was not only linked to events occurring at the time, but also to the communist take-over of 1947–1948.<sup>16</sup> Second, this crisis challenged the standard refugee status determination process: Because the refugee definition put the emphasis on the concept of a ›well-founded fear of being persecuted‹<sup>17</sup>, eligibility was determined on an individual basis.<sup>18</sup> However, the mass exodus of Hungarians rendered this process of individual screening impossible. UNHCR and Western states receiving Hungarian asylum seekers adopted a pragmatic approach to find a way out of this conundrum: It was decided to grant refugee status on a collective basis, by considering all the Hungarians as *prima facie* refugees falling under the UNHCR mandate.<sup>19</sup> This conclusion was *a posteriori* confirmed by the United Nations General Assembly in late November 1956.<sup>20</sup>

A year later, in a different context, the United Nations General Assembly passed a resolution providing a new basis for action to UNHCR, without modifying its Statute or the

14 See Gil Loescher, *The UNHCR and World Politics: a Perilous Path*, Oxford 2001, and Cecilia Ruthström-Ruin, *Beyond Europe: The Globalization of Refugee Aid*, Lund 1993.

15 See the chapter on ›The Hungarian Crisis of 1956‹ in: UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action*, Oxford 2000, pp. 26–35.

16 Ivor C. Jackson, *The Refugee Concept in Group Situations*, The Hague 1999, pp. 114–120.

17 1951 Refugee Convention, Article 1A(2); UNHCR Statute, para. 6A(ii).

18 Note that the issue of ›group determination‹ versus ›individual determination‹ has always been the source of legal debates. Thus, according to Prof. Goodwin-Gill: ›The UNHCR Statute [...] contains an apparent contradiction. On the one hand, it affirms that the work of the Office shall relate, as a rule, to groups and categories of refugees. On the other hand, it proposes a definition of the refugee which is essentially individualistic, seeming to require a case by case examination of subjective and objective elements. The frequency of large-scale refugee crises over [the years], together with a variety of political and humanitarian considerations, has necessitated flexibility in the administration of UNHCR's mandate.‹ Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford 1996, pp. 8–9. See also Jackson.

19 UNHCR, *The State of the World's Refugees 2000*, pp. 30–31.

20 See UNGA Res. 1127(XI) of 21 Nov. 1956; 1128(XI) of 21 Nov. 1956; 1129(XI) of 21 November 1956; 1130(XI) of 4 Dec. 1956; and 1131(XI) of 12 Dec. 1956. The matter had also been discussed in early November. See in particular: UNGA Res. 1006(ES-11) of 9 November 1956.

1951 Refugee Convention. Since the end of World War II, due to political and economic disorder, numerous Chinese had fled mainland China, mainly to reach Hong Kong. As early as 1951, this problem had been brought to the attention of the General Assembly leading to a UNHCR investigation. The ›time clause‹ was not an issue here and it seemed safe to assume that, in most cases, the fear of persecution was a real motive for departure. However, mainly because of the complicated legal and political situation<sup>21</sup>, the Office of the High Commissioner was unable to clearly determine whether the Chinese refugees in Hong Kong were eligible under the UNHCR mandate. It was nevertheless recognized on a number of occasions that, given the humanitarian problems involved, this situation was of concern to the international community and that the UN General Assembly should review the issue. As a consequence, Resolution 1167(XII) was adopted on November 26, 1957 authorizing »the United Nations High Commissioner for Refugees to use his good offices to encourage arrangements for contributions« for the benefit of the Chinese refugees.<sup>22</sup> This was the first instance of the use of this ›good offices formula‹, which referred to the UN General Assembly's ability to exceptionally ask UNHCR to develop assistance programs on behalf of specific displaced persons falling outside of its usual mandate.<sup>23</sup> This method was a pragmatic way to expand the UNHCR scope of activities. It also had a political value: through the use of the ›good offices formula‹, the Office of the High Commissioner could avoid expressing any implicit judgement concerning the political conditions in the country of origin based on the persecution criteria.<sup>24</sup>

In the following years, the General Assembly developed and strengthened this formula. In the context of the World Refugee Year in 1959, a resolution called on members of the United Nations and the specialized agencies to devote particular attention to the problems of refugees and authorized »the High Commissioner, in respect of refugees who do not come within the competence of the United Nations, to use his good offices in the transmission of contributions designed to provide assistance to these refugees«. <sup>25</sup> This resolution marked a new step because it was general in character: no specific group of refugees was mentioned. While UNHCR had previously been directed to assist specific refugee groups not falling within its mandate, the High Commissioner was now authorized to decide on his own which refugee groups would benefit from his good offices.<sup>26</sup>

The UNHCR answer to the Algerian refugee crisis<sup>27</sup> that developed from the mid-1950s has been researched thoroughly.<sup>28</sup> It has been described by UNHCR representatives as the first instance when the ›good offices formula‹ was used in Africa, opening the way for the agency's involvement on this continent and in decolonization issues, but Cecilia Ruthström-Ruin has convincingly demonstrated that this view was »incomplete and partly incorrect«. <sup>29</sup> Indeed, her study has established that High Commissioner August Lindt was bent on involving his agency in the crisis even before the adoption of any ›good offices resolution‹ by the UN General Assembly. This fact reinforces the intuition that legal underpinnings followed and justified UNHCR actions rather than the reverse.

21 The complexity was mainly due to the existence of two Chinas, each of which might have been called upon to exercise protection.

22 UNGA Res. 1167(XII) of 26 November 1957, para. 2 (Emphasis added).

23 See *Holborn*, *Refugees*, Vol. 1, pp. 434–450.

24 *Ruthström-Ruin*, p. 23.

25 UNGA Res. 1388(XIV) of 20 November 1959, para. 2.

26 Further resolutions were adopted in the following years. See in particular: UNGA Res. 1499(XV) of 5 December 1960; UNGA Res. 1673(XVI) of 18 December 1961. For an in-depth analysis of the issues involved and the General Assembly debates, see *Jackson*, pp. 94–112.

27 A sample of online documents relating to UNHCR involvement in the Algerian crisis is available at URL <<http://www.unhcr.org/cgi-bin/texis/vtx/research?id=4417e0302>> [30.01.2008].

28 See for example *Holborn*, pp. 436–437.

29 *Ruthström-Ruin*, p. 155.

In May 1957, Tunisia appealed for UNHCR assistance to deal with the massive influx of Algerians resulting from the conflict in their home country. This request placed the Office of the High Commissioner in a difficult situation because France insisted that the Algerian conflict was an internal issue and that any third party action would violate the principle of non-interference in its internal affairs. Accepting the refugees as eligible under the UNHCR mandate would have been understood as an indirect criticism of France.

The issue of eligibility was even more complex because at the time some UNHCR officials doubted that the Algerians fell under their mandate since it could be considered that they were ›simply‹ fleeing the difficult conditions created by the war rather than persecution. Moreover, the ›time clause‹ worked against recognizing Algerians as mandate refugees: linking their flight to the outbreak of hostilities did not comply with the 1951 Refugee Convention and the ›other option, namely the French annexation of Algiers in 1848, seemed too far-fetched‹.<sup>30</sup>

In addition, just like in the Hungarian case, it was impossible to investigate the persecution criteria on an individual basis because of the large influx.<sup>31</sup> Despite this situation, after having assisted Hungarian refugees, it was difficult for the High Commissioner to reject the Tunisian appeal. It also appears that such an option ran counter to High Commissioner August Lindt's own ambitions for his Office. The UN General Assembly elected Swiss diplomat Auguste R. Lindt on 10 December 1956 as head of the United Nations High Commissioner for Refugees who held this position until 1960. The years he served as High Commissioner were marked by his dynamic and forceful leadership, shaping and broadening the scope of UNHCR's mission on behalf of refugees, especially in the developing world.<sup>32</sup> It seems that August Lindt anticipated the potential implications of the decolonization process for his Office activities and world politics. According to Cecilia Ruthström-Ruin, Lindt wanted UNHCR to become a ›true UN organ‹ which should not discriminate against refugees in any country.<sup>33</sup> It is also well known that he did not want to be perceived as the ›High Commissioner for European refugees only.‹<sup>34</sup> He therefore wanted to avoid criticism from developing countries and even to build on the Hungarian success to maintain a momentum of expansion, particularly by securing support from the growing Afro-Asian group in the UN.<sup>35</sup>

Thus, August Lindt launched at an early stage a process that led to UNHCR involvement in the crisis. On the basis of an enquiry conducted in Tunisia to determine the status of displaced Algerians the High Commissioner ›came to conclude that the Algerian population that recently arrived in Tunisia include[d] persons who seemed, pima facie, to fall under‹ his mandate, while other persons did not.<sup>36</sup> While insisting on the purely ›humanitarian and social‹ character of his mandate and the necessity for his Office to have a totally non-political approach, he informed President Habib Bourguiba that he would immediately start ›looking for funds necessary to grant material assistance to the refugees.‹<sup>37</sup> Lindt avoided making explicit public statements about his understanding of the Algerians'

30 *Bem*, p. 620.

31 *Ruthström-Ruin*, p. 72.

32 For more information on August R. Lindt, see *Rolf Wilhelm/Pierre Gygi/David Vogelsanger* (eds.), *August R. Lindt: Patriot und Weltbürger*, Bern/Stuttgart/Wien 2002.

33 *Ruthström-Ruin*, p. 162.

34 *Loescher*, UNHCR, p. 9.

35 *Ruthström-Ruin*, pp. 160–161 and pp. 194–195.

36 Lettre de A. R. Lindt, Haut Commissaire des Nations Unies pour les Réfugiés à S. E. Monsieur Habib Bourguiba, Président de la République, 11 septembre 1957. Folio F, UNHCR Fonds 11 Series 1, 13/1/31 TUN ›Assistance to Algerian refugees in Tunisia‹ (06–1957/08–1961) [Vol. 1], p. 1.

37 *Ibid.*, p. 2.

eligibility. Nevertheless, in November 1957 UNHCR started assisting the refugees in partnership with the International Committee of the Red Cross (ICRC).<sup>38</sup> Again, it is important to note that these developments occurred before the adoption of the first two ›good offices resolutions‹.

It seems that the High Commissioner was able to overcome the original French opposition mainly because France could not count on her allies' full support. In particular, the United States and, to a lesser extent, Great Britain, preferred to leave the ›eligibility decision to the High Commissioner and supported him in the handling of the matter‹ in order to avoid the ›difficult task of officially presenting their own views, which would have offended the French government.‹<sup>39</sup>

For its part, the Moroccan government waited until October 1958 to request assistance. This appeal led to the adoption of the first United Nations General Assembly resolution related to Algerian refugees on 5 December 1958. This resolution recommended the ›United Nations High Commissioner for Refugees to continue his action on behalf of the refugees in Tunisia on a substantial scale and to undertake similar action in Morocco.‹<sup>40</sup> It thus paved the way for an extended and improved international relief effort. Under the authority of this resolution, a new operation was launched in the beginning of 1959 to assist Algerian refugees in Tunisia and Morocco.<sup>41</sup> However, this resolution as well as the three others that followed<sup>42</sup>, only ›referred in general terms to ›refugees‹ from Algeria without specifying whether or not they were refugees according‹ to the definition contained in the UNHCR Statute or the 1951 Refugee Convention. In addition, in this case the ›good offices formula‹ was not mentioned by the General Assembly. The legal status of these refugees thus remained formally undefined but it ›now became easier for UNHCR to avoid clarifying the eligibility issue: once the resolution had been adopted, Lindt could simply maintain that UNHCR had been asked by the General Assembly to give assistance.‹<sup>43</sup> On this account, Cecilia Ruthström-Ruin concluded that in this case the ›expansion of eligibility criteria did not occur through clear and well-conceived decisions‹ but rather through ad hoc judgements, ›which made it possible to avoid legal and political deadlocks.‹<sup>44</sup>

The Algerian episode heralded the expansion of the agency's geographical scope even though, in the 1950s, this development was far from being preordained. This expansion reflected modifications in the international system (particularly with the growing significance of decolonization), as well as the ambitions of the High Commissioners.

## II. UNHCR, DECOLONIZATION AND THE EMERGENCE OF THE THIRD WORLD

Despite the ›shaky‹ legal basis, the UNHCR action on behalf of Algerian refugees came to be remembered as the first instance when the UN Refugee Agency intervened in the developing world and in the context of decolonization through the ›good offices formula‹. Lindt's successor as High Commissioner, Felix Schnyder, was determined to keep the mo-

38 *Ruthström-Ruin*, p. 175. In March 1958, the ICRC withdrew and was replaced by the League of the Red Cross Societies. For the role of the ICRC see also the contribution of *Fabian Klose* in this volume.

39 *Ruthström-Ruin*, pp. 201–202.

40 UNGA Res. 1286(XII) of 5 December 1958.

41 *Ruthström-Ruin*, pp. 175–176.

42 UNGA Res. 1389(XIV) of 20 November 1959; UNGA Res. 1500(XV) of 5 December 1960; UNGA Res. 1672(XVI) of 18 December 1961.

43 *Ruthström-Ruin*, pp. 98–99.

44 *Ruthström-Ruin*, p. 201.

mentum going. From the beginning of his term in 1960, he made it clear that, on the basis of the good offices resolutions, he »foresaw a shift in the UNHCR away from programs involving European refugees to a focus on assistance to refugees in the developing world«.<sup>45</sup>

In effect, after the Algerian operation, the concept was extensively used in Africa and Asia. The first subsequent refugee crises the High Commissioner dealt with on the basis of his good offices related to refugees from Laos in Cambodia and Tibetan refugees in India. In Africa, from 1961, UNHCR provided assistance to Angolan refugees in the Congo, thus intervening for the first time in the highly politicized context of anti-colonial conflicts fought against Portugal in Africa. For UNHCR, the dilemmas were similar to those faced during the Algerian episode: the mass influx made individual screening impossible, while explicit criticism of Portugal had to be avoided.

An important obstacle in this perspective related to the agency's still limited structures and resources amplified by a lack of Afro-Asian staff members. To partially alleviate this situation, Schnyder appointed Prince Sadruddin Aga Khan – who had contacts with political actors in the Middle East, Asia and Africa – as his Deputy-High Commissioner.<sup>46</sup> In a joint press conference in October 1963, they both presented their views on the future of their Office, emphasizing the significance of Africa in this context. Schnyder considered that his Office was »now confronted with two great tasks«: to »overcome the backlog of misery of what we call the ›old‹ European refugees« and to »deal with current and new situations whenever they may arise«, especially the »burning new refugee problems in Africa«.<sup>47</sup> For his part, Sadruddin Aga Khan reported on his recent mission in ten countries<sup>48</sup> in Africa South of Sahara, where he had »had the opportunity of realizing [...] that Africa [was] certainly in motion and that [...] refugees unfortunately [were] a by-product«.<sup>49</sup> Furthermore he explained that it was his impression that »the problem of refugees will be with us for a very long time on that continent.« He also announced that, to deal with these new problems, the first UNHCR Regional Office South of the Sahara had just been established in Bujumbura, Burundi.<sup>50</sup> However, even then, the universalization of UNHCR activities and especially its expansion in Africa was not assured. A twin challenge had to be overcome: the limitations of the 1951 Refugee Convention and the drafting of a refugee convention by the recently created Organization of African Unity (OAU).

The ›good offices formula‹ had marked a turning point in the expansion of UNHCR activities but did not formally overcome the legal limitations of the Convention. Indeed, because of the time clause, refugees in Africa could not benefit from the standard framework of international legal protection. As a consequence of the expansion of UNHCR activities, by the mid-1960s, the Convention »did not apply to the majority of refugees being assisted by UNHCR«.<sup>51</sup>

As shown above, acting on the basis of his good offices allowed the High Commissioner to avoid the legal and practical complications linked to the persecution criteria. This pro-

45 Loescher, UNHCR, p. 106.

46 Loescher, UNHCR, p. 109.

47 »Joint Press Conference Given by the United Nations High Commissioner for Refugees, Mr. F. Schneider, and the Deputy High Commissioner, Prince Sadruddin Aga Khan – 9 October 1963«, MHCR/293/63 GE. 63-16383. UNHCR Fonds 13 Sub-fonds 1 Series 1, »Press Conferences of the Deputy High Commissioner« (1962–1965), p. 1.

48 Tanganyika, Uganda, Burundi, Rwanda, the Kivu Province of the Congo and its capital Leopoldville; and then in West Africa: Nigeria, Dahomey, Togo and Ghana.

49 »Joint Press Conference Given by the United Nations High Commissioner for Refugees, Mr. F. Schneider, and the Deputy High Commissioner, Prince Sadruddin Aga Khan – 9 October 1963«, p. 4.

50 Ibid., p. 7. Previously there were only *Chargés de Mission* assigned to specific problems, working out and reporting to Geneva.

51 UNHCR, *The State of the World's Refugees 2000*, p. 53.

cedure also permitted to ›ignore‹ the time limit included in the Convention. However, the ›good offices formula‹ was supposed to be used for exceptional situations. Moreover, this formula was considered to permit material assistance only, while legal protection was reserved for cases where refugees were individually screened and found to fulfil the persecution criteria. It did not bring any legal obligation upon receiving states with regard to the protection of refugees.<sup>52</sup> To remedy these difficulties, already in 1960, August Lindt had asked experts to study how the UNHCR Statute could be modernized to reflect the expansion of its activities. This initiative failed because the UNHCR Executive Committee did not forward the proposals to the UN General Assembly for fear of transforming UNHCR into a relief agency.<sup>53</sup>

The matter gained urgency when, in 1963, the OAU started the process of drafting a regional treaty designed to address the specific aspects of African refugee problems. An important goal was to reduce regional tensions linked to the movements of refugees as well as their political and military activities from and in their host countries. For the High Commissioner, this initiative presented a danger of undermining the universal character of the 1951 Refugee Convention and of his Office. UNHCR officials also feared the adoption of different standards of refugee protection, although the UN Refugee Agency was rapidly associated to the work on the drafting of the OAU Refugee Convention.<sup>54</sup>

The OAU had built up effective political pressure in order to clarify the legal status. Therefore, there was a certain urgency to remove the legal limitations inherent to the 1951 Refugee Convention. The first steps to amend the 1951 Refugee Convention were taken in 1964, when the UNHCR Executive Committee requested the High Commissioner to explore ways to overcome the temporal limitations.

As a consequence, a report written by a group of legal experts led to the adoption of the 1967 Protocol Relating to the Status of Refugees which indeed removed the geographical and temporal limits of the 1951 UN Refugee Convention and expanded the scope of obligations undertaken by states.<sup>55</sup>

Thereafter, many African states acceded to the 1951 Refugee Convention and the 1967 Protocol but this did not preclude the drafting of an African legal instrument. The Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted in September 1969 and entered into force in June 1974.<sup>56</sup> Nevertheless, the OAU Refugee Convention was not to compete with but rather to become the ›effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees‹.<sup>57</sup> It is noteworthy that while the OAU Refugee Convention reproduced the 1951 Refugee Convention definition, it also went beyond the ›individual persecution criteria‹ and extended the definition to include

›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‹.<sup>58</sup>

52 *Loescher*, UNHCR, p. 124.

53 *Ibid.*, note 67.

54 *Holborn*, pp. 183–188.

55 See UNHCR, *The State of the World's Refugees 2000*, pp. 55–56 and *Loescher*, UNHCR, pp. 123–126.

56 The text of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, usually referred to as the 1969 OAU Refugee Convention, is available at URL <<http://www.unhcr.org/basics/BASICS/45dc1a682.pdf>> [30.1.2008].

57 1969 OAU Refugee Convention, Article VIII.2.

58 *Ibid.*, Article I.2.

Hence, from the late 1950s onwards UNHCR could finally rely on sound and durable legal basis to act on the African continent. There, it was exposed to many new challenges. In particular, the organization had to deal with sudden mass refugee flows associated with the decolonization process, national liberation struggles, proxy wars and their aftermaths. Thus, UNHCR became involved in the twin major post-war developments: decolonization and the emergence of the Third World. The UN Refugee Agency even became involved in activities that went beyond a strict interpretation of its original mandate, including long-term development efforts in poor and often recently decolonized countries.<sup>59</sup>

Of course, due to its non-political role, the UN Refugee Agency was usually not directly involved in the decolonization process or the conflicts. Even when it was called by the United Nations or the West to act as a mediator between countries of origin and asylum, the High Commissioner was reluctant to get directly involved, for fear of undermining its humanitarian mandate.<sup>60</sup> It dealt with the ›side effects‹ of decolonization and of the conflicts that often followed independence but did not intervene in the evolving political and military situations. UNHCR obviously dealt with the aftermaths and the humanitarian consequences of decolonization, the emergence of new states, and the transition periods often characterized by fluctuating local and regional situations.

Despite the adoption of the 1967 Protocol and the 1969 OAU Refugee Convention, the UN Refugee Agency continued to face complicated legal dilemmas, linked to the decolonization process, complicating the UNHCR's humanitarian work. Again, this period was characterized by many uncertainties about the implementation of the relevant legal instruments and about the ›situation on the ground‹.

One important challenge was related to the issue of refugee status determination of people fleeing decolonizing or recently independent countries. In such situations, it was often difficult to determine the citizenship of those displaced persons, which fuelled internal debates and reflections about whether they fell under the UNHCR mandate. Deliberations of this kind were recurrent when the agency was confronted with the demise of the British Empire. For instance, in the early 1970s, an intense debate developed among UNHCR legal experts concerning the status of African Asians in former British colonies such as Uganda who wished to find refuge in the United Kingdom. A 1970 document gives a good example of the blurred situation the lawyers had to deal with. According to this note, a ›good legal case‹ could ›be made out for the East African Asians being refugees‹ but that an ›equally good case [could] be made for the contrary by virtue of them being United Kingdom citizens‹ since the ›decisive factor‹ was the ›quality one attaches to the nationality conferred on them by the United Kingdom‹:

»If we take the strictly legal view, that these are United Kingdom citizens prevented from entering their home country, [they can be considered as refugees]. If, however, we take the whole picture of a disintegrating empire into account and assume that the nationality conferred on them was a kind of ›nationalité de complaisance‹, a rash act of kindness on the part of the United Kingdom under circumstances which have since radically changed, we could not possibly consider them as refugees vis-à-vis the United Kingdom. There is, however, no doubt that most of these people, even temporarily, find themselves in a de facto condition of statelessness and are subject to what amounts to persecution in East Africa.«<sup>61</sup>

59 For a historical critique of these efforts, see *Jeffrey Crisp*, Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process, in: *International Migration Review* 35, Special Issue: UNHCR at 50: Past, Present and Future of Refugee Assistance, 2001, pp. 168–191.

60 *Loescher*, UNHCR, p. 117.

61 Memorandum from O. Bayer, to Mr. J. Colmar for the High Commissioner, 8 April 1970. Folio 12, UNHCR Fonds 11 Series 2, 100-UGA.ASI ›Refugees from Asia in Uganda‹ [Vol. 1] (1969–1972), p. 1 (emphasis in original). One of the first background papers on this issue can be found in a note on ›British Citizens of Asian Origin in East and Central Africa‹, 24 January 1969.

This document also called on the High Commissioner to »formulate a definite policy on the subject« and incited contrary opinions. There was an important internal debate on this issue within UNHCR. Thus, in a subsequent document, another UNHCR Representative replied:

»As far as I am concerned, I think that Asians who are British nationals should be the responsibility of the United Kingdom and not of the independent countries of Africa. This is a simple question of logic. I thus must say that I have strong reservations about your theory of a »disintegrating empire« and of a »nationalité de complaisance« tending not to consider the United Kingdom as being responsible. [...] I agree that we are here on moving and political grounds. But what does politics mean for us if it doesn't mean the defence of the refugees?«<sup>62</sup>

As late as February 1973 – after Idi Amin had decided to expel all Uganda's Asians – the matter was still not settled.

Perhaps more importantly, the UN Refugee Agency was drawn into the decolonization process by the major institutional changes resulting from the accession of new United Nations members. During its first decade, the Western powers and their clients made up the majority of the global organization, thus controlling the General Assembly where the »one-nation, one-vote« principle applies. However, after 1955 a massive increase in membership occurred, particularly through the accession of recently decolonized states, especially from Africa. Thanks to the appearance of this »Third World majority«, the United Nations General Assembly began to concern itself more and more with the problems of the developing world and the decolonization process.<sup>63</sup>

The new members considered Chapter XI of the UN Charter (Declaration Regarding Non-Self-Governing Territories) as granting the organization the constitutional right to play a leading role in the emancipation of peoples still under colonial rule, but they also wanted to strengthen the UN's prerogatives in this field. Already in December 1960, hoping to accelerate the decolonization process, the General Assembly adopted the famous Declaration on the Granting of Independence to Colonial Countries and Peoples. In essence, the Declaration called for »immediate steps« to be »taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories [...] in accordance with their freely expressed will and desire [...] in order to enable them to enjoy complete independence and freedom.«<sup>64</sup> Considered as a true »Decolonization Charter«, this text became a milestone in the process of decolonization. A year later, UN General Assembly Resolution 1654(XVI) established the Special Committee on Decolonization (also known as the Committee of 24 because of the number of members) to monitor the implementation of the Declaration and to make recommendations on its application. In its eighth operative

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Folio 2, UNHCR Fonds 11 Series 2, 100-UGA.ASI »Refugees from Asia in Uganda« [Vol. 1] (1969–1972). This note states: »When the dependent territories of Kenya, Malawi, Tanzania, Uganda and Zambia became independent, persons resident in those territories who were British subjects, but were of non-African origin, were given two years in which to decide whether to take up new local citizenship or to retain their UK citizenship. The majority are of Indian origin, with the remainder being of Pakistani origin.« (p. 2) See also the 28-page note for the File from J. E. R. Candappa, Legal Division, on »The East African Asians«, 9 March 1970. Folio 15, UNHCR Fonds 11 Series 2, 100-UGA.ASI »Refugees from Asia in Uganda« [Vol. 1] (1969–1972).

62 Note for the File from A. Noël, to Dr. O. Bayer, on »Asiatiques en Afrique«, 9 April 1970. Folio 13, UNHCR Fonds 11 Series 2, 100-UGA.ASI »Refugees from Asia in Uganda« [Vol. 1] (1969–1972), p.1 (emphasis in original; authors' translation).

63 Christopher O'Sullivan, The United Nations, Decolonization, and Self-Determination in Cold War Sub-Saharan Africa, 1960–1994, in: *Journal of Third World Studies* 22, 2005, pp. 105–106. See also the contribution of Daniel Maul to this volume.

64 UNGA Res. 1514(XV) of 14 December 1960, para. 5.

paragraph, this resolution requested »the specialized agencies concerned to assist the Special Committee in its work within their respective fields«. <sup>65</sup> Actually, during its first two years of existence, the Special Committee did not request the specialized agencies' help and it was not until 1964 that some of these institutions began sending representatives to the Special Committee meetings. UNHCR representatives began to do so in 1970. <sup>66</sup>

In December 1965, issues linked to African refugees were particularly high on the agenda of the General Assembly. A resolution on »Assistance to Refugees in Africa« was adopted, which invited »States Members of the United Nations and members of the specialized agencies to devote special attention to the problems of refugees in Africa and to co-operate actively with the United Nations High Commissioner for Refugees by placing the necessary means at his disposal, particularly in the form of increased financial contributions to the programmes of the High Commissioner's Office«. <sup>67</sup> A few days later, the General Assembly recognized the »legitimacy of the struggle by the peoples under colonial rule to exercise their right to self determination and independence« and requested the specialized agencies to »withhold assistance of any kind to the Governments of Portugal and South Africa«. <sup>68</sup> Co-operation between the Special Committee and the specialized agencies really began in 1966, when the General Assembly decided to formally ask specialized agencies to participate in the application of the Declaration in their respective domain. The »United Nations High Commissioner for Refugees and other international relief organizations and the specialized agencies concerned« were requested »to increase their economic, social and humanitarian assistance to the refugees from colonial Territories«. <sup>69</sup> Subsequent resolutions repeated these calls. <sup>70</sup> In December 1970, the General Assembly urged »the specialized agencies and other organizations within the United Nations system to provide, in consultation, as appropriate, with the Organization of African Unity, moral and material assistance to national liberation movements in the colonial Territories«. <sup>71</sup> It is worth noting that this resolution also recognized that in fighting for independence, »colonial peoples and peoples under alien domination« could legitimately use »all means at their disposal«. <sup>72</sup>

How did UNHCR respond to these calls from the United Nations? According to Maurice Barbier, refugees from colonized territories received noticeable assistance from the UN Refugee Agency. However, the UNHCR archives tell a more complex story. There were generally no issues involved in providing legal protection and assistance to the »classic« refugees generated by decolonization struggles. On the other hand, as the next part will show, the General Assembly appeals to grant this kind of »services« to »freedom fighters« and their organizations sparked intense debates and reluctance among UNHCR staff.

### III. THE DEBATES OVER THE ELIGIBILITY OF »FREEDOM FIGHTERS« AND ASSISTANCE TO LIBERATION MOVEMENTS

The new directions imposed by the General Assembly conflicted importantly with at least two fundamental sections of the UNHCR Statute: Paragraph 2, which states that the »work

65 UNGA Res. 1654(XVI) of 27 November 1961, para. 8.

66 *Maurice Barbier*, *Le comité de décolonisation des Nations Unies*, Paris 1974, pp. 223–224.

67 UNGA Res. 2040(XX) of 7 December 1965, para. 2.

68 UNGA Res. 2105(XX) of 20 December 1965, para. 10 and 11. A year later, Rhodesia was added to these »boycotted« two countries.

69 UNGA Res. 2189 of 13 December 1966, para. 8.

70 See for example, UNGA Res. 2465(XXIII) of 20 December 1968 and 2548(XXIV) of 11 December 1969.

71 UNGA Res. 2708(XXV) of 14 December 1970, para. 6.

72 *Ibid.*, para. 5.

of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social« and Article 7(d) – the so-called »exclusion clause« – which states that

»the competence of the High Commissioner [...] shall not extend to a person [...] in respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights«.

On this basis, many felt that despite the General Assembly resolutions supporting the freedom struggle in Africa, »freedom fighters« should still be excluded from the High Commissioner's mandate because the UN Refugee Agency had to be impartial and neutral in its approach.

UNHCR officials were also concerned about the involvement of the Organization of African Unity and the entry into force of the 1969 OAU Refugee Convention. Given that the 1963 OAU Charter set out as one of its purposes to »eradicate all forms of colonialism from Africa«<sup>73</sup>, there was the suspicion that African governments may »judge »freedom fighters« to be OAU Convention refugees in those cases where such a determination« could serve the needs of the »freedom fighters«.<sup>74</sup>

In addition, the OAU Convention also posed a »problem of differential refugee treatment because its signatories [were] very likely to interpret one of the exclusion clauses of that definition differently from, for example, the UNHCR«.<sup>75</sup> In its Article 1, paragraph 5, the OAU Convention contains exclusions clauses comparable to the 1951 Refugee Convention, but also bar from the possibility of obtaining refugee status the persons who have »been guilty of acts contrary to the purposes and principles of the Organization of African Unity«.<sup>76</sup> UNHCR officials were concerned that »dissidents of the African liberation movement and those betraying the specifically African cause could be excluded since their pro-colonial attitude would be an obstacle to the emancipation of African peoples«.<sup>77</sup> In such situations, it would be difficult for UNHCR to provide protection to persons considered as mandate refugees by the Agency but not by the receiving countries.

These themes were debated during the late 1960s and the 1970s, as the Office attempted to reconcile its legal foundations and humanitarian philosophy with the geopolitical realities inherited from the decolonization process. In a memorandum of 1968, the Director of the UNHCR Legal Division, Arnold Rørholt, attempted to answer the »difficulties« encountered by »various UNHCR Representatives [...] in determining the status of the so-called »freedom fighters« in the light of UNHCR's Statute«. Starting by referring to the Declaration on the Granting of Independence to Colonial Countries and Peoples, the subsequent relevant General Assembly resolutions, and the work performed by the Committee of 24, Rørholt also reminded that the work of the High Commissioner's Office was of an »entirely non-political character«.<sup>78</sup> In essence, he explained that, while UNHCR offi-

73 1963 OAU Charter, Article II 1(d).

74 *Holborn*, p. 191.

75 *Holborn*, p. 190.

76 1969 OAU Refugee Convention, Article 1, para. 5(c).

77 *Ousmane Goundiam*, African Refugee Convention, Migration News, March-April 1970, p. 9.

78 Interoffice Memorandum No. 22 – Branch Office Memorandum No. 26 (UNHCR/IOM/22/68 – UNHCR/BOM/26/68) from Arnold Rørholt, Director, Legal Division, to All UNHCR Representatives and Correspondents; All UNHCR Professional Officers at Headquarters, on »Question of »Freedom Fighters« and Liberation Movements in Africa«, No Date [1968]. Folio B, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], pp. 1–2 and p. 4. In its introduction, this document mentions a »memorandum of 14 October 1966 entitled »Effects of Political Activities by Refugees on the Granting of Material Assistance by

cial should »rely, as in all other cases, exclusively on the Statute and the exclusion clause contained in paragraph 7(d)«, not all ›freedom fighters‹ were to be excluded from the UNHCR mandate.<sup>79</sup> Indeed, he took care to explain that »the term ›freedom fighter‹ [was] not used in Africa *only* for persons actually engaged in military activities«, but also for »militants«, i. e. »persons who may be engaged in purely intellectual activities such as writing of articles, propagation of anti-colonial material, as well as those responsible for political thinking within the liberation movements«. <sup>80</sup> Therefore, he concluded that:

»Persons coming out of territories under colonial rule for reasons enumerated in paragraph 6 of the Statute may be considered eligible. If these persons fleeing from persecution are, for understandable reasons, bent upon struggling against colonial rule, they cannot, for that reason alone, be excluded. Thus until such time as they engage in military or sabotage activities, the question of their eligibility does not arise. In other words, it is only when a person is actually engaged in activities covered in paragraph 7(d) of the Statute that the question of his exclusion from the Mandate can be taken up.«<sup>81</sup>

Rørholt also explained that problems linked to refugee status determination would not arise provided UNHCR officials kept in mind that persons engaged in military activities often felt »no need to claim refugee status and/or seek the protection or material assistance of UNHCR«. Indeed, in general »the active members of liberation movements [were] protected and given necessary facilities by the host countries where they [had] their headquarters«. <sup>82</sup> Perhaps more surprisingly, this document also claimed that:

»The question of the UNHCR protection or assistance does not arise in the case of persons actively engaged in military operations or sabotage. Furthermore, it is understood that the primary duty of ›freedom fighters‹ is to fight *within* the territory under colonial rule since armed action can take place only within the territories for whose independence the liberation movements are struggling. Thus the question of the eligibility of persons *within* these territories does not arise.«<sup>83</sup>

The debates did not stop there. Thus, Rørholt's memorandum was critically re-assessed in a June 1970 note written by J. E. R. Candappa of the UNHCR Legal Division. Candappa countered the idea that ›freedom fighters‹ should be »excluded from the mandate by virtue of paragraph 7(d) of the Statute« while they participate to »military or sabotage activities«. <sup>84</sup> In essence, the note argued that since the United Nations had – through the Declaration on the Granting of Independence to Colonial Countries and Peoples and the subsequent relevant General Assembly resolutions – recognized the right to struggle against colonialism »whatever its form«, the UNHCR Statute's ›exclusion clause‹ did not apply to ›freedom fighters«. <sup>85</sup>

Nevertheless, it appears that Candappa's views did not convince everyone. In March 1971, Dr. Bayer, the then Acting Director of the UNHCR Legal Division, issued a new memorandum on »Freedom Fighters and Liberation Movements in Africa« which superseded Rørholt's memorandum, without modifying much the approach. This document repeated the position that persons »actively engaged in the struggles« were not considered

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UNHCR« and the »addendum of 12 February 1968 to this memorandum entitled ›Eligibility of Persons Previously Engaged in Military or Sabotage Activities‹«. Unfortunately, the authors could not find those documents in the UNHCR archives.

79 Ibid., p. 4.

80 Ibid., p. 3 (emphasis in original).

81 Ibid., p. 3–4.

82 Ibid., p. 4.

83 Ibid., p. 3 (emphasis in original).

84 Note for the File from J. E. R. Candappa, Legal Division, on »›Freedom Fighters‹ – Branch Office Memorandum No. 26, 1968 – A Re-assessment«, 24 June 1970. Folio C, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 3.

85 Ibid., pp. 4–9.

as refugees and the question whether they were »covered by any exclusion clauses in the Convention or the Statute [did] not arise« because they generally did »not seek the protection of, or assistance from, UNHCR« and were »often engaged in the struggle within the territories of their countries of origin«. <sup>86</sup> However, the distinction between active »freedom fighters«, simple militants and dissidents was maintained, persons falling in these last two categories being eligible for the Status of refugees under the Mandate. <sup>87</sup>

The issue of the status of dissidents or deserters from liberation movements does not appear to have been a very difficult one to settle legally but it did cause serious tensions between UNHCR and liberation movements. A January 1974 note on »UNHCR Attitude with Regard to Dissidents and Deserters from Liberation Movements« explained that the UN Refugee Agency should »grant protection and assistance to all persons fulfilling the criteria of the Statute even if they [were] dissidents from liberation movements«. This document also stated that assistance by UNHCR »on the basis of its humanitarian mandate to dissidents who are refugees [was] not and should not be considered as an action inimical to the liberation movements«. <sup>88</sup> Actually, it was even acknowledged that membership of a liberation movement implied »the acceptance of the movement's discipline« and that there were »cases in which there might be a real need for the liberation movement to keep a dissident in detention for security reasons, e.g. if he had acquired secret military information«, provided that »detention and disciplinary measures« were »not excessive«. <sup>89</sup> Ideally, these details were to be discussed between UNHCR, the Government of the host country and liberation movements, with the aim of working out a humanitarian position, when possible.

Nevertheless, the issue of dissidents remained an important »bone of contention between UNHCR and the liberation movements« as these organizations' leaders tended to consider that UNHCR assistance and protection for dissidents »could only encourage desertion and lower their troops' moral«, thus diverting »freedom fighters« from »the movements' major *raison d'être*, i. e. the liberation of their respective countries by armed struggle«. <sup>90</sup> According to a 1977 note, for this reason, »leaders of these movements have often preferred to avoid any contact with UNHCR«. <sup>91</sup> The attitude of liberation movements was indeed ambivalent: while they requested assistance and recognition, they also often regarded international actors such as the Office of the High Commissioner for Refugees with scepticism and suspicion.

As explained above, the debates within UNHCR did not remain restricted to the issues of the eligibility of »freedom fighters«, but also – and maybe more importantly – related to the calls for establishing relations with the liberation movements. The state of these relations has varied widely over the years. »From a state of open hostility during the 1960s«, these relations reached a »rather cordial level« in the mid-1970s, even though there remained »a degree of mistrust on the one side and of reluctance on the other«. <sup>92</sup>

86 Interoffice Memorandum from Dr. O. Bayer, Acting Director, Legal Division, to All UNHCR Representatives and Correspondents; All UNHCR Professional Officers at Headquarters, on »Freedom Fighters and Liberation Movements in Africa«, 11 March 1971. Folio F, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 2.

87 Ibid., pp. 2–3.

88 Note for the file by Ivor C. Jackson, on »UNHCR Attitude with Regard to Dissidents and Deserters from Liberation Movements«, 10 January 1974. Folio 19A, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 1.

89 Ibid., pp. 3–4.

90 »Relations entre le HCR et les mouvements Africains de libération (le point de la situation)«, anonyme, non daté (approx. avril 1977). Folio 105, 101-GEN »Relations with Liberation Movements – General« [Vol. 2] 1975–1977, p. 1 (authors' translation).

91 Ibid.

92 Ibid.

As far as the archives can tell, the problems posed by the prospect of assisting or establishing relations with these organizations were first spelled out in a July 1967 memorandum. This document explained that relations »between UNHCR representatives and UNHCR correspondents and refugee organizations of a political character« were of a »delicate nature, particularly when the refugee organization« aimed at »overthrowing the government or the authorities in the country of origin«. Indeed, UNHCR officials were reminded that in dealing with such organizations they should bear in mind that, according to the UNHCR Statute, their work should »be humanitarian and social« and »of an entirely non-political character«. Moreover, it had to be remembered that UNHCR could not »be a part, or give support to, activities directed against Member States of the United Nations«. <sup>93</sup> Therefore, the following directives were issued:

»(a) Except when the contact is clearly in the interest of the refugees and is imperatively necessary, the initiative of the contact shall not be taken by UNHCR officials. The contacts shall not be in any written form.

(b) Whilst visits from such refugee organizations shall not be refused, they should not be provoked or caused by UNHCR (except as under [a]). In any conversations the non-political role of UNHCR should be emphasized.

(c) Correspondence from such refugee organizations shall be dealt with, as a rule, orally. Written replies shall be sent only with prior approval of UNHCR Headquarters.« <sup>94</sup>

Clearly, UNHCR officials were instructed to remain very cautious when dealing with liberation movements. Potential political problems linked to the direct involvement in conflict situations had to be avoided, even when there were refugees to be saved. The early UNHCR reactions to the calls for more cooperation with liberation movements issued by the General Assembly seems to have been based on the assumption that the Office of the High Commissioner for Refugees was a particular agency, with a specific mandate that made it impossible to collaborate with such organizations closely and openly. However, with the evolving situation and the recurrence of General Assembly resolutions mentioning this theme <sup>95</sup>, the UN Refugee Agency had to review its position. In addition, in the early 1970s, liberation movements began to criticize the Office of the High Commissioner for its approach and especially contended that »UNHCR was not implementing the General Assembly's resolutions«. <sup>96</sup> This criticism was taken seriously by UNHCR officials, especially Mr. Antoine Noël, then Chief of the Regional Section for Central and Western Africa, who considered that the Agency's »relations with the most important liberation movements: PAIGC, MPLA, FNL (GRAE), FRELIMO, should be strengthened« <sup>97</sup> and

93 Interoffice Memorandum No. 24/67 – Branch Office Memorandum No. 21/67 (UNHCR/IOM/24/67 – UNHCR/BOM/21/67) from J. Colmar, Chef de Cabinet, to UNHCR Representatives and Correspondents, on »Relations between UNHCR and Refugee Organizations«, 20 July 1967. Folio A, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 1.

94 Ibid., p. 1–2.

95 See for example UNGA Res. 2980(XXVII) of 14 December 1972.

96 Mémorandum de Antoine Noël, à Monsieur le Haut Commissaire, sur »Deuxième Séminaire du BPERA«, 13 Décembre 1973. Folio 7A, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 1.

97 These acronyms refer to the following liberation movements: the African Party for the Independence of Guinea and Cape Verde (in Portuguese: *Partido Africano da Independência da Guiné e Cabo Verde* – PAIGC); the Popular Movement for the Liberation of Angola (in Portuguese: *Movimento Popular de Libertação de Angola* – MPLA); the Revolutionary Government of Angola in Exile (in Portuguese: *Governo revolucionário de Angola no exílio* – GRAE); the Liberation Front of Mozambique, (in Portuguese: *Frente de Libertação de Moçambique* – FRELIMO).

that »contacts should be established with« the Zimbabwe African Peoples Union (ZAPU), the Zimbabwe African National Union (ZANU), the Pan Africanist Congress (PAC) and the African National Congress (ANC).<sup>98</sup> Noël also appealed for a rationalization of the Office's approach and the production of new and more precise directives on this matter.

In December 1973, Deputy High Commissioner, Charles H. Mace, actually issued new guidelines. This initiative was justified on the basis of »recent developments concerning relations with liberation movements recognized by OAU«, by the fact that General Assembly resolutions recognized that »those liberation movements have a representative character« and, more importantly, the fact that in preceding years, the liberation movements had »shown growing interest in humanitarian and social activities«. It was in »the light of this twofold development«, that »the question of relations with liberation movements [had] been thoroughly reviewed«. <sup>99</sup> This »growing interest in humanitarian and social activities« of these organizations appears to have served as the argument that allowed overcoming the original UNHCR reluctance. By emphasizing these aspects, the Office of the High Commissioner could demonstrate that it was not violating its principles. Actually, one of the directives was that: »With regard to material assistance, UNHCR representatives« needed to be »satisfied that their action [fell] within the non-political and humanitarian context« of the Office's work.<sup>100</sup>

It was still fundamental for the Agency not to appear to be favouring one side against the other when providing assistance in the context of an armed struggle. Assistance programs were thus to cover basic humanitarian and social needs. UNHCR officials were instructed that in close cooperation with the host countries, agreements with liberation movements in these domains »should be developed in the future, and should become a general practice«. <sup>101</sup> In the following months, contacts with liberation movements developed and improved, but past reluctance still had an impact as can be seen in comments made by a representative of the *Movimento Popular de Libertação de Angola* (MPLA) in May 1974: While acknowledging and being appreciative for the new atmosphere, he still remembered that »UNHCR had long been locked in an obsolete conservatism of which it was the only champion among international organizations«. Indeed, according to him, in the past, »when UNHCR accepted to have contacts with liberation movements, it did so only unofficially if not clandestinely« and as a result, the funds allocated to Angolan refugees in Zaire had been very limited.<sup>102</sup> This perception was partly based on UNHCR past apprehensions but also on a certain misunderstanding of the specific UN Refugee Agency's mandate and its inherent legal and political constraints.

There was thus an important improvement, but it was still not clear »whether UNHCR could validly enter into contracts with liberation movements.« <sup>103</sup> This theme was brought to the attention of the United Nations Secretariat Legal Division for opinion. The answer came in March 1974. The UN official replied that, given the degree of recognition awarded

98 Ibid., p. 3.

99 Interoffice Memorandum No. 41 – Branch Office Memorandum No. 43 (UNHCR/IOM/41/73 – UNHCR/BOM/43/73), from Charles H. Mace, Deputy High Commissioner, on »Relations with Liberations Movements«, 20 December 1973. Folio 9, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 1.

100 Ibid.

101 Ibid., pp. 1–2.

102 Mémoire de A. A. Peters, Délégué Régional du HCR pour l'Afrique Centrale, Kinshasa, à Monsieur le Haut Commissaire, sur »Mission à Brazzaville le 23 mai 1974 – Entretien avec Monsieur Lara du MPLA«, 28 mai 1974. Folio 117, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 2], p. 5. [Authors' translation]

103 Letter from Emmanuel K. Dadzie, Director, Protection Division, to Blaine Sloan, Legal Division, United Nations Secretariat, 20 December 1973. Folio 9A, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1].

to liberation movements by successive General Assembly resolutions and provided that a more precise legal analysis was undertaken on a case-by-case basis, »it would seem that with the consent of member states concerned (expressed if necessary through the Organization of African Unity), the UNHCR, in the fulfilment of its functions, could enter into contracts with the liberation movements concerned.«<sup>104</sup>

In the following months, the procedure for establishing this kind of contracts was revised to facilitate planning processes and accelerate the implementation of assistance programs.<sup>105</sup> As far as the archives consulted can tell, the first formal and direct agreement of this kind was established in June 1974 between UNHCR and the *National Front for the Liberation of Angola* (FNLA) in the field of educational assistance.<sup>106</sup> This same year, formal agreements were also established with the other liberation movements from Angola (UNITA and MPLA) and other colonial territories.<sup>107</sup> Based on these movements' expressed needs, assistance programs covered housing, educational training, clothing, food supply as well as agricultural projects.

Soon, UNHCR also began to envisage and prepare voluntary repatriation programs in collaboration with liberation movements. Indeed, after the military *coup* of 25 April 1974 (the Carnation Revolution) in Portugal, a rapid program of decolonization ensued, recognizing the independence of Guinea-Bissau, Mozambique, Cape Verde Islands, Sao Tome and Principe, and Angola. It is noteworthy that UNHCR officials reacted differently to this rather sudden acceleration of the decolonization process. As reported by Antoine Noël, some perceived an opportunity to make savings and to scale down the level of assistance to liberation movements. Indeed, given the potential return of refugees, the rationale was that UNHCR should not invest in expensive infrastructure building projects in asylum countries.<sup>108</sup> For his part, Noël believed that the »High commissioner faced a historic choice« and presented him with another more »imaginative« and proactive approach:

»I propose that we invest in men what we will not invest in stones. To those who propose a ›holding operation‹, I oppose a *vast and ambitious training project* for those people who will tomorrow receive rehabilitation assistance in a liberated Mozambique, Angola, and Guinea Bissau. To those who think about standing there with their arms crossed, waiting for the beginning, I say that the beginning is today. In liberation struggles, there is no pause, no holding operation, but a constant intensification of the action, with some reorientations when necessary. Tomorrow's work in the field

104 Letter from Blaine Sloan, Legal Division, United Nations Secretariat, to Emmanuel K. Dadzie, Director, Protection Division, 26 March 1974. Folio 77D, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 1], p. 3.

105 Note de Antoine Noël, à Monsieur le Haut Commissaire (sous couvert de M. Gilbert Jaeger), sur »Engagement contractuel avec les mouvements de libération«, 21 mai 1974. Folio 103 a, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 2]; note de Gilbert Jaeger, à MM. Les Délégués régionaux du HCR en Afrique occidentale, Dakar et centrale, Kinshasa et MM. Les Délégués du HCR en Tanzanie, Dar-es-Salaam, et Zambie, Lusaka, sur »Assistance aux mouvements de libération«, 24 mai 1974. Folio 111, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 2].

106 Mémoire de A. A. Peters, Délégué Régional du HCR pour l'Afrique Centrale, Kinshasa, à Monsieur le Haut Commissaire, sur »Accord HCR/FNLA«, 18 juin 1974. Folio 129, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 2].

107 See for example »Status Report on Projects of Assistance to Liberation Movements«, transmitted by the UNHCR Representative for Zambia, 13 September 1974. Folio 10, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974); »Status Report II, August 1974: Projects of Assistance to Liberation Movements«, transmitted by the UNHCR Representative for Zambia, 01 September 1974. Folio 14, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974).

108 Note de Antoine Noël, à Monsieur le Haut Commissaire, sur »Assistance aux mouvements de libération«, 21 juin 1974. Folio 136, UNHCR Fonds 11 Series 1, 1/1/79 »Liberation Movements« (07–1967/07–1974) [Vol. 2], pp. 2–3.

of assistance and at the political level starts today or, as far as we are concerned, risks never to begin.<sup>109</sup>

Noël's opinion was apparently influential. As early as August 1974, it was suggested that the Office may consider two types of activities: either engage in ambitious programs of repatriation and resettlement in the newly independent states, or simply develop classical assistance towards voluntary repatriation up to the border.<sup>110</sup> At the request of the High Commissioner, Antoine Noël and Emmanuel K. Dadzie (Director of the UNHCR Protection Division) examined »with relevant liberation movement representatives the question of an eventual voluntary repatriation of refugees to Guinea Bissau, Mozambique and Angola, and the reception and resettlement of these refugees in their respective countries of origins.«<sup>111</sup> As a consequence, High Commissioner Aga Khan addressed this point at the November 1974 Executive Committee, to which some liberation movements had been requested to assist as observers.<sup>112</sup> He explained:

»The major new development in Africa is, without doubt, the Liberation of territories hitherto under Portuguese administration. [...] A considerable effort will no doubt be required from the [United Nations] as a whole to help the new states in every respect of their economic and social development. [...] UNHCR has, through the years, maintained close contacts with the liberation movements. Since the last session of the Executive Committee, we have concentrated more recently on two specific aspects: A. Modalities of voluntary repatriation of the refugees and the support required to enable their resettlement in their country of origin, and B. Continued support to refugees in their present countries of asylum, in cooperation with the liberation movements, particularly in such fields as education and health.«<sup>113</sup>

In December 1974, the United Nations General Assembly formally requested the High Commissioner to »take appropriate measures, in agreement with the Governments concerned to facilitate the voluntary repatriation of refugees from Territories emerging from colonial rule and, in co-ordination with other competent bodies of the United Nations, their rehabilitation in their countries of origin.«<sup>114</sup>

These efforts were largely complicated by political factors, especially in Angola and Mozambique which did not achieve peace with independence. Both countries »became caught up with the Cold War larger geo-strategic battles in southern Africa during the late 1970s and 1980s«, which produced new mass flows of refugees and »severely compounded

109 Ibid., p. 3 (authors' translation; emphasis in original).

110 Mémoire de Antoine Noël, à Charles H. Mace, Haut Commissaire Adjoint (sous couvert de Monsieur Jaeger), sur »Décolonisation des territoires africains administrés par le Portugal«, 07 août 1974. Folio 3, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974); note from P. Coat, to the Deputy High Commissioner on »Territories under Portuguese Administration – Contingency Plans«, 07 August 1974. Folio 4, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974).

111 Memorandum from A. Noël, to Mr. C. Mace (through Jaegger), on »Repatriation of Refugees Originating from Guinea-Bissau, Mozambique and Angola«, 10 September 1974. Folio 18, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974), p. 1.

112 Cable from UNHCR Headquarters (drafted by A. Noël) to UNDEVPRO Kinshasa (Zaire), 09 October 1974. Folio 28, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974); Cable from UNHCR Headquarters (drafted by A. Noël) to HICOMREF Dar-Es-Salaam (Tanzania), 09 October 1974. Folio 29, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974).

113 Cable from UNHCR Headquarters (drafted by Z. Rizvi), to HICOMREF New York, 14 October 1974. Folio 32, UNHCR Fonds 11 Series 2, 101-GEN »General Policy on Liberation Movements« [Vol. 1] (1974), pp. 1–2.

114 UNGA Res. 3271(XXIX) of 10 December 1974, para. 3.

the difficulties inherent in reconstructing these war-torn countries«. <sup>115</sup> There was certainly no panacea to deal with violent decolonization, as shown by the case of the liberation of Rhodesia/Zimbabwe. Due to intensified fighting, in the mid-1970s, important waves of refugees from Rhodesia began reaching neighbouring Mozambique, Botswana and Zambia. There, the UN Refugee Agency's work was furthermore complicated by a number of trends such as the militarization of refugee camps, which sometimes became bases for recruitment or to launch attacks against Rhodesia. Refugee camps also became targets for Rhodesian security forces, as was the case in Botswana during the 1970s. <sup>116</sup> In this context, it became difficult for UNHCR and relief organizations to provide »assistance to refugees without simultaneously aiding the combatants«. Despite the guidelines adopted to deal with liberation movements and ›freedom fighters‹, the »medical aid and food sent into Mozambique to assist refugees inevitably also found its way to the guerrillas« and UNHCR »found it increasingly difficult to distinguish between refugees and guerrilla fighters«. <sup>117</sup> The legal framework and guidelines that had been developed did not provide a sufficiently secure scheme of action for UNHCR officials.

#### IV. CONCLUSION

UNHCR started in the early 1950s as a rather weak institution, with limited means and a circumscribed mandate. Less than a decade later the UN Refugee Agency expanded to become a global organization and began acting on behalf of refugees in Africa. The expansion of the agency's functions represented a reorganization challenge for the Office. In particular, UNHCR had to make adjustments in terms of staffing. At its origins, the agency relied on less than 100 staff members and by the early 1970s its personnel was still relatively limited, totaling about 350 persons. By 1980, however, UNHCR employed 900 individuals. <sup>118</sup> This expansion in personnel reflected a gradual shift away from the Eurocentric social structure of the Office. In the 1960s, UNHCR started hiring »African or Asian specialists who might better understand the cultural and political contexts of new refugee situations in the developing world.« <sup>119</sup> During this period, the Executive Committee was also expanded to include recently decolonized nations, especially from Africa.

This development was in large part the result of UNHCR officials' willingness to extend their sphere of operation and to see the universality of their mandate recognized. Nevertheless, this evolution was not totally the result of a controlled process of emancipation and expansion. It is certainly difficult to evaluate how decisive was the organizational ›will to survive‹ and the role played by UNHCR staff members' readiness to expand the scope of activities of their agency. Nevertheless, it appears that more than considering the problems in Africa simply as the way to ensure the continuing existence of their organization, UNHCR personnel considered that the new refugee issues of the Third

<sup>115</sup> *Loescher*, UNHCR, p. 164.

<sup>116</sup> Letter Dated 12 January 1977 from the Permanent Representative of Botswana to the United Nations, Addressed to the President of the Security Council [on the Aggression against Botswana by the Ian Smith Regime, South Rhodesia], UN Doc. S./12275, 12 January 1977. Enclosed: Provisional Verbatim of 1983<sup>rd</sup> and 1984<sup>th</sup> meetings of the Security Council; Folio 310A, UNHCR Fonds 11 Series 2, 100-GEN.RHO »Refugees from Rhodesia – General« [Vol. 2] (1977).

<sup>117</sup> *UNHCR*, *The State of the World's Refugees 2000*, p. 45.

<sup>118</sup> See *Holborn*, pp. 1399–1404, and *Susan F. Martin*, *Forced Migration and Professionalism*, in: *International Migration Review* 35, 2001, pp. 226–243.

<sup>119</sup> *Loescher*, UNHCR, p. 109. Note that this lack of ›Third World personnel‹ was somewhat balanced by the fact that UNHCR usually worked in cooperation with implementing partners, often local or regional organizations.

World warranted answers similar to those that had existed in the Western world since the end of World War II. The drive was linked to a willingness to promote human rights and humanitarian action on a global scale rather than a simple process of organizational expansion and survival. In addition, the expansion of UNHCR activities did not come without difficulties. External directives from states and the United Nations General Assembly led to conflicts with the agency's values and legal foundations. Some of the actual tasks UNHCR was requested to perform on behalf of liberation movements provoked intense internal debates, which ultimately resulted in the adoption of guidelines for UNHCR representatives. In particular, despite the »purely non-political« aspect of their work, from the mid-1970s, they were allowed to enter into direct contact and reach formal legal agreements with liberation movements.

One may be tempted to think that there was a certain delay in the application of General Assembly resolutions and in adapting to new refugee problems. Actually, UNHCR staff members were relatively fast in noticing the new problems linked to the process of decolonization, but this was not translated immediately into policy decisions and deeds because of the legal constraints imposed on UNHCR activities. However, it must be remembered that while the prospects of establishing relations with liberation movements made UNHCR officials feel uneasy for a long time, they were not inactive on the African scene. »Classic« refugees fleeing the effects of liberation wars and persecution from colonial authorities were assisted by the UN Refugee Agency even before the mid-1970s. Nevertheless, the challenges faced by the Office of the High Commissioner were important and could not be solved in a swift and easy fashion. Because the situations of refugees changed permanently, UNHCR often had to act in legally and politically opaque situations. Under these conditions, the internal debates were undoubtedly an absolute necessity if clear and sound directives were to be adopted to meet the challenges of decolonization.

The strategies adopted by UNHCR with regard to its relations with liberation movements and the eligibility of »freedom fighters« were certainly valuable in dealing with the »side effects« of the end of colonial rule in Africa. As evidenced by present-day crises in Africa and the Middle East this problem continues to plague the effectiveness of UNHCR in dealing with the refugee crises of the 21<sup>st</sup> century. More broadly, it symbolizes the difficulties that international organizations face when dealing with situations lacking in any form of centralized authority. In this regard, UNHCR activities amidst the decolonization process have major contemporary relevance as they provide valuable lessons for dealing with present and future refugee crises.