

THE ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) IN THE PROTECTION OF REFUGEES AND ASYLUM SEEKERS

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Abstract: Since its inception in the post-war period, the United Nations High Commissioner for Refugees (UNHCR) has played an extremely important role in providing protection and care for refugees and asylum seekers around the world. The changing circumstances in the world over the seventy years of the UNHCR's existence have led the UNHCR to adapt to new situations. Millions of refugees and internally displaced people needed to be cared for after the Second World War. During the Cold War turmoil, the need to take care of refugees received a new note. Even after the Cold War, due to the disintegration of certain countries and the outbreak of armed conflicts, it left its mark in the area of taking care of refugees and displaced persons. Until the latest mixed refugee-migrant crisis, the UNHCR successfully adapted to the needs on the ground. By working in the field and adopting various documents, so-called "soft law" sources, the work of the UNHCR became effective. However, it remains to be seen whether all the needs of refugees in modern times will be met by an adequate legal framework, which would facilitate the activities of the UNHCR and other providers of refugee protection and asylum seekers.

Keywords: Refugees, asylum seekers, UNHCR, 1951 Refugee Convention, international protection, mixed migration.

INTRODUCTION

In the more than seven decades since the founding of the United Nations High Commissioner for Refugees (UNHCR), the needs of asylum

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seekers and refugees have changed significantly. A large number of asylum seekers and refugees in the world raise a number of questions regarding the regulation of their status, integration into host countries, relocation to third countries, and return to their country of origin. Activities in these areas require the joint and coordinated action of several actors in the international community, because it would be almost inconceivable that the only stakeholders would be the states in such processes. They are assisted in these activities by numerous international governmental and non-governmental organizations, and primarily the UNHCR, without whose activities regarding the care of refugees, a system of modern international protection would not be conceivable. The number of asylum seekers and refugees has been growing steadily from decade to decade and, more recently, from year to year. In 2020, that number reached 82.4 million refugees globally, with a tendency for further growth (UNHCR, 2021, p. 4) and, according to the latest estimates, in the middle of 2021, there were about 84 million forcibly displaced people in the world (UNHCR, 2022a). The largest exodus of refugees after the Second World War was initiated by the outbreak of the conflict in Ukraine in February 2022. In the first ten days of the conflict, the refugee wave caused more than a million people to leave Ukraine, and several hundred thousand people were internally displaced within Ukraine. In less than two months after the conflict began, more than five million people fled Ukraine, and millions more will be internally displaced within the country's borders (UNHCR, 2022b). These statistics are proof of the growing trend of an increasing number of asylum seekers and refugees, so it can be expected that by the end of 2022, there will be over 90 million forcibly displaced people in the world. Different periods and situations on the ground have significantly affected the work of the UNHCR, which has caused the need to adapt the UNHCR to changing circumstances and reflect on the provision of adequate assistance to asylum seekers and refugees. Today, the UNHCR is present in 132 countries and territories in the world with a staff of 17,878 people with different mandates or the degree of participation in the protection of asylum seekers and refugees (UNHCR, 2022c). Judging by the number of armed conflicts, crisis hotspots, and mass and systemic human rights violations around the world, there is almost a certain tendency to increase the number of IDPs in the world and the need for an increasing UNHCR presence on the ground. All this points to the need to consider the mandate of the UNHCR, its capacities, and role in solving problems related to modern forced migration.

THE ORIGIN AND DEVELOPMENT OF THE UNHCR

In order to properly understand the role of the UNHCR in the protection of asylum seekers and refugees, it is necessary to consider the situation in the world during the more than seven decades-long existence of the UNHCR. This is especially important due to various dramatic events, which are reflected in forced migration and the trend of increasing the number of asylum seekers and refugees in the world from year to year.

The post-war period and the emergence of the UNHCR

In the post-war period, after the adoption of the United Nations Charter, the adoption of international legal instruments in the field of human rights began, and over time, the formation of oversight bodies in this area. The system of international protection that existed in the past, under the auspices of the League of Nations, did not reach the level of global validity as built in the postwar period, but rested on an *ad hoc* basis, addressing the issues of certain refugee groups, such as Russian refugees and others in the interwar period (Hathaway, 2021, pp. 19-26). Faced with the biggest refugee crisis to date, the international community had to find a way to manage the refugee crisis and provide protection to millions of refugees in the post-war period. The decision to establish the UNHCR was made in 1949, and the following year the UNHCR Statute was adopted (UNHCR, 2022b). The focus was initially on millions of refugees and internally displaced persons in Europe, but in time it moved to other parts of the world due to the outbreak of various crisis hotspots on other continents, which led to the establishment of a universal system of international protection. Shortly after the end of the Second World War, due to issues related to resolving the status and protection of millions of refugees, the Convention on the Status of Refugees (*Refugee Convention*) was adopted in 1951, which entered into force on April 22, 1954 (United Nations Treaty Series, 1954). In addition to the definition of a refugee, it also contains the rights and obligations of refugees (Krstić & Mitrović, 2021, pp. 22-38).¹ However, the system established by the 1951 Convention

¹ The previous idea was to adopt an international agreement that would apply to both refugees and stateless persons. This was soon abandoned, and after the Convention on the Status of Refugees, the Convention on the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) were adopted.

on Refugees initially contained a shortcoming that was somewhat remedied by the adoption of the 1967 Protocol to the Convention Relating to the Status of Refugees (*New York Protocol*). Namely, the definition of a refugee from the 1951 Refugee Convention refers to refugees coming from Europe and to the period up to January 1, 1951. According to the New York Protocol, the domain of the 1951 Refugee Convention was extended to refugees coming from outside Europe even after January 1, 1951. In this way, the significantly narrower scope of application of the 1951 Refugee Convention has been removed, and the time and geographical limitations have been removed. However, in modern times, the problem remains in those states that have not acceded to the 1951 Refugee Convention and/or the New York Protocol (Allen & Muturi, 2021; Janmur, 2021).² The post-war period, until the formation of the UNHCR and the adoption of the 1951 Refugee Convention, was followed by initial steps of decolonization and the emergence of “new” refugees, i.e., refugees and internally displaced persons not related to the Second World War. Thus, the process of India’s independence and its division into India and Pakistan due to mass relocation caused the suffering of thousands of people and millions of refugees and internally displaced persons. Also, the beginning of the war on the Korean Peninsula and the division of the peninsula into the Democratic People’s Republic of Korea and the Republic of Korea caused not only a refugee crisis but also the separation of a large number of families and later defections from one Korea to another.

The Cold War period

The animosities that existed between the states of the Eastern and Western blocs caused frequent flights of dissidents from one of the two sides. Also, the period of decolonization and armed conflicts that erupted in these processes caused forced migrations. The position of any international organization in the bipolar world was difficult when it was necessary to balance between the two blocs. The process of decolonization did not always go without major setbacks and problems. Thus, armed riots, incidents, and conflicts broke out throughout Africa and Asia, which resulted in a large number of human casualties but also waves of refugees.

² This problem is present seventy years after the adoption of the Convention Relating to the Status of Refugees and more than fifty years since the adoption of the New York Protocol.

A special problem arose in connection with a large number of people who did not have regulated citizenship status and found themselves in a situation of statelessness. The adoption of two conventions dealing with statelessness, the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961), only seemingly gave hope that the phenomenon of statelessness would be eradicated (United Nations Treaty Series, 1960; 1975). In the decades after the adoption of these conventions, but also today, the role of the UNHCR in the suppression of statelessness is important.³ During this period, due to its important role in caring for asylum seekers and refugees and contributing to peace and stability in the world, UNHCR won the Nobel Peace Prize on two occasions, in 1954 and 1981 (The Nobel Prize, 2022). This type of recognition is not common, and the reputation of the UNHCR has not declined in the future.

The post-Cold War stage

The tectonic changes in international relations after the fall of the Berlin Wall (1989), the disappearance of the Eastern Bloc, and primarily the collapse of the Soviet Union, led to major changes in international relations and the international community. In the last decade, there have been numerous armed conflicts, such as the escalation of the situation in the Middle East, the Iraqi invasion of Kuwait and the response of the international community, the collapse of the former Yugoslavia, the conflict in Rwanda that led to genocide, constant tensions in Palestine, and many other crisis hotspots around the world. This resulted in waves of refugees from different countries, and after a long time from Europe (dissolution of Yugoslavia). The characteristics of the Cold War frictions resulted in the flight of dissidents and political refugees from one bloc to another, but, with the end of the Cold War and bloody conflicts in the former Yugoslavia, for the first time since the Second World War, hundreds of thousands of refugees began to leave their countries on the European continent. In the latest conflict in Ukraine, it has been shown that although Europe was not a source of refugees for more than two decades and European countries were the “only” countries of transit and

³ In 2014, UNHCR launched the global campaign #IBELONG in order to eradicate statelessness in the world in the period 2014-2024, which, for now, is showing good results, but the final results of the campaign will be shown after its completion.

reception of refugees, in the field of forced migration, new hotspots can open and refugees can also become citizens of economically stronger and politically more stable countries and territories. So, modern migration, which is mixed and massive, is possible in any part of the world. It can come from the areas from which refugees flee, transit, or find refuge.

Contemporary mixed (refugee-migrant) crises

Large waves of migration, such as those caused by the permanent crisis in Afghanistan or the wave of crises triggered by the Arab Spring, have caused the mass forced migration of extremely large numbers of people in the 21st century. The conflict has been going on in Syria for more than a decade, which has caused a mass exodus of Syrians. According to UNHCR estimates, about 6.6 million people have fled Syria since the conflict began in 2011 until 2020, and 6.7 million have been internally displaced, making up a significant portion of the country's total population (UNHCR, 2022d). The situation in the host countries (Jordan, Lebanon, Turkey, Pakistan, Iran and others) is also worrying, as parts of the countries in the region where riots are taking place or large numbers are migrating are under very strong pressure to take care of hundreds of thousands or even millions of refugees transiting through or seeking refuge in those countries. From the beginning of the Afghan war in 1979 and the temporary easing of tensions, to the Allied invasion of Afghanistan in 2001, to the escalation of the crisis with the return of the Taliban regime to power in August 2021, millions of Afghans were forced to seek refuge in other parts of Afghanistan as well as beyond its borders. Thus, in the last few decades, Afghan refugees have taken refuge in neighboring countries, primarily in Pakistan, which has not been able to adequately accept all refugees, and some of them have continued to Iran, Turkey, and other countries. However, due to the Arab Spring and the coups in several Arab countries (Libya, Tunisia, etc.), a wave of refugees started, and one part of the refugees went by sea (across the Mediterranean), towards the EU member states, and one part to the Middle East to Lebanon, Jordan, and Turkey, and since 2015, in the biggest wave so far, on the so-called Balkan routes towards EU countries, primarily to Germany, which was back then pursuing a so-called "open doors" policy. In other parts of the world, there has been mass and mixed migration, such as those that have been going on for years from the countries of South and Central America to the United States and Canada. During the mandate of the then President of the US, Donald Trump (2017-

2021), there was a tightening of measures and discriminatory policies that referred to refugees and migrants, which negatively affected the position and rights of those people (Galbraith, 2019a, pp. 377-386; 2019b, pp. 833-842; 2020, pp. 504-511; Eichensehr, 2021, pp. 340-347).⁴ For several decades, the issue of refugees in Australia and New Zealand has been important. They mostly arrive by sea, and in the case of Australia, they are often detained outside that territory (Nauru and Papua New Guinea), or on the territory of Australia itself. The latest crisis in relations between Russia and Ukraine since the beginning of this year has shown that Europe is not only a refuge for refugees but also a place where a large number of refugees are fleeing due to armed conflicts. The largest number of refugees from Ukraine are seeking refuge in European countries, mostly in neighboring countries. Poland received almost half of the refugees from Ukraine, then Romania, Russia, Hungary, Moldova, and Slovakia. That makes Europe a continent that, while receiving large numbers of refugees, still creates new refugees. Large migratory movements have caused the tightening of policies and changes in the legislation of many countries regarding the transit and reception of refugees. As a result, a number of measures were adopted in some countries around the world, but also “protective” wires and walls were erected (in the US, Hungary, Greece, etc.). Also, the states did not shy away from explicitly violating the norms of international refugee law but also domestic law in that area. This, of course, hampered the codification and progressive development of international refugee law, further slowing the processes that would lead to the best solutions for managing mass and mixed migration, which is one of the modern international community’s most pressing challenges. What is characteristic of modern migrations, especially since the second decade of this century, is their mass and mixed character. It concerns the movement of a large number of people – refugees and migrants – via the same routes. The International Organization for Migration (IOM) has defined mixed migration as follows: “A movement in which a number of people are traveling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. People traveling as part of mixed movements have varying needs and profiles and may include asylum seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular

⁴ President John Biden and his administration have begun to overturn the decisions of the previous administration of the US.

situation.” (IOM, 2019: 141, 142). However, what needs to be kept in mind is the different legal framework that applies to different categories of people on the move. One, which refers to refugees, the backbone of which is the 1951 Refugee Convention and the New York Protocol, and the other to other migrants. With regard to migrants, there is no “umbrella” international agreement, unlike the legal framework for refugees. Thus, with regard to migrants, there is “only” the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, an international agreement that covers one part of migrants – migrant workers and members of their families (United Nations Treaty Series, 2004).⁵ Refugees, according to the provisions of international law, enjoy a higher degree of protection than other migrants (refugees are migrants in the broadest, sociological sense, but from a legal point of view, they are a special category covered by a special international and national legal framework). Especially since modern migrations are massive and mixed, their management is more complex and is an obstacle for all actors who manage migration due to the specifics it brings.

THE UNHCR MANDATE

When considering the mandate and role of UNHCR in the care of asylum seekers and refugees, two types of activities can be noticed: traditional, i.e., those that arose during the formation of the UNHCR, which are set by the UNHCR Statute and the 1951 Refugee Convention; and modern, i.e., those that have evolved due to changing circumstances on the ground (Loescher, Betts & Milner, 2008, pp. 10-16). Other activities have developed over time, with the fact that there is a wide field of action in which the UNHCR could develop activities in the field, such as taking care of the so-called environmental refugees, but also providing humanitarian assistance to people who are forcibly migrating. The different types of assistance provided by the UNHCR to asylum seekers and refugees cover a number of different domains. The UNHCR, with the help of executive partners, funds and supports the provision of free legal aid to asylum seekers and refugees in many countries around the world; assists their inclusion and integration into the host country; assists in the relocation of refugees to third countries; assists in the process of

⁵ By March 1, 2022, the implementation of the Convention will become obligatory for 57 states.

return to the country of origin; assists state bodies in various ways in building and improving the asylum system; as well as in many other activities, such as providing humanitarian assistance to the most vulnerable persons of concern.

Traditional role and activities of the UNHCR

The UNHCR Statute prescribes the role of the UNHCR with the goal of protecting refugees that fall under its mandate.⁶ Thus, UNHCR is obliged to take care of the ratification of international agreements that protect refugees but also to monitor their implementation and propose mandates; to promote, through special agreements with governments, the implementation of all measures designed to improve the situation of refugees and reduce the number of persons in need of protection; to assist governmental and non-governmental efforts in promoting voluntary return or assimilation within new national communities; to promote the reception of refugees; to seek permission for refugees to transfer property, in particular those necessary for their relocation; to obtain information from governments on the number and conditions of refugees in their territory, as well as on regulations concerning refugees; to maintain close liaison with governmental and intergovernmental organizations in these areas; to establish contacts with private organizations dealing with refugee issues, as well as to enable coordination in the efforts of private organizations dealing with refugee welfare. From these statutory competencies of the UNHCR, one can see the diversity and complexity of the role that the UNHCR has in its mandate. In order to facilitate the functioning and realization of the competencies of the UNHCR set out in its statute, the UNHCR Executive Committee (ExCom) was established in 1958 as an auxiliary body of the UN General Assembly. The ExCom began operations on January 1, 1959, with an executive and advisory role that included: advising the High Commissioner in the exercise of his/her functions; reviewing funds and programs; authorizing the High Commissioner; making appeals for funds and approving proposed biennial budget targets (ECOSC, 1958; UNHCR, 2022e). The ExCom is made up of representatives from 107 countries (UNHCR, 2022f). By 2022, the ExCom adopted a large number of legal documents. The ExCom documents are of great importance for providing international protection

⁶ Article 8 of the UNHCR Statute.

and influencing the creation of the “doctrine” of the UNHCR (Lewis, 2012, pp. 60-77). Although they represent non-binding legal acts, i.e., sources of so-called soft law, the ExCom documents are of great importance as guidelines for all actors who deal with asylum seekers and refugees. Also, the authority of these decisions is significant given the composition of the ExCom, which includes representatives of states, including those states that have not committed to the implementation of the 1951 Refugee Convention and/or the New York Protocol. The traditional role of the UNHCR is to promote the 1951 Refugee Convention. Thus, for example, in Europe, almost all countries are obliged to implement the 1951 Refugee Convention and the New York Protocol. The problem is that, for example, Turkey is bound by the 1951 Refugee Convention with a geographical reservation relating to the definition of refugees, which in practice means that refugee protection is granted to refugees coming from Europe but not to refugees from other parts of the world. This, further, leaves a gap in the protection of millions of refugees who crossed the border with Turkey in the years behind us in search of adequate international protection (refugees from Afghanistan, Iraq, Syria and other countries). This problem also exists in other parts of the world, such as Asia, because many countries have not committed themselves to the 1951 Refugee Convention and/or the New York Protocol, or have made certain reservations that narrow the application of these instruments. The UNHCR’s role is therefore important in countries not bound by the 1951 Refugee Convention and/or the New York Protocol by intervening to find ways to fill gaps with more or less sustainable solutions, but also by assisting countries in building asylum systems and resettlement to other countries of certain categories of persons in need of international protection. Also, the role of UNHCR is very important in terms of finding lasting solutions for refugees – assimilation in the receiving country or return of refugees to their country of origin. Although the UNHCR was formed in 1950, before the 1951 Refugee Convention was adopted, which entered into force in 1954, there is an organic and functional link between the UNHCR and the 1951 Refugee Convention. Most of UNHCR’s activities are focused on the 1951 Refugee Convention, either in terms of the implementation of the 1951 Refugee Convention or in terms of filling in the gaps in the 1951 Refugee Convention itself that occur in practice. The UNHCR has taken on the role of the most relevant interpreter of the 1951 Refugee Convention, as evidenced, inter alia, by the role of the UNHCR when acting as an intervener (*amicus curiae*) before domestic and international bodies, or when these bodies use UNHCR documents and

views when making decisions. The “doctrine” of the UNHCR has been building for decades and represents a strong influence on the application of existing international legal instruments, but also domestic sources of law, and influences the adoption of new ones in the *spirit* of the 1951 Refugee Convention. One of the shortcomings regarding the work of the UNHCR is the inability to submit individual petitions from asylum seekers and refugees to the UNHCR, as is the case with many international treaties, universal and regional, which protect human rights and provide for a control body before which they can conduct interstate proceedings or proceedings on individual petitions.⁷ This specificity is an expression of the attitude of states that the issue of granting asylum is the sovereign right of every state and belongs to the *domaine réservé* of sovereign states. The examination of each individual decision related to the asylum procedure could not be entrusted to a supranational body. Special attention should be paid to the period when the 1951 Refugee Convention and the then understanding of state sovereignty, as well as the position of the individual in international law, were adopted, which has changed significantly over time, in practice. About 70 years ago, it was unthinkable that an individual could initiate a dispute before an international body, either to sue his own state or a foreign state. Even disputes before the International Court of Justice (ICJ), which were conducted to protect the rights of the individual, were conducted in such a way that the state of which the injured party is a citizen initiates a dispute before the ICJ, thus substituting for the injured party. Today, the practice when it comes to human rights has changed significantly, so it is possible to conduct disputes against states before various international committees and courts with the party in the dispute being an individual, either its citizen or a foreigner under its jurisdiction. The 1951 Refugee Convention provided for the obligation of states to cooperate with the UNHCR, which is done within the activities within the competence of the UNHCR in order to facilitate its task of monitoring the implementation of the said convention.⁸ States Parties undertake to provide, in an appropriate form, the requested information and statistics relating to the

⁷ With the entry into force of many international treaties and their protocols in modern times, there is the possibility of filing individual complaints against a state that is alleged to have violated any of the human rights of human beings under its jurisdiction or the bodies such as the Human Rights Committee (CCPR), the Committee on the Elimination of Discrimination against Women (CEDAW), the

status of refugees, the implementation of conventions, and the laws and regulations and other regulations which will enter into force or have entered into force relating to refugees.⁹

Adapting the role of the UNHCR to changed circumstances

The UNHCR's presence in the field in different parts of the world in different periods required adaptation to different needs at a given time across the globe, but also at different levels – universal, regional, and local (Milner & Ramasubramanyam, 2021, pp. 195-200). In some countries, the UNHCR is fully taking over the role of taking care of asylum seekers and refugees, i.e., resolving their status issues, due to the fact that the receiving country does not have a prescribed procedure for determining refugee status. In other countries, the UNHCR assists receiving countries, either in some phases of the asylum procedure, or in building an asylum system, etc. Namely, in some countries, the UNHCR participates in the second-instance procedure for determining refugee status. In the third group of countries, which have a regulated asylum procedure and, in general, a functional asylum system, that is, the reception and protection of asylum seekers and refugees, the UNHCR helps in various ways. This is done in the form of humanitarian aid in the event of an influx of a large number of refugees who are in the territory of the receiving state, then by preparing reports on the situation in the countries of origin or transit of refugees, or as an intervener (*amicus curiae*) in proceedings conducted at the request of a refugee. Overall, the UNHCR's presence on the ground is of paramount importance given that the UNHCR is a factor with great authority, both moral and expert, in interpreting the norms of international refugee law. The changing circumstances on the ground, which may not have been foreseen during the formation of the UNHCR, have shown its strength to cope with new trends, which has further

Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD), etc., or judicial bodies of regional human rights monitoring mechanisms, such as the European Court of Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms), the Inter-American Court (Inter-American Convention on Human Rights), etc.

⁸ Refugee Convention, Article 35, paragraph 1.

⁹ Refugee Convention, Article 35, paragraph 2.

strengthened the role of the UNHCR. True, it would not be correct to conclude that only UNHCR is obliged to deal with all innovations and changes in refugee law, bearing in mind the still great role of states, but also due to the nature of the UNHCR, bearing in mind that the UNHCR is a UN agency, and therefore it must take care of neutrality¹⁰ and still have an effective influence on changes and adjustments of state policies regarding the care of asylum seekers and refugees. The issue of different categories of people in forced migration, such as internally displaced persons (IDPs) or stateless persons, is a particular challenge to address. Namely, with regard to IDPs, there is no “umbrella” international agreement, such as those that exist for refugees and stateless persons, bearing in mind that IDPs are forcibly displaced within the state of which they are citizens, or in the case of stateless persons, where they have their habitual residence. This specificity, further, has the consequence that the countries in which the IDPs are located do not want to interfere with external factors and view the issue of resolving internal forced migration as an internal matter. Of course, over time, the practice has developed that various international entities, primarily the UNHCR, are involved in the management of IDP-related issues. The changing nature of migration and new tendencies caused by mass and mixed migration (*refugee-migrant*), but also the emergence of new forms of migration, such as environmental migration,¹¹ force the international community and its actors to adapt to new trends, which have had different success rates (Stojanović, 2020, pp. 73-89; Stojanović et al., 2021).¹² Thus, in 2016, in the midst of a refugee-migrant crisis that shook the world, the New York Declaration on Refugees and Migrants was adopted. The New York Declaration, although integrating issues related to refugees and migrants, foresaw the

¹⁰ According to the UNHCR Statute, its mandate is non-political (Chapter I, para. 2 of the UNHCR Statute).

¹¹ Regarding the issue of so-called environmental refugees, the actions and procedures of other actors such as the Human Rights Committee are also indicative, which is the impact of human rights mechanisms that make up for shortcomings in the field of international protection and human rights.

¹² The challenges that actors involved in international protection face have been particularly evident since the outbreak of the COVID-19 pandemic. On that occasion, a number of controversial issues relevant to the matter of international refugee law and its principles arose, such as issues related to respect for non-refoulement principles.

adoption of two separate global compacts – one dedicated to refugees and the other to migrants (UN GA, 2016a). Thus, two years after its adoption, two global compacts were adopted – the Global Compact for Refugees (GCR) and the Global Compact on Safe, Orderly and Regular Migration (GCM) (UN GA, 2018a, 2018b; Krasić & Stojanović, 2020). The importance of both global compacts is reflected in the fact that the responsibility for taking care of asylum seekers and refugees, as well as migrants, has been lowered from the vertical to the horizontal level, involving various state and non-state actors in various processes related to these categories of people (Stojanović, 2022). Regarding the concretization of both global compacts, significant mechanisms are envisaged in both compacts. Thus, at the end of 2019, the first meeting of the Global Refugee Forum was held, hosted by the UNHCR and the Government of Switzerland, where the actors from the GCR committed themselves to concrete actions in the future (Stojanović, 2020b, pp. 195-198). In addition to the above steps taken by adopting international instruments to try to respond to new trends in cross-border migration, another important consequence of mixed migration is the closer cooperation between the UNHCR and the IOM, so that migration can be managed in a sustainable way. The changing nature of modern migration, i.e., its mixed and mass nature, has caused the need for collaboration between the UNHCR and the IOM. By adopting first the New York Declaration on Refugees and Migrants and then two global compacts – the GCR and the GCM – the foundations of that cooperation were laid. Previously, the IOM received the status of a UN-related organization in 2016 (UN GA, 2016b). Cooperation between the UNHCR and the IOM has lasted for years in various areas, such as the fight against human trafficking (Stojanović, 2020c, pp. 391-395). The UNHCR is also taking significant steps on the issue of new tendencies in international refugee law, such as the provision of protection to people who are forced to migrate due to environmental issues – the so-called “environmental refugees”. People seeking international protection in the context of the adverse effects of climate change or disasters may have valid claims for refugee status. They may have a well-founded fear of persecution under Article 1A (2) of the 1951 Convention or be compelled to seek protection outside their own country owing to events seriously disturbing public order under Article I (2) of the 1969 OAU Convention and Conclusion III (3) of the 1984 Cartagena Declaration. In addition, there may be grounds for international protection under general international human rights law, i.e., non-refoulement obligations, including the right to life.

THE UNHCR IN THE 21ST CENTURY - NEW CHALLENGES AND OPPORTUNITIES

In the 21st century, the UNHCR faces a number of challenges. Mass and mixed migration, tensions in international relations, the crisis of multilateralism, and the problem of funding, are just some of the problems and challenges that hinder the functioning of the UNHCR. Mass and mixed migration put the UNHCR in a situation of necessary cooperation with other actors. In the first place, it is about cooperation with countries but also with other international organizations. In the first place, it is about the IOM, whose mandate is to protect migrants (Article 1 of the Constitution of the International Organization for Migration from 1953) (Chetail, 2022, pp. 244-264).¹³ The need for cooperation is reflected in the fact that refugees and migrants in mixed migration share common routes, but they often have in common that countries of transit and reception often do not provide certain international standards for both categories of people in migration. Thus, the intertwining of circumstances in which refugees and migrants find themselves and their mass movement requires a multidimensional observation of the situation and necessarily points to cooperation with other relevant actors. Furthermore, mass influxes of refugees, especially in the context of mixed migration, have resulted in states protecting their borders by often resorting to illegal actions aimed at preventing refugees and migrants from entering their territory. This means that the achieved standards and already existing norms in the field of refugee law will be lowered, and legal norms will be violated. This problem, especially when it comes to absolute norms of international law (*ius cogens*), represents a serious blow to the international legal order, having in mind the seriousness and consequences of violating the norms of *ius cogens*. Due to these risks and the need to prevent violations of international law relating to asylum seekers and refugees, it is necessary to strengthen cooperation between states and other actors in order to make a fair distribution regarding the care of asylum seekers and refugees, to avoid illegal practices in dealing with people in need of international protection, and to facilitate the management of mixed migration in countries of transit and reception.

¹³ The IOM Constitution has been amended several times. The following amendments were made to the Constitution on November 14, 1989: the organization was renamed to the International Organization for Migration; and on November 21, 2013, the Executive Committee was abolished.

The problem of UNHCR funding is not a new phenomenon. Given that the UNHCR is largely funded by state donations, with contributions from economically strong countries in the north and west, it is very difficult to avoid the influence of those countries in terms of policy making and fieldwork, which is a great challenge for the UNHCR. Unlike the IOM, which was influenced by the United States and its Western allies, the UNHCR has been open to all countries from the beginning, striving to act in all areas where there is a need for its intervention, not just in Europe, although at the time of the creation of the UNHCR and the Convention relating to the Status of Refugees, the Euro-centric attitude prevailed. In order to achieve sustainable financing, it is necessary to work on the awareness and conscience of all countries to improve their contribution to UNHCR's finances, bearing in mind that any country in the world can be a country of origin, transit, or destination of refugees. At the universal level, the UN provides refugee assistance and support to asylum seekers and refugees, as well as to the countries in whose territory they are located. For that reason, and because events from the recent past have shown that every country in the world may find itself in need of some of the types of assistance provided by the UNHCR. Not to mention that solidarity is necessary for taking care of asylum seekers and refugees. A holistic approach to vulnerable groups, which certainly includes asylum seekers and refugees, is a form of humanization of international law, which is a legacy of the post-Second World War period and thus one of the cohesion factors in the international community. Tensions in international relations have resulted in a crisis of multilateralism in various areas, including international refugee law, which is reflected in the functioning of the UNHCR. The need to adopt international legal instruments that have the character of so-called hard law is proving necessary in order to address burning issues related to international protection, such as the protection of so-called "environmental refugees". The limitations of the refugee definition given in the 1951 Refugee Convention require that ways be found to make up for the shortcomings, and that all those in need of international protection be provided with such protection. In order to overcome the stalemate in codification and progressive development related to international refugee law, it is necessary to sensitize all actors involved in the management of forced migration and refugee care – the state, international governmental and non-governmental organizations, and other actors. The activities of various expert bodies made up of legal experts – international lawyers – such as the Institut de Droit

International and the International Law Association, which in previous years have dealt with issues related to international protection and mass migration, can be useful.¹⁴

CONCLUSIONS

Changing circumstances on the ground, due to changes in international relations but also due to the development of international and domestic refugee law, have forced the UNHCR to change and adjust the way it works to provide protection and assistance to refugees and asylum seekers. The process of decolonization and the significantly larger number of countries that exist today than those that existed at the time of the creation of the UNHCR have increased the need to build a system that could effectively and sustainably monitor the situation of asylum seekers and refugees in all parts of the world and also balance the interests of different actors. In that process, it was never easy to keep the interests of asylum seekers and refugees as the most important ones. Through the historical development presented in this paper, it is clear that the UNHCR's adaptability to changes on the ground is perhaps most responsible for why the UNHCR has survived for more than seven decades and largely successfully provides protection to asylum seekers and refugees around the world, despite tensions in international relations, conflicts, and all other issues faced by asylum seekers and refugees forced to leave their country of origin. Through its various activities related to the protection of asylum seekers and refugees and the regulation of their status for more than seven decades, the UNHCR has influenced the creation of a robust system of international protection and the construction of national asylum systems in different parts of the world, which was by no means an easy undertaking. This is especially so because states jealously guard their sovereignty and strive to "protect" *domaine réservé* as widely as possible. Finding ways to successfully overcome the challenges is an important task the UNHCR is facing. This process will certainly not be easy, given the growing number of forcibly displaced persons around the world growing from year to year. If tensions in

¹⁴ Institut de Droit International, Final Resolution, Sixteenth Commission: Mass Migrations, 2017, rapporteur: M. Maurice Kamto. More recently, the International Law Association has formed two committees – the Refugee Procedure (1992-2002) and International Migration and International Law, which was formed in May 2021.

international relations are added to that, as well as the emergence of new forms of forced migration, such as migration due to climate change, finding an effective and sustainable solution in the coming period will not be possible if the international community and the UNHCR do not face numerous difficulties and obstacles.

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