Europe:
Home of Migrants Built on Sand

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EU Political and Legal Discourse
on Immigration and Asylum

By

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TO MY MOTHER…

Once you said to me:

“May God give you everything you desire, as you deserve it”

Thank you, Mum, today one of my dreams has come true

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PREFACE

JAN ENGBERG,
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In these years the field of interdisciplinary studies of law and language is booming. The field is characterised by the coming together of interests and methods from linguistics (in a broad sense) and the study of law. The broad sense of linguistics may also include fields like anthropology, sociology and discourse studies. In this connection, we often see works that have a mainly linguistic or a mainly legal focus. The first type investigates a linguistic question (like, e.g., the frequency and distribution of modal verbs) and uses legal texts and discourse as their (coincidental) field of study, but without actually investigating legal aspects of the texts. The second type looks at a legal problem (like, e.g., the interpretation of a statute) and includes dictionary definitions in the argumentation, but without really going into all possibly relevant parts of the semantics of the investigated word. The present study by Stefania D'Avanzo on political and legal discourse on immigration is one of the still rare examples of a genuinely interdisciplinary work, one which may not be categorized in any of the above classes. From the perspective of the legal interest, selected legal concepts from immigration and their development as documented in official statutory texts from the EU legal system are studied in considerable detail in the first part of the work, applying methods from the discipline of law and following the development of the concepts. In the second part, the author applies methods from corpus linguistics to investigate the influence of indicators of evaluation and of vagueness connected to the concepts under scrutiny. In this way, she manages to give a broad picture of legal concepts from the point of view of its political and legal characteristics. The work combines different perspectives and achieves a new and more diversified picture of the investigated concepts. It is a good example of how the sum of combining two approaches may actually lead to a result larger than the two combined approaches. Thus, I see this work in many ways as a prototype to be followed in the field of legal linguistics in a broad sense.

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I would like to thank my father, my sisters and my friends for their undying affection and support

Last, but not least, I want to thank my husband, Fabio, for his very precious technical assistance, and especially for encouraging and putting up with me during my difficult moments, thank you!

INTRODUCTION

"Addressing the crisis of displacement within and from Iraq is a massive and continuing challenge, which remains unmet in part due to the shocking lack of political will from European countries […] Europe's response to the crisis of displaced Iraqis has been hugely inadequate with European governments failing to fairly share the responsibility for Iraqi refugees with one another and with other countries around the world […] At the same time EU Member States have focused on preventing refugees' access to their territory, including Iraqis, through the development of ever stricter border controls that do not distinguish asylum seekers from other persons arriving at the border[…]"
—UNHCR, March 2008

Research Questions & Corpus

The United Nations High Commissioner for Refugees (UNHCR)'s statement (March 2008) is the starting point of this research, based on the general assumption that the European Union has not yet developed an effective legislation aimed at protecting refugees and asylum seekers as Member States failed to share a common policy on receiving migrants.

In particular, the research question of this study is grounded on the assumption that this lack of effectiveness is mainly due to vagueness in the language of EU Directives, deliberately employed to legislate in favour or against migrants' rights.

The analysis of linguistic and legal vagueness to discuss the migratory phenomenon will be preceded by a general overview of EU policy on this issue through the investigation of Presidency Conclusions of EU Councils, where immigration is discussed along with other phenomena. At this stage, particular attention will be paid to the co-text of crucial lexical choices (i.e. *immigration*, *migration*) and evaluative language that seem to be functional to revealing EU political attitude towards the immigration issue.

The last part of the research is devoted to the investigation of Directives on illegal immigration, in order to explore vagueness in relation to the same points investigated in Directives on legal immigration and further explore ideological implications in the EU attitude towards such opposing issues.

As far as the documents investigated are concerned, three corpora have been collected. The first corpus includes the Presidency Conclusions of the European Councils from 1999 to 2008:

– Presidency Conclusions of European Tampere Council (1999);
– Presidency Conclusions of Laeken European Council (2001);
– Presidency Conclusions of Thessaloniki European Council (2003);
– Presidency Conclusions of Brussels European Council (2004);
– Presidency Conclusions of EU Councils from 2005 to 2008.

It is necessary to point out that while the Councils from 1999 to 2004 mainly concern immigration, the Councils from 2004 to 2008 can be considered general Councils where issues concerning immigration and asylum matters are also discussed.

The second corpus investigated includes EU Directives on migrants' rights:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Finally, the third corpus includes EU Directives on illegal immigration:

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;

- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985;
- Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Methodology

The methodological framework is mainly provided by studies on vagueness in normative texts (Endicott 2001; Bhatia / Engberg / Gotti / Heller 2005; Engberg / Heller 2008). Close attention is given to theories on the semantics and vagueness of adjectives (Pinkal 1995; Fjeld 2005). As a matter of fact, a number of vague adjectives co-occurring with nouns denoting specific rights seems to affect the linguistic clarity of the whole phrase and weaken the legal efficacy of the granting of the rights themselves.

Studies on vagueness and ambiguity in modal auxiliary verbs (Caliendo 2004a; Bhatia / Candin / Engberg (eds) 2008; Williams 2005, 2007) have also been taken into account, since linguistic structures where modal auxiliary verbs occur, often seem to convey a kind of indeterminacy in the direction of a depersonalized discourse on immigration and asylum. Hence, an investigation of vagueness related to modality will also be provided.

The concept of vagueness has also been examined in Directives on illegal immigration and asylum in order to investigate a potentially different attitude of the EU when imposing prohibitive measures against this phenomenon.

The investigation is preceded by an analysis of the general political attitude of the EU towards immigration. In particular, in order to provide an overview of the lexical choices employed in EU political discourse on immigration, studies on evaluation (Hunston / Thompson 2000 among others) have been taken into account. In particular, the investigation of the co-text of specific evaluative lexis will be aimed at analysing ideologies that might be concealed in EU institutional discourse. In view of the fact that one of the main aims of this research is to analyse the relationship between EU policy on immigration and ideologies bearing legal consequences on the implementation of specific rights, studies on ideology and discourse have been taken into account (Fairclough 1989, 2003; van Dijk, 2000, 2003). These studies offer a fundamental theoretical framework in order to understand how and to what extent ideological

implications are accountable for vagueness in the Directives and how power roles can be operationalised through vagueness.

All the theoretical assumptions are evaluated via the use of AntConc 3.2.1, software mainly employed to investigate the co-text of specific words and phrases. Notwithstanding, it was also employed to search results from a Reference Corpus deliberately built in order to give evidence of some assumptions. More specifically, the Reference Corpus includes Directives on very different issues from those characterizing the Directives investigated (e.g. *radio interference of vehicles, compensation granted to crime victims, the introduction of organisms harmful to plants,* etc.) but belonging to the same time span (2001-2005). Dissimilarity in the topics was aimed at further exploring specific features of the Directives on immigration and asylum.

CHAPTER ONE

LEGISLATIVE BACKGROUND

International protection of the right of asylum

The Universal Declaration of Human Rights

One of the first documents where immigrants' rights are introduced is the Universal Declaration of Human Rights which was adopted and proclaimed by the General on 10 December 1948. In particular, Article 14 includes the right to seek asylum:

> "Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

Article 14(2) of the Universal Declaration represents an 'exclusion' provision, as it expresses the concept that certain persons who flee persecution can be denied international protection as refugees if involved in serious crimes. The notion that such persons are unworthy of international protection and assistance as refugees emerged during the Second World War. As in the Constitution of the International Refugee Organization of 1946 and subsequent provisions in the 1950 Statute of the Office of the United Nations High Commissioner for Refugees and the 1951 Convention relating to the Status of Refugees, Article 14(2) of the Universal Declaration reflects the concern that those involved in war crimes, crimes against humanity, and crimes against peace, or more generally acts contrary to the purposes and principles of the United Nations should not be allowed to enjoy such protection, and that common law criminals should be surrendered under applicable extradition agreements. A review of the drafting history of these provisions also reveals how the concept of exclusion from international refugee protection was shaped by an understanding of the concept of asylum, which was essentially the right of States not to extradite certain persons. The adoption of the Refugee Convention resulted in a significantly different legal

framework for determining whether or not an individual should be granted, or excluded from, international protection against persecution, which entailed, among other things, a separation of the criteria governing exclusion from those applicable to extradition. Subsequent developments in international human rights law and other pertinent areas of international law naturally also had an impact on the interpretation and application of exclusion provisions. As a matter of fact, the aim and content of the limitations to the right of asylum provided for in Article 14(2) of the Universal Declaration should be read in the light of Article 1F of the Refugee Convention as well as other relevant standards under international law.

The Geneva Convention on refugees (1951)

The United Nations Convention Relating to the Status of Refugees is an international Convention that defines the term ‘refugee’, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The Convention also establishes which people do not qualify as refugees, such as war criminals. Furthermore, it also allows some visa-free travelling for those holders of travel documents issued under the Convention. It was approved at a special United Nations conference on 28 July 1951. Initially aimed at protecting European refugees after World War II a 1967 Protocol removed the geographical and time limits, thus expanding the Convention's scope. The Convention was approved in Geneva and is often referred to as "the Geneva Convention", although it cannot be grouped with other Geneva Conventions specifically dealing with war crime.

Denmark was the first state to ratify the treaty (on 4 December 1952) and there are now 147 signatories to either one or both the Convention and Protocol. In the aftermath of the Second World War, refugees and displaced persons were high on the international agenda. At its first session in 1946, the United General Assembly recognized not only the urgency of the problem but also the cardinal principle that “no refugees or displaced persons who have finally and definitely […] expressed valid objections to returning to their countries of origin […] shall be compelled to return […]” (Resolution 8 (I) of 12 February 1946). After the war the United Nations’ met this need by setting up a specialized agency, called the International Refugee Organization (IRO, 1946-1952), but despite its success in providing protection and assistance and facilitating solutions, it was expensive and also enavitably became entangled with the policy of the Cold War. It was therefore decided to replace it with a temporary, initially

non-operational agency, and to endow the new institution with revised treaty provisions on the status of refugees.

The historical context also helps to explain both the nature of the Convention and some of its apparent limitations. The Charter of the United Nations had identified the principles of sovereignty, independence, and non-interference within the reserved domain of domestic jurisdiction as fundamental to the success of the Organization (see Article 2 of the Charter of the United Nations). In December 1948, the General Assembly adopted the Universal Declaration of Human Rights, which recognized that "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (Article 14, Paragraph 1), although the individual was only then beginning to be seen as the beneficiary of human rights in international law. These factors are crucial in understanding both the manner in which the 1951 Convention was drafted (that is, initially and primarily as an agreement between States as to how they should treat refugees), and the essentially 'reactive' nature of international legislation on refugee protection (that is, the system is triggered by cross-border movement, so that neither prevention nor the protection of internally displaced persons come within its range).

A key-role in drafting the Convention was played by the United Nations High Commissioner.

After extensive discussions in its Third Committee, the General Assembly moved to replace IRO with a subsidiary organ (under Article 22 of the Charter of the United Nations), and the Office of the United Nations High Commissioner for Refugees was set up (Resolution 428 (V) of 14 December 1950) with effect from 1 January 1951. Originally set up to last three years, the High Commissioner's mandate was regularly renewed thereafter for five-year periods until 2003, when the General Assembly decided "to continue the Office until the refugee problem is solved" (Resolution 58/153 of 22 December 2003, Para. 9).

The High Commissioner's primary responsibility, set out in Paragraph 1 of the Statute annexed to Resolution 428 (V) of 14 December 1950, is to provide "international protection" to refugees and, by providing assistance to Governments, to seek "permanent solutions for the problem of refugees". Its protection functions specifically include "promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto" (Paragraph 8 (a) of the Statute).

A year earlier, in 1949, the United Nations Economic and Social Council had appointed an Ad Hoc Committee to fulfil the following aim:

> "[…] consider the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons and, if they consider such a course desiderable, draft the text of such a convention."

The Ad Hoc Committee decided to focus on the refugee (stateless persons were eventually included in a second Convention, the 1954 Convention relating to the Status of Stateless Persons), and duly produced a draft convention.

Its provisional draft identified a number of categories of refugees, such as the victims of the Nazi or Falangist regimes and the ones recognized under previous international agreements, and also adopted the general criteria of "well-founded fear of persecution and lack of protection" (see United Nations doc. E./AC.32/L.6, 23 January 1950).

In August 1950, the Economic and Social Council returned the draft for further review, before consideration by the General Assembly, and then finalized the Preamble and refugee definition. In December 1950, the General Assembly decided to convene a Conference of Plenipotentiaries to finalize the Convention (Resolution 429 (V) of 14 December 1950).

The Conference met in Geneva from 2 to 25 July 1951 and took as its basis for discussion the draft which had been prepared by the Ad Hoc Committee on Refugees and Stateless Persons, save that the Preamble was the one adopted by the Economic and Social Council, whereas Article 1 (definition) was recommended by the General Assembly and annexed to Resolution 429 (V). While adopting the final text, the Conference also unanimously adopted a Final Act, including five recommendations covering travel documents, family unity, non-governmental organizations, asylum, and application of the Convention beyond its contractual scope.

In spite of the intended complementarity between the responsibilities of the UNHCR and the scope of the new Convention, a marked difference already existed: the mandate of the UNHCR was universal and general, unconstrained by geographical and temporal limitations, while the definition forwarded to the Conference by the General Assembly, reflecting the reluctance of States to sign a 'blank cheque' for unknown numbers of future refugees, was restricted to those who became refugees by reason of events occurring before 1 January 1951 (and the Conference was to add a further option, allowing States to limit their obligations to refugees resulting from events occurring 'in Europe' before the critical date).

Persecution and Reasons for Persecution

Although the risk of persecution is central to the refugee definition, the term 'persecution' itself was not defined in the 1951 Convention. Articles 31 and 33 refer to those people whose life or freedom 'was' or 'would be' threatened; therefore, it includes the threat of death, or the threat of torture, or cruel, inhuman or degrading treatment or punishment. A comprehensive analysis today requires the general notion to be related to developments within the broad field of human rights (cf. 1984 Convention against Torture, Article 7; 1966 International Covenant on Civil and Political Rights, Article 3; 1950 European Convention on Human Rights; Article 6; 1969 American Convention on Human Rights, Article 5; 1981 African Charter of Human and Peoples' Rights).

Fear of persecution and lack of protection are in themselves interrelated elements. The persecuted clearly do not enjoy the protection of their country of origin, while evidence of the lack of protection on either internal or external level may create conjecture as to the likehood of persecution and to the well-foundedness of any fear/threat.

A Convention refugee, by definition, must be unable or unwilling to avail himself/herself of the protection of the State or Government, and the notion of inability to secure the protection of the State is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against the persecution of non State actors.

The Convention requires that the persecution is feared for reasons of "race, religion, nationality, membership of a particular social group (added at the 1951 Conference), or political opinion". This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, provides an insight into the type of individuals and groups which are considered relevant to refugee protection. Persecution for the above stated reasons implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could also comprise a single act of torture.

Persecution under the Convention is thus a complex of reasons, interests and measures. The measures affect or are directed against groups or individuals for reasons of race, religion, nationality, membership of a particular social group, or political opinion. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights.

The Convention, however, does not only state who a refugee is. It goes further and sets out the conditions under which refugee status cannot be

recognised (Art. 1 C; for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin). For specific, political reasons, the Convention also places Palestinian refugees outside its scope at least while they continue to receive protection from other United Nations agencies (Article 1D), and excludes persons who are treated as nationals in their State of refugee (Article 1E). Finally, the Convention definition categorically excludes from the benefits of refugee status anyone who may be believed to have committed a war crime, a serious non-political offence prior to admission, or acts contrary to the purposes and principles of the United Nations (Article 1F). From the very beginning, therefore, the 1951 Convention included a number of clauses sufficient to ensure that any serious criminal or terrorist does not benefit from international protection.

Article 1A, Paragraph 1 of the 1951 Convention applies the term 'refugee', first, to any person considered a refugee under earlier international arrangements. Article 1A, Paragraph 2, read now together with the 1967 Protocol and without time limits, then offers a general definition of the refugee which includes any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion:

> For the purposes of the present Convention, the term "refugee" shall apply to any person who:
>
> (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;
>
> (2) As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Geneva Convention on Refugees, Art.1)

Stateless persons can also be considered refugees, where the country of origin (citizenship) is understood as "the country of former habitual residence". Those who possess more than one nationality will only be considered 'refugees' within the Convention if such other nationality or nationalities do not provide protection. The refugee must be outside his or her country of origin, and s/he may not necessarily have fled by reason of fear of persecution, or even have actually been persecuted. The fear of persecution can also emerge during an individual's absence from his/her home country, for example, as a result of political change.

Non Refoulement

Besides identifying the essential characteristics of a refugee, the Member States also accept a number of specific obligations which are crucial to achieving the goal of protection, and thereafter an appropriate solution.

Foremost among these is the principle of *non-refoulement*. As set out in the Convention, this prescribes broadly that no refugee should be returned in any manner whatsoever to any country where he or she would be at risk of persecution (see also Article 3, 1984 of the Convention against Torture, which extends the same protection where there are substantial grounds for believing that a person if returned would be in danger of being tortured). The word *non-refoulement* derives from the French *refouler*, which means to drive back or repel. The idea that a State ought not to return persons to other States in certain circumstances is first referred to in Article 3 of the 1933 Convention relating to the International Status of Refugees, under which the contracting parties undertook not to remove resident refugees or keep them from their territory, "by application of police measures, such as expulsions or non-admittance at the frontier (*refoulement*)", unless dictated by national security or public order. Each State undertook, "in any case not to refuse entry to refugees at the frontiers of their countries of origin".

The 1933 Convention was not widely ratified, however a new era began with the General Assembly's 1946 endorsement of the principle that refugees with valid objections should not be compelled to return to their country of origin. The Ad Hoc Committee on Statelessness and Related Problems initially proposed an absolute prohibition on *refoulement*, with no exceptions (United Nations Economic and Social Council, Summary Record of the twentieth meeting, Ad Hoc Committee on Statelessness and Related Problems, First Session, United Nations doc. E/AC.32/SR.20, (1950), 11-12, Paras. 54 and 55). The 1951 Conference of Plenipotentiaries specified the principle, however, by adding a paragraph to deny the benefit

of *non-refoulement* to the refugee when there are "reasonable grounds for regarding as a danger to the security of the country […], or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country." Apart from such limited situations of exception, however, the drafters of the 1951 Convention made it clear that refugees should not be returned either to their country of origin or to other countries in which they would be at risk.

The Convention Standards of Treatment

In addition to the core protection of *non-refoulement*, the 1951 Convention prescribes freedom from penalties for illegal entry (Article 31), and freedom from expulsion, save on the most serious grounds (Article 32). Article 8 seeks to exempt refugees from the application of exceptional measures which might otherwise affect them by reason only of their nationality, while Article 9 preserves the right of States to take "provisional measures" on the grounds of national security against a particular person, but only "pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in the interests of national security".

States have also agreed to provide certain facilities to refugees, including administrative assistance (Article 25); identity papers (Article 27), and travel documents (Article 28); granting permission to transfer assets (article 30); and facilitating naturalization (Article 34).

Given the further objective of a solution (assimilation or integration), the Convention concept of 'refugee status' thus offers a point of departure in considering the appropriate standard of treatment of refugees within the territory of Contracting States. It is at this point, where the Convention focuses on matters such as social security, rationing, access to employment and liberal professions, that it betrays its essentially European origin; it is here, in the articles dealing with social and economic rights, that one still finds the greatest number of reservations, particularly among developing States.

The Convention proposes, as a minimum standard, that refugees are granted at the very least the same treatment which is generally accorded to aliens. Most-favoured-nation treatment is called for in respect of the right of association (Article 15), and the right to engage in wage-earning employment (Article 17, Paragraph 1). The latter is of major importance to the refugee in search of an effective solution, but it is also the provision which has attracted most reservations. Many States have emphasized that the reference to most-favoured-nation should not be interpreted as entitling

refugees to the benefit of special or regional customs, or economic or political agreements.

National treatment, that is, treatment not different from that accorded to citizens, is to be granted in respect of a wide variety of matters, including the freedom to practice religion and regarding the religious education of children (Article 4); the protection of artistic rights and industrial property (Article 14); access to courts, legal assistance, and exemption from the requirement to give security for costs in court proceedings (Article 16); rationing (Article 20); elementary education (Article 22, Paragraph 1); public relief (Article 23); labour legislation and social security (Article 24, Paragraph 1); and fiscal charges (Article 29). Article 26 of the Convention prescribes such freedom of movement for refugees as is accorded to aliens generally in the same circumstances. Eleven States have made reservations, eight of which expressly retain the right to designate places of residence, either generally, or on the grounds of national security, public order (*ordre public*) or in the public interest.

Reservations

While reservations are generally permitted under both the Convention and the Protocol, the integrity of certain articles is granted total protection, including Articles 1 (definition); 3 (non-discrimination); 4 (religion); 16, Paragraph 1 (access to courts); and 33 (*non-refoulement*). Under the Convention, reservations are further prohibited with respect to Articles 36 to 46, which include a provision entitling any party to a dispute to refer the matter to the International Court of Justice (Article 38). The corresponding provision of the 1967 Protocol (Article IV) may be the subject of reservation, and some have been made; however, until August 2008), however, no State sought to make use of the dispute settlement procedure.

Cooperation with UNHCR

The General Assembly assigned a protection role to the High Commissioner, particularly in relation to international agreements on refugees. States parties to the 1951 Convention/1967 Protocol accepted specific obligations in this regard, agreeing to cooperate with the Office and in particular to "facilitate its duty of supervising the application of the provisions" of the Convention and Protocol (Article 35 of the Convention; Article II of the Protocol).

Treaty oversight mechanisms, such as those established under the 1966 International Covenant on Civil and Political Rights, the 1984 United

Nations Convention against Torture and the 1989 Convention on the Rights of the Child, have distinct roles, which may include both the review of national reports and the determination of individual or inter-State complaints. UNHCR does not possess these functions, and the precise nature of the obligation of States is not always clear, although together with the statutory role entrusted to UNHCR by the General Assembly, it is enough to give the Office a sufficient legal interest (*locus standi*) in relation to States' implementation of their obligations under the Convention and Protocol. States generally do not appear to acknowledge that UNHCR has the authority to lay down binding interpretations of these instruments. However, it is arguable that the position of the UNHCR generally on the law or specifically on particular refugee problems should be considered in good faith.

In practice, States commonly associate UNHCR with decision-making relating to refugees, and UNHCR provides regular guidance on issues of interpretation. Its *Handbook on Procedures and Criteria for Determining Refugee Status*, published in 1979 at the request of States members of the UNHCR Executive Committee, is regularly relied on as authoritative, if not binding, and more recent guidelines are also increasingly cited in refugee determination procedures.

The 1967 Protocol Relating to the Status of Refugees

Instead of an international conference under the auspices of the United Nations, the issues related to the Geneva Convention were addressed at a colloquium of some thirteen legal experts which met in Bellagio, Italy, from 21 to 28 April 1965. The Colloquium did not favour a complete revision of the 1951 Convention, but opted, instead, for a Protocol by way of which States parties would agree to apply the relevant provisions of the Convention, although not necessarily becoming party to that treaty. This approach was approved by the UNHCR Executive Committee and the draft Protocol was referred to the Economic and Social Council for transmission to the General Assembly. The General Assembly took note of the Protocol (the General Assembly commonly 'takes note' of, rather than adopts or approves, instruments drafted outside the United Nations system), and requested the Secretary-General to transmit the text to States with a view to enabling them to accede (Resolution 2198 (XXI) of 16 December 1966). The Protocol required six ratifications and it duly entered into force on 4 October 1967.

The Protocol is often referred to as amending the 1951 Convention; however, this is not strictly the case. The Protocol is an independent