Political Survival as a Motive in Decision-Making: The UNHCR and the Rwandan Refugee Crisis

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Abstract

Often the UNHCR's decisions contradict the mandate that it was created to uphold and fulfill. This thesis seeks to understand the reason the UNHCR makes these decisions. It examines various decisions the UNHCR made regarding the caseload of Rwandan refugees who fled after the Rwandan genocide and the resulting attacks into Rwanda. This includes three forced instances of repatriation from Zaire, Tanzania, and Uganda. It then evaluates the motives behind the UNHCR's decision to recommend that all Rwandan refugees from this caseload lose their status as refugees in June 2013. The field research component of this was carried out in Uganda in both Kampala and Kyaka II refugee settlement, where interviews of both refugees and key informants were conducted. The research also utilizes internal US government and UNHCR documents. The research found that the UNHCR makes decisions based on its need to survive as an organization. The need to survive involves three key components that influence the UNHCR's decisions in different situations based on what needs are most pressing in each circumstance. The first component is the interests of donors, which the UNHCR must follow to continue receiving the funding necessary to operate as an organization. The second component is the priorities of host governments, which the UNHCR must follow because, to carry out its work, the UNHCR must have the trust and cooperation of the host governments willing to put land and resources towards the maintenance of refugee populations within their countries. The third component is the appearance of adhering to its mandate because otherwise the UNHCR loses its authority as an organization dedicated to helping refugees, which erodes its credibility and legitimacy. It is through these three components that UNHCR is able to continue to carry out its work and extend its tenure as a prominent humanitarian organization. This addresses a gap in the literature because it reaches an important middle ground between realism, which views humanitarian organizations as an extension of the priorities of donor governments, and humanitarianism, which views humanitarian organizations as institutions focused on promoting their mission autonomously. These findings are important not only to understanding the decisions the UNHCR makes but the decision-making of humanitarian organizations more generally.

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1. Introduction

Rwandan refugees under the jurisdiction of the United Nations High Commissioner for Refugees (UNHCR), who fled the aftermath of the Rwandan genocide in 1994, are set to lose their status as refugees on June 30, 2013. This will close one of the most complicated refugee crises in history, but it will not resolve the challenges facing the thousands of refugees who stand to lose their status and access to refugee rights. Perhaps as importantly, the challenges that this case has and continues to pose to the very survival of the UNHCR as an organization remain under-addressed. This thesis aims to examine the motives underpinning UNHCR policy implementation, including the decision to invoke the cessation clause in the case of Rwandan refugees. While the paper will focus extensively on the decision mechanisms in this particular region, the findings will shed light on UNHCR decision-making more broadly. In short, what motivates UNHCR decisions? Is the organization guided primarily by its principles, or do political calculations shape the behavior of this "apolitical" organization?

Some would suggest that the UNHCR effectively operates as an apolitical organization that make all decisions based on the needs of refugees. Others claim that the UNHCR was created to carry out the political will of the states that founded it and continue to fund its operation. In this thesis, I argue that the UNHCR makes its decisions based on what it needs to do to survive as an organization. The choice then follows one of three components crucial to its survival. At times it makes decisions based on the interests of donors, at times based on the priorities of the host governments, and at times it makes its decisions based on how it will uphold its ability to carry out its mission to help refugees.

To examine the UNHCR's reasoning, I use a comparative case study involving three questionable forced repatriations of Rwandan refugees and the cessation clause that takes away Rwandan refugees' rights to remain outside of their country. The three repatriations took place in Tanzania, Zaire, and Uganda. For research on the Ugandan repatriation and the cessation clause, research was conducted in Kampala, Uganda and Kyaka II refugee settlement, the settlement from which the refoulement to be examined occurred. I conducted interviews with refugees and officials, held a workshop with refugees, and obtained internal UNHCR documents regarding the cessation clause. I then completed an extensive literature review on the UNHCR, the Great Lakes Region of Africa, and UNHCR's actions within the region, conducted interviews with three key informants, and obtained declassified United States state department documents to build the evidence section.

This thesis is divided into five chapters. The first chapter explores the background of the UNHCR. The UNHCR section is divided into three parts. First, I explore the origins of the UNHCR and its expansion. The UNHCR was created with only a three-year mandate and a budget too small to accomplish much of what was in its mandate and designed to help only refugees from World War II. The UNHCR realized that the only way it could survive as an organization was to take expand its own mandate. It expanded its mandate by receiving funding from a foundation grant, deviating from the expected route of funding for a humanitarian organization. The UNHCR also expanded its mandate by handling post-World War II refugee crises in Hong Kong and then Tunisia, which paved the way for further work in refugee crises located outside of Europe, a change key to its survival as an organization when crises began decreasing in Europe and increasing in developing countries. The chapter then explores various pieces of legislation defining the UNHCR's role. The section highlights key terms and concepts,

including the three durable solutions, protracted refugee situations, and the cessation clause. This chapter demonstrates how the UNHCR's need for organizational survival influenced many of its early decisions and actions.

The next chapter includes a literature review of existing theories and my theory. First I review the history of humanitarian organizations, which began at the end of the Holocaust and upon the signing of the Universal Declaration of Human Rights. Then I examine existing theories. Liberal and humanitarian theory claim humanitarian organizations make decisions based on what they believe will best suit the interests and benefit of the group or issue they are working to help. Realist theory, on the other hand, views humanitarian organizations as nothing but a representation of interests of their founders and donors, who make decisions for the organization. Constructivism, taking an approach more able to believes humanitarian organizations make decisions based on modern conceptions of the purposes humanitarian organizations should serve and, instead of being affected by donor interests, are able to influence the priorities of donors. All three of these theories fail to take into account the ways in which decision-making must take several factors in account at the same time. My theory is that humanitarian organizations make decisions in carrying out their stated missions based on a core need to survive and expand. To do this, an organization works to establish its global legitimacy by showing it can uphold its mandate, raise the necessary funds from private and state donors, and win cooperation of countries where work is being carried out. My theory predicts that those are the three factors that the UNHCR considers as it decides how to carry out its stated mission.

The third chapter presents a background to the Rwandan genocide and aftermath. This will help create the context of UNHCR's actions regarding repatriations of Rwandan refugees. First, there is a background to the Rwandan genocide, which explains both the growth of

hostilities between the Hutu and Tutsis and the influence of early refugee movements on the current situation in Rwanda, both of which are key to understanding refugee movements and repatriations today. I then explain the unfolding of the genocide and the Rwandan refugee outflow that started after the end of the genocide, which consisted primarily of Hutus fleeing the new government. I then give a background on the host countries and their relationship with refugees before and after the refugee situation presented. In Eastern Congo, refugees have influenced and changed local politics significantly, leading to further conflict and unending war in the region. In Tanzania, the government that once had an open and welcoming stance towards refugees changes its policies and expels the Rwandan refugees from Tanzania. In Uganda, the complex history of the Ugandan government, the Rwandan government, and Rwandan refugees in Uganda places Rwandan refugees in the position of being a political tool, both domestically and in its relations with Rwanda.

The fourth chapter contains evidence supporting my theory. I examine four comparative UNHCR actions regarding repatriation of refugees that were displaced shortly after the Rwandan genocide. First, I demonstrate that the UNHCR assisted in and encouraged the repatriation of Rwandan refugees from Zaire while the Rwandan government was attacking refugee camps because donors were willing to give financial and material assistance to repatriation efforts but not toward the maintenance of refugee camps. Second, I show that the UNHCR helped coordinate the forced repatriation of refugees from Tanzania because the Tanzanian government was determined to repatriate the refugees regardless of the UNHCR's decision. Third, I demonstrate that the UNHCR did not participate in or prevent a refoulement in Uganda because participation would have jeopardized its legitimacy as an organization with a mandate to protect refugees. After comparing these three UNHCR decisions, I examine the UNHCR's decision to

invoke the cessation clause because of a lack of willingness by donors or host governments to continue supporting the refugees. As a humanitarian organization, the UNHCR relies on host governments, donor governments, and its own reputation and legitimacy in order to survive as an organization. I demonstrate that the UNHCR makes decisions that allow it to persist as an organization because it is easy for the UNHCR to lost support in any of these three categories.

My final section is the conclusion. First, I summarize the findings of my thesis. Then, I explain the implications of this for the UNHCR, its constituents and, more broadly, humanitarianism. I will then explores potential areas for further study.

This project offers two important contributions. First, it includes original evidence that offers insight into the very refugee populations that are ultimately affected but under-examined and the ways in which the UNHCR's decisions have affected the experience and security as refugees. Second, it stakes out theoretical ground between realism and humanitarianism when examining humanitarian organizations. It is able to identify that humanitarianism and realism both come into play at different points depending on the relevant survival needs. This new framework has the possibility of much broader relevance and use.

UNHCR is a complex organization with an important, complicated mission and many diverse pressures. The ways in which the UNHCR handles its decision-making under so many different pressures is instructive for understanding decision-making for other humanitarian organizations. Sometimes, the UNHCR makes decisions that strictly follow its mandate to help refugees. Sometimes, it will even defy its donors in order to preserve its guiding mission. Of greatest political interest, however, are the decisions it makes to diverge from its mandate because of its desire for political survival.

2. The United Nations High Commissioner for Refugees – A Background

The United Nations High Commissioner for Refugees (UNHCR) has managed to survive for over sixty years because it has made decisions based on organizational survival, even when they contradict its mandate. The UNHCR decides to deviate from its mandate often in both temporary and permanent manners in order to overcome obstacles and address changes over time. These changes over time, include different geographic necessities, types of conflict, and donor priorities and have forced the UNHCR to choose between making decisions based on its need to survive as an organization and making decisions solely based on the needs of refugees or the needs of donors. While the UNHCR was established as a humanitarian organization dedicated to helping refugees, its decisions cannot be based solely on the desire to help refugees because it also needs to endure as an organization. Thus the UNHCR makes its decisions based on this primary need to persist.

In this chapter I explore the background of the UNHCR. First, I give a brief history of the UNHCR, its inception, and major expansions in the UNHCR's work that have allowed it to endure. Second, I explain key documents determining the UNHCR's official mandate, including the 1950 statute founding the UNHCR, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the Organization of African Unity Convention, and the "good offices" General Assembly resolutions. Third, I highlight the different resources and support the UNHCR relies on to continue its work. Finally, I discuss key terms and concepts regarding durable solutions for refugees, including repatriation, resettlement, and local integration. It also examines the concepts of protracted refugee situations, where no durable solutions are available, and the cessation clause. Throughout the chapter, it becomes

clear that the UNHCR has been created for political reasons and has had to continuously change its interpretation of it mandate and deviate from its mandate to survive as an organization.

2.1 History of the UNHCR

It is integral to understand that the UNHCR, like all international organizations and humanitarian organizations, is inherently unable to exist as an apolitical organization. This is because, as an organization, the UNHCR must base its decisions around its need to survive as an organization. To thoroughly comprehend this, it is important to understand the political origins of the UNHCR's inception and early expansion.

The UNHCR was created in 1950. It was to be a temporary organization with minimal funding and a mandate lasting three years. Its objective was to either resettle or repatriate refugees still displaced from World War II, which remained a problem six years after the end of the war. As an organization set up to have a short mandate and little power, the UNHCR was not expected to go on to become one of the most important international humanitarian organizations sixty years later.

Although the UNHCR was created with a mandate to only help refugees gaining their status on or before 1951, it was also created at the same time that the Korean War had begun and the Cold War began to intensify. Already there were refugee flows from the East to the West, and the United States and its allies quickly began to view these refugees as tools for the Cold War. The United States officially defined refugees as those fleeing communism and grouped refugee policy with national security.[1] Because the United Nations (UN) is an international organization the US has limited control over, US officials did not want refugees to be dealt with

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[1] Gibney, Mark. *Global Refugee Crisis: Second Edition.* ABC-CLIO; Santa Barbara. 2010. Pp. 90

primarily through a UN organization.[2] The success of the UNHCR could lead to the creation of a new refugee commission, or expansion of the UNHCR, to also cover refugees fleeing communism. The United States denied the organization any direct funding and even created its own refugee organization to compete with it. It also encouraged the United Nations to finance the UNHCR with only a small annual budget and ensured that the organization was a legal organization and not an operational organization.[3] From the beginning, the UNHCR had to work to survive as an organization. Originally, UN members, following the encouragement of the US, gave the UNHCR a minimal annual budget of $300,000.[4] The UNHCR was given only nominal funding so that it would not overstep state sovereignty. Under these circumstances, it was hard for the UNHCR to have much influence over states and their decisions regarding displaced people. However, the High Commissioner and his staff were determined to effectively carry out its mandate instead of becoming a hollow temporary organization unable to help the group it was created to benefit.

From the beginning, the UNHCR had to find its own funding. The countries that created the UNHCR had mandated that it had little power or ability. The UNHCR found itself unable to gain sufficient funding while competing with and splitting with the many other human rights causes and organizations also needing funding for governmental donors after the 1948 Human Rights Declaration. Instead, they went to the private sector and secured a grant from the Ford Foundation for $2.9 million.[5] With this money, they helped resettle refugees in Western Europe who were displaced both in World War II and the Cold War. From these early efforts, the

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[2] Loescher, Gil. "The UNHCR and World Politics: State Interests vs. Institutional Autonomy," International Migration Review, Vol. 35, No. 1, Special Issue: UNHCR at 50: Past, Present and Future of Refugee Assistance (Spring, 2001), pp. 33-56

[3] Gibney, Mark. *Global Refugee Crisis: Second Edition.* ABC-CLIO; Santa Barbara. 2010. Pp. 90
[4] Loescher, Gil. *Beyond Charity.* New York: Oxford University Press, 1993.P. 57.
[5] Loescher, Gil. *The UNHCR and World Politics: A Perilous Path.* New York: Oxford University Press, 2001. P. 66.

UNHCR began to gain the prominence from and the respect of many governments as an effective organization. From this early stage, the UNHCR began expanding its mandate and prominence in order to survive as an organization.

The UNHCR's first expansion outside of its original mandate involved the assistance to Hungarian refugees during the Hungarian civil war in 1956. In this expansion, the UNHCR went against its donors to expand its mandate. The UNHCR helped organize the repatriation of ten percent of Hungarian refugees from Western countries. Originally, Western countries resisted this because it would make communism look popular if people chose to return to the country. However, if the UNHCR did not help organize the repatriation, it would be seen as a Western organization and thus unable to gain the trust and respect of other regions and govenrnments. Therefore the UNHCR had to go against its donors in order to survive as an organization.

The UNHCR first expanded its mandate outside of Europe into developing countries when dealing with the Chinese refugee crisis in Hong Kong after the establishment of the People's Republic of China (PRC) in 1949. After some negotiation, the UNHCR was able to assist refugees in Hong Kong. This was the first use of the "good offices" as will be explained in 2.3.

Soon after, the UNHCR expanded into Africa. In the first two decades of the UNHCR's tenure, many African countries won their independence from European colonizers, which would lead to many refugee situations for the UNHCR. Many battles for independence were long and involved the exile of revolutionaries. One of the bloodiest and longest wars for independence took place in Algeria, where Algerians fought their French colonizers from1954 until 1962. As a result of the conflict, many Algerians fled, causing outpours into bordering countries. In 1957,

Tunisia requested the UNHCR's assistance in dealing with refugees.[6] The request by Tunisia was a challenge to the UNHCR's survival. If it did not accept the request, the UNHCR would be known as an organization only responsible for European refugees and blind to other crises. On the other hand France, one of its key founders and donors, did not want the UNHCR to support the Algerian refugees fleeing the war with France because it would put on the crisis on an international scale and draw attention to the atrocities of the war. The UNHCR's decision in either direction could have a lastin impact on its ability to survive as an organization. The UNHCR ultimately maneuvered diplomatically into playing a role in the crisis. This marked the first time that the UNHCR intervened in Africa and truly expanded its mandate outside of Europe.

After this breakthrough, the UNHCR found itself handling more and more cases centered in Africa. As decolonization continued, new countries sought to establish themselves, and civil wars broke out over leadership often leading to mass refugee influxes. Similar conflicts in other parts of the Global South had analogous effects. Soon, the UNHCR found that the majority of its work took place in the Global South, as Western Europe became more peaceful and the iron curtain was firmly drawn.

Because of changing circumstances, the UNHCR found that they had quickly switched from being an organization based only in Europe to an organization operating most frequently in developing countries. This was because fewer conflicts occurred in Western European countries. Had the UNHCR not worked to expand its mandate to Asia and Africa early into its tenure, it would likely have ceased to maintain relevance. The UNHCR had to weigh the interests of

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[6] Loescher, Gil. *The UNHCR and World Politics: A Perilous Path.* New York: Oxford University Press, 2001. P. 97.

donors, the interests of host countries, and the effects of their actions on their mandate in order to make decisions.

The next great challenge for the UNHCR was the end of the Cold War. The end of the Cold War is commonly considered one of the most significant turning points of modern world history. At the end of the Cold War, refugees were no longer fleeing communism. This dramatically changed the purpose of the refugee regime for the West because these governments no longer saw refugees that were fleeing communism as 'heroes' choosing Western ideologies over Eastern ideologies. Because of this change and changing economic circumstances, developed countries began reevaluating its view of the UNHCR's policies and priorities. The UNHCR often provides relief to mass movements of refugees, which is both crucial to the survival of the refugees and also functions as an easy fix to prevent the mass movements of refugees from reaching Europe or the US[7]. Many governments of developed countries have begun ignoring many rights of refugees set down in the 1951 Convention. Originally, the UNHCR served as an organization in charge of legal rights. As it became clear the UNHCR could not protect refugees without material assistance that allowed refugees to live, the UNHCR found itself in charge of both legal and material assistance. After the Cold War, in order to accommodate the changing attitudes of Western governments and their unwillingness to uphold the protection mandate, the UNHCR has slowly become an organization more and more focused on operational support instead of legal support[8]. This shift addresses needs such as food and shelter but at times does not necessarily provide refugees with the protection that the UNHCR is supposed to provide them. The emphasis on material aid allows the emphasis on protection to

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[7] Chimni, B S. "The Geopolitics of Refugee Studies: a View from the South." *Journal of Refugee Studies*. 11.4 (1998): 350-374. Print.
[8] Loescher, Gil. "The Unhcr and World Politics: State Interests Vs. Institutional Autonomy."*International Migration Review*. 35.1 (2001): 33-56. Print.

change so that protection is based on resources available to help refugees. This has had a dramatic impact on UNHCR's decision-making because, when it runs out of resources to provide material assistance, the UNHCR often looks for durable solutions instead of continuing to emphasize the protection of the refugees[9]. These changes have been necessary so as to survive as an organization, as changing donor interests and further exclusion policies for immigrants to the US and Europe have meant that the UNHCR has to re-order itself to survive as an organization.[10][11]

At its inception, the UNHCR faced time restraints, geographic restraints, and budget restraints that challenged its ability to carry out its mandate. Because of this, the UNHCR sought out its own funding and responded to emergencies outside of the region and the time period it was created to address. By understanding what was needed to become an established organization, the UNHCR gained global acceptance as a first responder for refugee situations. However, it also understood that the parameters under which it had to operate to survive would change over time, and the UNHCR has continuously changed its priorities and operations based on the wants and needs of the international community, with particular emphasis on its need to survive as an organization.

2.2 The UNHCR's Mandate – Key Legislation

The UNHCR was established through a 1950 statute passed by the UN General Asse,b;y but derives its overall mandate from the 1951 UN Convention Relating to the Status of Refugees and the subsequent 1967 Protocol Relating to the Status of Refugees, which was an amendment

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[9] Ibid.

[10] The shift in European and American policies away from acceptance of refugees has high importance to the UNHCR and its mandate. Because of its complexity and variance by country, there is not the space to write about it here. However, it has been written about extensively elsewhere and it is incredibly important to understand the change in time.

[11] Widgren, Jonas. "Asylum Seekers in Europe in the Context of South-North Movements."*International Migration Review*. 23.3 (1989): 599-605. Print.

to the original convention. As is true of all United Nations conventions, states ratify conventions

they agree to join and are then expected to write their own legislation implementing the

convention within their country, as the United Nations has no real power over sovereign states.

The Organization of African Unity (OAU)[12] also created its own legislation on refugees,

tailoring its definitions to the region's specific needs and priorities. To survive as an

organization, the UNHCR must follow the mandate set out by these protocols and definitions

because they set out exactly what the UNHCR can do. However, the UNHCR often pushes the

limits of its mandate and has often gone against what is written in its mandate, which can be

expanded through "good offices," from which the UN voted the UNHCR could expand its

mandate for the benefit of groups not named under the original. Before examining the UNHCR

policies and actions, it is important to understand the legislation that together makes up the

mandate of the UNHCR.

1951 Convention on Refugees and the 1967 Protocol

The UNHCR was officially created in December of 1950 with a three-year mandate to

help Europeans still displaced five years after the end of World War II. Seven months later, the

1951 Convention Relating to the Status of Refugees was adopted by the United Nations, giving

the UNHCR a legal mandate and framework The 1967 Protocol Relating to the Status of

Refugees recalls this part of the 1951 Convention defined a refugee as:

"Some one who is unable or unwilling to return to their country of origin owing to a well-
founded fear of being persecuted for reasons of race, religion, nationality, membership of a
particular social group, or political opinion[13]."

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[12] This is now the African Union (AU). However, because the literature was adopted when it was the OAU, I
will continue using this to refer to it.
[13] UN General Assembly, Convention Relating to the Status of Refugees, Ch. 1 Article 1A2. 28 July 1951,
United Nations.

The 1951 Convention establishes the rights of refugees, such as freedom of movement, right to education, right to asylum, and many other rights.[14] The Convention is based off of principles established in the 1948 Universal Declaration of Human Rights, which was the first legal mandate to establish that people have certain basic rights that should be inalienable. Initially, because the UNHCR was originally created to deal with refugee issues in Europe and from World War II, the mandate also required that they met the conditions above because of events occurring before January 1,1951. Signatories were given a choice as to whether they'd prefer to only apply the mandate to include those displaced in Europe or also those displaced elsewhere.[15] While the 1951 Convention was based on a specific group of people, the 1967 protocol made this the first international mandate to be applied to all refugees instead of only to a specific group.

Under the United Nations, the UNHCR is governed by the United Nations General Assembly and the Economic and Social Council (ECOSOC). However, over time, the UNHCR has gained significant autonomy because of its expertise in the area of refugees and the way in which it raises its own funding. The executive committee of the UNHCR, responsible for approving the budget and expenditures, started out in 1958 with 25 member states and has grown to 85 members.[16] Today, the UNHCR operates in 126 countries with a total of 7,685 staff members.[17]

Of the 26 countries represented during the convention, none were from Asia or Sub-Saharan Africa. Today, many of the largest refugee populations are fleeing from and to Asian and African

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[14] At times, these rights end up advantaging the refugee population over the local population. For example, as cited in Mahmood Mamdani's *When Victims Become Killers,* Rwandan refugees in Uganda gained assistance and scholarships that ultimately made the refugee better educated than the children in host communities, leading to resentment. More recent UNHCR efforts have assisted host governments as well, decreasing the resentment.
[15] Ch. 1 Article 1B. UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations.
[16] UNHCR. "ExCom Members" UNHCR Website. http://www.unhcr.org/pages/49c3646c89.html
[17] UNHCR. "Governance and Organization" UNHCR Website. http://www.unhcr.org/pages/49c3646c80.html

countries not represented during the initial creation of the UNHCR's mandate. Many of the European countries represented are now among the worst in terms of rejecting asylum seekers without allowing them to make a case for refuge, sending people back to their countries where they will face the danger and, in some cases, death they were fleeing. Therefore, many of the countries least represented at the inception of the UNHCR are those most affected by its existence and mandate whereas many of those represented willfully choose to disobey its mandate without facing repercussions.

The "Good Offices"

Soon after the UNHCR began working with refugee operations, it became clear that its mandate did not allow the UNHCR to tackle most major refugee problems because of its time and location sensitive mandate during the 1950s and 1960s. Often the UN General Assembly would expand the UNHCR's mandate to cover new locations and refugee problems by "good offices" resolutions, which would declare that the UNHCR could take care of refugees and persons of concern where it saw fit. Good offices were often used between 1951 and 1967 so that the UNHCR could work with refugees from crises other than World War II. It was also used to justify working with refugees in mass influxes as allowed for by the OAU Convention. Good office conventions were last used in 1973. After this, these expanded offices became the norm and so legal backing for exceptions was no longer deemed necessary. To begin its growth as an organization, the UNHCR had to go against its own mandate almost from inception.[18]

The OAU Convention

The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa was written in 1969, only a few years after most African states

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[18] Zieck, Marjoliene. *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis.* Martinus Nijhoff Publishers. 1997. Pp 73-74.

achieved their independence.[19] Because of the time period, African governments were mainly concerned with refugees in the context of exile for fighting foreign occupation. Because these refugees were different from the traditional definition of refugees, they were taking into consideration different types of wars and refugee flows, for which assessing the persecution of each individual would be more difficult. The OAU Convention thus broadens the definition of refugees to also apply to:

"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.[20]"

This is an important addition because it acknowledges that a general war, and not only persecution on personal grounds, can prompt a person to flee his or her country. While only the OAU Convention includes this definition within its refugee convention, the UNHCR has adopted this definition universally under the concept of the "good offices."

There are subsequently two ways people fleeing their countries can achieve refugee status. The first is as individual asylum seekers. Here the claims are processed on an individual basis, analyzing whether fears are well founded and fall under the 1951 UN Convention definition. The second is as part of a mass influx. The 1951 UN Convention does not have a provision for this, but as demonstrated the Organization for African Unity (OAU) and the UNHCR do have methods for allowing temporary refuge for groups in this situation. This often

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[19] The Organization of African Unity was created in an effort to unite Africa and promote decision-making separately from the old Colonial powers. The OAU's decision to write its own legislation on refugees was in part as a way of setting their own standards, but still it was written to facilitate the work of the UNHCR.
[20] OAS, Convention Governing the Specific Aspects of Refugee Problems in Africa, 6-10 September 1969, OAS, Article 1 p. 2.

occurs when a large group of refugees flees a country and, due to the overwhelming number and the fact that the fear is clearly well founded, individual cases are not evaluated.[21]

The UNHCR and its Unofficial Mandate

While the UNHCR's official mandates are listed above, the UNHCR's ability to continue operations is contingent on the enduring legitimacy and importance in the view of the international community. There are three main factors influencing the UNHCR's lasting tenure including funding, permission to operate, and authority as a protectorate of refugees While the UNHCR may continue to exist as an organization under the United Nations, it would be less effective or cease to hold any functional role if it fails to maintain these three factors.

For any humanitarian organization, donor funding is necessary to survive. Because no state has a financial obligation to help refugees, the UNHCR has no choice but to rely on donor funding. This can create a collective action problem where nobody feels obligated to donate money because refugee protection and assistance is viewed as a shared public good. As it has been doing since its inception, the UNHCR must convince donors to put money towards the protection of refugees. It does this through making general appeals for UNHCR funding and direct appeals for emerging refugee crises. Donors often give a certain amount to the UNHCR's general fund and then will also earmark money for certain initiatives. This ensures that the donors' priorities are met. While the UNHCR discourages earmarking, its reliance on donor funding forces the UNHCR to take earmarked funds.[22] As a response, the UNHCR began reporting total contributions and total un-earmarked contributions of each country separately in

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[21] Stedman, Stephen J. **"**Refugee Manipulation: War, Politics, and the Abuse of Human Suffering," Brookings Press. 2003

[22] Interview with Karen Abu Zayd, former Secretary to High Commissioner Sadako Ogata. Conducted 20 July 2012.

its annual reports so as to reward states willing to give more generally.[23] However, this has not stopped a general trend towards earmarking.

This thesis will focus on the interests of the United States when looking at the influence of donors because the United States is by far the UNHCR's biggest donor. The United States was initially skeptical of the UNHCR but, after realizing the power working with an external humanitarian actor could have for policy, the US soon changed its attitude. While some other governments give funds to the UNHCR and assume the UNHCR will spend it as they see fit, the US slowly earmarked more and more of its funding until it started designating the exact appropriations for 100% of its funding to the UNHCR since 2005, displaying its desire that the UNHCR carry out its work based on state priorities and not necessary its own priorities. Later, the US would go on to fund the UNHCR at much higher rates. According to Karen Abuzayd, former North American coordinator for UNHCR, the UNHCR often resisted requests from the United States government that it felt went against its mandate.[24] Other sources suggest this has often led the US government to instead work through the International Organization for Migration (IOM).[25] To survive as an organization, the UNHCR often has to weigh such requests with other elements of the need to survive as an organization, such as continued legitimacy through its mandate, funding realities, and host government interests.

The second factor is that the UNHCR must maintain its permission to operate in refugee-hosting countries. Because these countries signed the 1967 protocol, they have agreed to host refugees and follow the mandate. However, refugees can put geographic, material, and financial strain on host countries, most of which are developing countries already struggling to meet the

[23] UNHCR Annual Reports 1999-2011.
[24] AbuZayd, interview with.
[25] Hilhorst, D. and Jansen, B. J. (2010), Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid. Development and Change, 41: 1117–1139. doi: 10.1111/j.1467-7660.2010.01673.x

needs of their populations. Often, the pressure on host governments is alleviated by burden-sharing efforts[26] by donor governments. Donor governments give financial and material assistance and also accept some of the most vulnerable refugees into their countries. However, host governments still carry the vast majority of the burden. They are expected to allocate land and personnel to staff decision-making regarding refugee statuses in their country. At times, refugees pose a security risk to its host country because they themselves become militarized or the government or individuals from their country of origin seek out refugees in their host country. Hosting refugees from a neighboring country also puts strain on the relationship between countries, as hosting refugees indicates a lack of faith in a government's ability to protect its citizens.[27] For many developing countries already struggling with stability and resources, hosting a refugee population can push the country to instability. Recently, many refugee situations have become protracted for decades, leaving the host country responsible for a prolonged period of time as donor interests fade. As has been listed, refugees put numerous strains on host governments, all of which cease to be a problem if host governments commit refoulement and forcefully expel refugees. While this goes against the UNHCR mandate to which host governments are signatories, there have been numerous incidences where refoulement, or forced repatriation, has taken place. When one country commits refoulement, it sends a signal to other host countries that they too could commit refoulement. If refoulement becomes too normalized, it will effectively override the UNHCR's mandate because the UNHCR

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[26] The term "burden-sharing" is used frequently by the UNHCR to describe sharing responsibilities in caring for refugees. This term captures the common view that refugees are a "burden," which many have declared to be a negative attitude in need of change. Recent initiatives have focused on trying to make refugees a productive part of their host societies. For now, it is this attitude that forces the UNHCR to work hard in convincing both donors and host governments to support refugees without clear reward.

[27] When the definition of refugees was created, the word "persecuted" was used pointedly to create a stigma for the countries refugees were fleeing. This has had a lasting impact for the way governments perceive governments with fleeing refugees…

can no longer offer refugees any guaranteed protection. Therefore, the UNHCR must work with host governments and meet their needs to ensure continued cooperation in order to survive as an organization.[28]

The third factor the UNHCR must take into account as its appearance as an organization primarily concerned with protecting and aiding refugees. While the UNHCR has a mandate that sets up its work but it can deviate from, it still must continue to carry out its mission (or appear to) enough that they able to maintain the authority and legitimacy to continue to hold to thrive as an organization. Losing this authority and legitimacy leads to general deterioration of trust from both donors and host governments, even if those groups themselves encouraged the UNHCR to deviate from its mandate in certain situations. Although it may be able to neglect this role in the short term while trying to gain donor or host support, doing so consistently would lead the international community to question its dedication to its mission and thus its purpose for existing. At times, the UNHCR must make decisions that contradict donors and host governments in order to preserve its mission in the long term.

The UNHCR must fulfill all three of these components to hold its unofficial mandate to operate from the actors it relies on to survive and carry out its work. While two of these factors are not part of its official mandate to operate, they are equally important in the way it carries out its operations to the mandate itself.

Conclusion

The rights established in both the 1951 United Nations Convention and the 1969 OAU Convention were based around the political environment in existence at the time they were written. The 1951 Convention only applied to individuals and very directly stated the time period

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[28] Often, initiatives aimed at refugees are extended to local populations so as to offset unequal distribution of aid and offer host communities incentives for hosting refugees. However, this only mitigates certain concerns about hosting refugees – it does not address issues of diplomacy and security, for example.

and geographical location it was relevant to. The 1969 Convention was written in response to refugee flows from fighting colonialism and subsequently from decolonization. This is important because both were created based on the time at which they were written and not based on predicting future refugee crises.

The United Nations High Commissioner for Refugees thus faces an ongoing challenge. It must both stay within the confines of mandates created based on specific refugee situations (even if applied more universally) and stay relevant to changing refugee situations. If it fails to stay relevant, it will lose funding and cease to exist or at least cease to hold the important role it does today. This was true as early as the 1950s, when the UNHCR already had "good offices" to expand its mandate past the 1951 Convention. It is this constant challenge to stay relevant for organizational survival that often causes the UNHCR to overstep or contradict the mandate of its creation.

2.3 Explanation of Important Concepts

Because refugee protection constitutes a legal mandate, the UNHCR had to establish its own definitions and procedures. These established concepts and procedures were originally set forward as the norms for actions and policies regarding refugees. However, because of its need for organizational survival, the UNHCR has changed many of its norms. This section will detail a number of concepts important to the UNHCR's actions and policies towards refugees. It will focus on the three durable solutions available for refugees; repatriation, resettlement, and local integration. It will also discuss protracted refugee situations and the cessation clause.

The status of refugee is supposed to be a temporary state of being. The UNHCR thus lists three durable solutions for refugees; resettlement, repatriation and local integration. While these have consistently been the three solutions for refugees, their prominence and definitions have

changed over time because of the UNHCR's need for organizational survival. With regards to the three durable solutions, the UNHCR's work is highly confined by donor priorities and the priorities of host governments, forcing it to go against its mandate in order to maintain support.

Resettlement

Resettlement, the least frequent of durable solutions, is the movement of a refugee to a third country, meaning a country other than the country of origin or country of asylum. Refugees are generally only granted resettlement when able to prove that they will be harmed if they stay in their host country and so they therefore need to be moved elsewhere.

Most frequently today, refugees are resettled to Europe, Oceania, or the United States and Canada.[29] The UNHCR's ability to resettle refugees is wholly based on the desire of a country to host them. This is because once a refugee is granted refuge in one country, they have asylum and that country becomes their protectorate. Because of the nature of most modern refugee flows, this means that refugees often go from a developing country of origin to a developing host country, meaning that developing countries have to deal with much more of the burden of refugees than developed countries. The idea behind resettlement has now become a model of "burden-sharing" in which developed nations should take in more refugees and finance refugee services the developing countries forced to host refugees cannot afford to provide. However, developed countries often do not want to take in refugees and there is no way to force them to do so. The UNHCR estimates that while 800,000 refugees have well-founded reasons for needing resettlement every year, there are only 80,000 slots available.[30] This does not include other individuals who want to be resettled but are not considered to qualify under the UNHCR's standards. In addition, politics are a large part of resettlement. Refugees chosen for resettlement

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[29] "Resettlement" UNHCR Website. http://www.unhcr.org/pages/4a16b1676.html
[30] UNHCR "Frequently Asked Questions about Resettlement," 2011.

are often chosen for political and pragmatic reasons; often they are either well educated and would contribute to the economy or are from a politically important country. For example, many Somalis have been resettled to the US. Some claim this is because of political interests – the US wants to build up future leaders for the nearly failed state so it is not a terrorist hub in the future.[31] While the UNHCR would like to be able to send more refugees to be resettled, it cannot make this its main priority for funds and advocacy if it wishes to survive as an organization because it derives its funding from developed countries and would not want to lose the favor of the donor countries.

Local Integration

The second durable solution is local integration, under which refugees become citizens or permanent residents of their host country. In terms of naturalization, the 1951 UN Convention states the following:

"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.[32]"

However, the UN and UNHCR have no authority or power to dictate citizenship laws in any country. Therefore, this serves only as a recommendation and not as a mandate.[33] It is then the laws of the host country that dictate the actualization of local integration. Because many host governments are developing countries with limited resources, few governments choose to locally integrate refugees. Just as UNHCR chooses not to emphasize resettlement to donors because it may decrease their support, the UNHCR similarly does not push the hand of host governments regarding local integration because, to survive, the UNHCR needs host governments to continue

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[31] Singer, Audrey and Wilson, Jill, "Refugee Resettlement in Metropolitan America," Brookings Institute. March 2007

[32] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations.

[33] While technically nothing in the UNHCR mandate is legally bounding, the request that hosts give refugees citizenship would overstep national sovereignty much too far by rewriting who belongs to the country.

to accommodate new influxes of refugees without casting them away for fear of having to locally integrate them.

Repatriation and Refoulement

The third durable solution is repatriation, where refugees voluntarily return to their country of origin because of improved conditions. The word "voluntary" is an important part of repatriation as a durable solution. The UNHCR defines "voluntary" repatriation as taking place under the following conditions:

- "Conditions have changed sufficiently in the country of origin to allow the return of the majority in safety and dignity.
- The return must be lasting and sustainable.
- The return must take place without forces pushing refugees to leave or barriers preventing return.
- The return can take place under conditions of:
  - Legal safety – absence of discrimination, freedom from persecution.
  - Physical safety - freedom from attack, safe routes of return.
  - Material safety – a means of livelihood and access to basic services[34]."

The 1950 statute establishing the UNHCR names one of the commissioner's jobs as promoting and assisting in voluntary repatriation[35]. In 1980, the UNHCR executive committee came to the conclusion that voluntary repatriation should be a key part of the UNHCR's work and that they should help determine what is voluntary[36]. Because the 1969 OAU Convention was created in reaction to colonialism, it was written with the expectation that most refugees would want to return to the country they were exiled from, so the OAU Convention heavily emphasized repatriation. Today, repatriation is the most accentuated solution in every region and is often promoted as the only solution for most refugees.[37] This shift in emphasis to repatriation has often

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[34] UNHCR, *Handbook: Voluntary Repatriation: International Protection.* 1996. Geneva.
[35] Ibid.
[36] Ibid.
[37] UNHCR, *Handbook: Voluntary Repatriation: International Protection.* 1996. Geneva.

led the UNHCR to neglect its duty to protect refugees.[38] In the evidence and data section, there will be an analysis of how repatriation no longer has an emphasis on being voluntary, and is now even carried out in ways that put refugees in danger, because of the UNHCR's need to survive as an organization.

When governments carry out refoulement,[39] it is a violation of the rights of refugees. This is stated in the UNHCR's mandate as:

> "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.[40]"

While this is a part of the mandate widely accepted by most governments, it has often been violated. This has become more common in recent years. As many Western governments now systematically detain and often repatriate individuals seeking asylum, many developing countries no longer feel obliged to protect refugees and there are no longer governments in a position to criticize these refoulements. Therefore the UNHCR must figure out how to simultaneously prevent further refoulements and maintain the trust of and legitimacy from host governments. If the UNHCR allows several refoulements to occur, its legitimacy and authority will be challenged.

Protracted Refugee Situations

When none of the three solutions are available, refugees are left in protracted refugee situations. Protracted refugee situations are settings in which refugees are forced to stay in a country of asylum as if in a state of limbo for an extended period of time. The UNHCR defines a situation

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[38] Takahashi, S. "The Unhcr Handbook on Voluntary Repatriation: the Emphasis of Return Over Protection." *International Journal of Refugee Law*. 9.4 (1997): 593-612. Print.

[39] A refoulement is the repatriation of refugees are carried out without the consent of the refugees being returned to their country of origin. While the definition pertains to host governments, in practice the UNHCR has itself practiced or helped in the practice of refoulement.

[40] UNHCR mandate, article 33(1).

as protracted if refugees have been living in exile as refugees for more than five years. Until recently, the number had to be at least 25,000 refugees, but that was eliminated because it excluded many refugees. Today over two-thirds of refugees are in protracted situations which have become more common over time.[41] Protracted refugee situations are one of the biggest concerns for the UNHCR because they require extended funding but, because they are no longer immediate crises, many Western governments stop earmarking funds or providing additional funding for such protracted situations[42]. Unfortunately, because of the changing nature of conflict and the increase in failed states or states under danger of failing, protracted situations have become more common, with many of the situations in conflict-ridden countries continuing to deteriorate.

The Cessation Clause

Refugee status has never been meant to be permanent. This is why the UNHCR named three durable solutions- it is an acknowledgement of the fact that refugee status itself is not durable. The 1951 UN Convention states that refugee status will be removed in the situation that

"He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality."

The invocation of the cessation clause strips these former asylum seekers of all rights they were guaranteed as refugees. This means that the UNHCR and the host government no longer need to work to ensure that the refugees are able to have one of the three durable solutions available. Instead, the former refugee retains the status of an illegal immigrant, which puts him or her at risk for a number of vulnerabilities and risks such as detainment and forced repatriation.

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[41] Refugee Studies Center. "Protracted Refugee Situations" University of Oxford. http://www.prsproject.org/protracted-refugee-situations/
[42] Interview with Karen Abu Zayd, former Secretary to High Commissioner Sadako Ogata. Conducted 20 July 2012.

Governments hosting refugees are officially in charge of researching and declaring when conditions in the country of origin are safe enough for return. Once the host government believes this safety standard is met, it can declare the cessation of refugee status for the group previously guaranteed protection. However, in practice decisions regarding application of this generally fall under the jurisdiction of the UNHCR. If a state decides that conditions in the host country are safe enough to force refugees to return but the state does not have the agreement of the UNHCR, the return of refugees is often considered refoulement. However, because most governments see refugees as a burden, host governments have thus far always followed any guidelines for cessation deadlines put forward by the UNHCR. Because of this norm creation, the UNHCR's cessation recommendations are generally taken by the international community as declaration. The UNHCR often goes as far as recommending a specific date and creating implementation plans with each host government. In the case of Rwandan refugees, for example, international aid organizations and governments alike quickly interpreted the UNHCR's recommendation for cessation as the final word[43]. The UNHCR's decision to recommend the invocation of the cessation clause for Rwandan refugees will be examined further in the data and evidence section.

Conclusion

The UNHCR names three durable solutions for refugees. However, because of restraints in support, it emphasizes repatriation over the other two solutions. The UNHCR is often unable to move refugees that remain in danger within their country of asylum to a third country for safety because of a lack of willingness by Western countries to host refugees. This prevents UNHCR from fully carrying out its mandate for protection. Similarly, the UNHCR is unable to

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[43] Most recently, Amnesty International has issued recommendations to governments hosting Rwandan refugees that it is still their decision whether or not to invoke the cessation clause and that they should first do their own research. This is in response to the way in which it has become a norm to see host governments follow UNHCR recommendations.

successfully promote local integration because developing countries often do not have the resources or support to naturalize refugees Because of a lack of support from Western countries for local integration efforts. This leaves repatriation and, when that is not possible, protracted refugee situations. As will be examined later, this often leads the UNHCR to violate its own mandate of voluntary repatriation, at times leading to the endangerment of refugees. To survive financially as an organization, repatriating refugees allows the UNHCR to renew donor interest in a situation, have positive results to report, and maintain status as an effective organization.[44]

Conclusion

This chapter examines the UNHCR from many different angles. First, we looked at the inception and history of the UNHCR, where it was made clear that the countries creating the UNHCR had political motivations for both its conception and its initial limited abilities. The UNHCR expanded because of its understanding of what was necessary to survive as an organization. Second, we examined the mandates dictating what the UNHCR was allowed to do, as well as the legal ways in which the UNHCR was able to surpass what was dictated in its mandate within its first decade of existence. We also saw the unofficial elements key to its mandate. The last section laid out the different possible solutions the UNHCR sees for refugees and the ways in which the funding and desires of developed countries dictate which of these solutions are emphasized. It also outlined the concept of protracted refugee situations, which are increasingly common because of restraints on other possible solutions, and the cessation clause, which revokes refugee status instead of finding a durable solution. This chapter explored how the UNHCR dealt with these concepts based on its need to survive as an organization.

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[44] Crisp, J. (2001), Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process. International Migration Review, 35: 168–191. doi: 10.1111/j.1747-7379.2001.tb00010.x

The United Nations High Commissioner for Refugees needs to survive as an organization to carry out its mandate. This chapter has demonstrated how the UNHCR's mandate and history is innately political. It has also demonstrated how the UNHCR's motivation to survive as an organization is an underlying factor in the decisions it makes. Understanding the UNHCR's decision-making is important because sometimes the UNHCR makes decisions that contradict its mandate and put refugees at increased risk. I will demonstrate that the UNHCR's need to survive as an organization at times puts refugees at risk, which directly contradicts the UNHCR's reason for survival and existence.

3. A Theory of Organizational Survival

For an examination of humanitarian organizations and decision-making, I chose the UNHCR for several reasons. First, the UNHCR has, over time, become one of the most prominent humanitarian organizations in the field.[45] The mission of the UNHCR is to protect refugees. However, the term "refugees" had never held a specific and technical definition until the creation of the UNHCR.[46] Previously, "refugee" did not have a set definition and so, while many individuals and governments noted the vulnerability and needs of refugees, being granted refugee status was not viewed as a determination granting individuals universal inalienable rights. This norm creation allows the UNHCR to carry out its work as the primary expert on refugees in the field of humanitarianism and international development. Because of this expertise, the UNHCR is considered to be one of the more autonomous humanitarian organizations. This expertise exceeds the knowledge and interest of donors on refugee affairs, which allows the UNHCR to make decisions more autonomously.[47] The UNHCR is often cited as an important case study in papers evaluating the autonomy of humanitarian organizations. While the qualities listed above make the UNHCR stand out as a humanitarian organization, the decision-making mechanisms the UNHCR uses are the same as those of other humanitarian organizations. The UNHCR is thus being used as a specific case fitting into a larger theory about humanitarian organizations.

In this chapter I review existing literature on the decision-making of humanitarian organizations and then I put forward my own theory. First, I explore the history of humanitarian

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[45] For the purposes of this paper, an international humanitarian organization will be defined as any organization created to give humanitarian relief in a foreign country. While other potential definitions of "humanitarian" will be discussed later, for the purposes of this paper it will be defined as emergency relief given to people unable to help themselves with their most basic needs such as food, shelter, water, medicine, and protection from harm (such as conflict).

[46] Orchard, Phil. "Protection of Internally Displaced Persons: Soft Law As a Norm-Generating Mechanism." *Review of International Studies*. 36.2 (2010): 281-303. Print.

[47] Barnett, Michael and Finnemore, Martha. "Politics, Power, and Pathologies of International Organizations"

organizations and their growth in power and quantity. Then, I summarize the existing theories about humanitarian organizations and the decisions they make. This will include humanitarian theory, realist theory, and constructivist theory, . Finally I introduce my theory that humanitarian organizations make decisions based on their need to survive.

3.1 History of Humanitarian Organizations

The atrocities the Nazis committed during the Holocaust in Germany and its occupied territories during World War II led people across the world to advocate for the creation of mechanisms to prevent and ban such actions from ever happening again. It was only shortly after this that the United Nations was created in 1945 with, as written in the UN charter "the mission of promoting friendly relationships, peace and cooperation between nations.[48]" The member states of the United Nations quickly prioritized human rights. In 1948, UN several member states signed the Universal Declaration of Human Rights, which became the foundation for the basic notion of human rights now recognized by much of the world. The content of what is included as basic human rights has always been controversial, especially as it has grown in scope. While some still interpret it to only include what is defined under the 1948 Declaration, the term "human rights" has been expanded to include many other rights,from rights for people with disabilities[49] to the right to express one's sexuality,[50] the latter of which has raised much concern in a number of countries claiming homosexuality will harm their cultures and religions[51]. The right to asylum for refugees stems from the Universal Declaration of Human Rights as a solution to take care of people whose governments fail to protect those unalienable rights. Therefore to

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[48] UN Charter
[49] United Nations Enable Website. http://www.un.org/disabilities/
[50] "Historic Decision at the United Nations". Human Rights Watch. 17 June 2011.
http://www.hrw.org/news/2011/06/17/historic-decision-united-nations
[51] This has been demonstrated as of recent in Uganda, which has gotten global attention when the parliament was consider a bill that gave the death penalty for homosexuality. The first time the bill was set forward, it was tabled because of the pressure of allies and donors. However, it has been set forward again.

understand the UNHCR and humanitarian organizations more broadly, it is first important to understand the origin of human rights and its significance.

Human rights are becoming more universally recognized, but are rooted in Western principles and shaped largely by Western countries. The concept of human rights is innately Western[52] in its focus on the ideal of individualism. Many other cultures instead focus on communalism and each person's place within society. This clash of cultures arises in most discussions of human rights.[53] A good example is the Convention on the Elimination of Discrimination Against Women (CEDAW) adopted in 1979. Though it seeks to prevent gender discrimination., many countries complain it undermines their cultures by requiring a re-ordering of hierarchy and gender roles.[54] But those countries, especially the ones dependent on aid from the West, felt pressured into signing the convention.[55] Ironically, the United States refused to sign the convention, saying it might usurp its own sovereignty.[56] Though often critical of Western style humanitarianism, other countries view human rights by the type of right. There is general consensus, for example, that all people deserve food, water, shelter and protection in emergency situations over which they have no control. In the context of the UNHCR's work, however, there is disagreement over who deserves to be granted refugee status and basic necessities, as will be discussed further in the evidence and data section.

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[52] After the International Criminal Court put out a warrant for the arrest of Al-Bashir, the leader of Sudan, for organizing a genocide, many states in the African Union claimed that this was invading the rights of a leader to sovereignty over his state based on Western ideals of human rights.

[53] Holtmaat, Rikki & Naber, Jonekke, Women's Human Rights and Culture: From Deadlock to Dialogue (Intersentia 2011).

[54] Ibawoh, Bonny. "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State" *Human Rights Quarterly*, Vol. 22, No. 3 (Aug., 2000), pp. 838-860

[55] Landman, Todd. "Measuring the international human rights regime." 97th annual meeting of the American Political Science Association, San Francisco, August. 2001. AND Moya, Dambisa *Dead Aid*

[56] Fattahi, Kambiz. "Women's bill 'unites' Iran and Us," BBC 31 July 2007. http://news.bbc.co.uk/2/hi/6922749.stm

Several humanitarian institutions emerged from this concept of human rights. The first major international humanitarian organization was the International Center of the Red Cross (ICRC), founded in 1863 (says its website). It is widely considered the model of how a humanitarian organization can operate in almost any setting while maintaining a reputation for neutrality.[57] After World War II, the United Nations, and some countries and private donors, also created several organizations with written mandates to take care of basic human rights. However over time the type of human rights violations and the situations where they occur have changed extensively. As a result, many organizations have changed or have periodically deviated from what their original mandates required. This work sets out to address the reasons humanitarian organizations make decisions that contradict their own mandates.

3.2 Existing Theories

An extensive literature exists on the creation and mandates of humanitarian organizations, but institutional change and divergence from mandates is a newly emerging area of study. As humanitarian organizations become more prominent, understanding their decision-making processes and level of autonomy becomes key to understanding international relations and global governance today. The decisions of humanitarian institutions can be examined not only through theories of humanitarianism but also through broader theories of international organizations. This section will discuss literature on international humanitarian organizations and determine existing gaps. First, it examines liberalist and humanitarian theory, which employs only a humanitarian and ideological viewpoint. Then, it examines realist theory, which views international institutions as vehicles for the agendas of states or donors. Finally, it examines constructivism, which argues international organizations constantly change as they learn more

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[57] Interview with AbuZayd, Karen and Interview with Gambino, Tony.

and understand more about humanitarian effectiveness or organizational effectiveness in the world. Each of these theories makes an important contribution, but they present oontradictory views of how humanitarian organizations operate and, taken singly, each one fails to identify humanitarian actors' primary overarching motivation. The theory I set forward synthesizes the core of these three theories and stipulates that humanitarian organizations make decisions primarily so as to ensure their continued survival.

Liberalism and Humanitarianism

Liberalist theory believes progress is possible through cooperation and that this collaboration is the key to future peace and thus the alleviation of suffering. Rooted in the Enlightenment, it sees this cooperation as creating not only economic networks and political relationships that ensure peace but also a culture and mindset that leads to peace. Modern idealist / liberalist theory stems from Immanuel Kant, who first argued that, while human violence and war may be a part of human nature, international governance and law could lead to lasting peace. Liberalism became a popular ideology between World War I and World War II, during which Woodrow Wilson and others attempted to create the League of Nations as an international organization that would monitor international relations. In his fourteen point plan, Woodrow Wilson outlined a plan that would promote peace between countries and allow for justice for all and not only the victors, which had never been done before. Although this was not implemented, Wilson's ideas and principles became a new ideology of equality that fell in line with humanitarianism.[58] And while the League of Nations failed, Wilson's ideas made way for the United Nations and the growth of humanitarian organizations focused on human rights and peace. In the mid 1950s, Claude Levi-Strauss, an anthropologist, sought to emphasize the

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[58] Seymour, Charles. "Woodrow Wilson in Perspective." *Foreign Affairs*. 34.2 (1956): 175-186. Print.

universality of humanity without ethnocentricity.[59] This view of shared humanity came at a time when many colonies were fighting for independence and humanitarian and human rights organizations were gaining prominence. His work helped create an anthropological and philosophical way of viewing humanitarianism and helped it gain an even wider appeal[60].

Humanitarianism is the ideological application of liberalism in emergency settings. Humanitarian aid[61] is rooted in international cooperation and shared values as humanitarian aid comes from Western donors, including governments and private donors, who liberalists would argue may not directly benefit from giving such aid.[62] Humanitarianism thus extends the notion of cooperation for peace into the provision of basic needs for those endangered by war or other disaster settings. The debates within the humanitarian perspective revolve around making choices about changes based on what would be best for populations in need. There is an ongoing debate within humanitarianism over whether the changes humanitarian organizations make should take on a political nature or should remain as neutral as possible. Remaining neutral would emphasize the liberalist transcendence of borders and politics. On the other hand, taking on a political nature would promote Kant's notions of sustainable peace by using cooperation in international systems to prevent and condemn atrocities.

This debate has gained momentum because, while traditionally humanitarianism and development have been separated,[63] more recently there has been discussion that perhaps they

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[59] Hénaff, Marcel. *Claude Lévi-Strauss and the Making of Structural Anthropology*. Minneapolis: University of Minnesota Press, 1998. Print.

[60] Barnett, Michael N. *Empire of Humanity: A History of Humanitarianism*. Ithaca, N.Y: Cornell University Press, P. 36. 2011. Print.

[61] Humanitarian aid is defined as emergency relief given to people unable to help themselves with their most basic needs such as food, shelter and water[61].

[62] Generally, the concept of humanitarianism is applied to aid given across borders as opposed to aid given by internal actors of the country where the disaster has occurred.

[63] In the field of international development studies, there is a traditional distinction between humanitarian aid and development aid. Humanitarian aid focuses on meeting immediate relief needs, as mentioned before.

cannot be easily separated.[64] There has been an increase in the number of failed and failing

states, protracted armed conflicts, and ongoing crises after natural disasters. The protracted

nature of these situations leaves many reliant on humanitarian aid unless there is an effort to

incorporate development concepts into their treatment. However, humanitarian aid was

traditionally defined by neutrality and impartiality, while development often addresses more

political matters. This has opened an ongoing debate as to whether humanitarian aid should

involve politics or not. The key takeaway from this argument is that the discussion excludes the

possibility that humanitarian organizations' choices are innately tied to more than just their

beliefs, including funding restraints and the need for legitimacy. Under this view, humanitarian

organizations have extensive autonomy.

According to humanitarian theory, humanitarian organizations should and usually do

make their own decisions and are not reliant on external actors. This view allows for change over

time and assumes that change will occur. However, it fails to see that not everything

humanitarian organizations do is based on helping populations in need. While it takes into

account funding restraints, it sees these as forced compromises as opposed to one of a few

factors that are a part of the need to survive as an organization. It would be a mistake to believe

that humanitarian organizations could be divorced from those principles governing international

organizations more generally.

Realism

Stemming from a Machiavellian view of political motivations, E.H. Carr defined classical realist

theory through his critique of liberalist or "idealist" theory for naively failing to take into account

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Development, on the other hand, focuses on longer-term, sustainable development. The idea behind
development is that, after an initial period of immediate relief, it is more important that people can become self-
reliant instead of relying on outside sources.
[64] Etxeberria, Xabier "The Ethical Framework of Humanitarian Action." *Reflections on Humanitarian Action;
Principles, Ethics and Contradictions,* 2001.

the importance of state survival and competition in all international relations. Hans Morgenthau

similarly believed that all governments based their foreign policies in terms of increasing power,

which he attributes to human nature[65]. Kenneth Waltz built on Morgenthau's theories to create a

sub-theory of structural-realism, in which he argues that international politics are still founded on

power (though generally power in terms of security and not in terms of authority).[66] However,

instead of accrediting this dynamic to human nature, he attributes it to the anarchic nature of

international politics. In the context of international organizations, Waltz's theories would

indicate that international organizations should never be considered serious political actors

because states would never truly cede to such a supranational power and thus the international

organization would have no ability to act independently.[67] Regardless of the perceived root of

international relations, realist theorists concur in the view that international organizations have

little or no autonomy over their decisions.[68] As is true of traditional international relations theory,

realism uses a statist perspective.[69] International organizations are simply institutions created so

that states and donors can advance their priorities. It views any deviations from the mandate of

an organization as self-interested choices the states and donors believe should be made. Donor

desires are derived not from the true desire to help those in need or uphold human rights but to

advance the interests of the state. Because international organizations rely on states for both

funding and legitimacy, under realist theory they have little autonomy or ability to make

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[65] Morgenthau, Hans "Six Principles of Political Realism" *International Politics: Enduring Concepts and Contemporary Issues.*
[66] Waltz, Kenneth "Globalization and Governance," *International Politics: Enduring Concepts and Contemporary Issues.*
[67] Abbott, Kenneth W, and Duncan Snidal. "Why States Act Through Formal International Organizations." *Journal of Conflict Resolution*. 42.1 (1998): 3-32. Print.
[68] Barnett, Michael and Finnemore, Martha. *Rules for the World.*
[69] The statist perspective has been considered the center of (Western) international relations since the 1648 Peace of Westphalia Treaties defined the notion of a nation-state. However, the growth of terrorist organizations across state boundaries and ethnic conflicts stemming from illegitimate boundaries in Africa, the primacy of the state is slowly being questioned even outside of discussing regarding international organizations.

decisions. Realist theory also takes power dynamics within international relations into consideration. Should one actor or state be donating much more than others or have more international power over other states, that government makes the majority of decisions. For example, the United States donates more than twice as much as any other donor state to the UNHCR and has considerable power within the United Nations. Because of this, realist theory would state that the United States makes the majority of decisions for the UNHCR to carry out.

Realism addresses the political nature of the inception of humanitarian organizations in a way humanitarian theory does not. It also takes into account the funding constraints of humanitarian organizations. When considering the actions of humanitarian organizations, understanding funding is crucial to understanding decisions. However, reliance on donors and donor decisions do not encompass the entirety of decision making in a humanitarian organization. Realism falls short in its view that humanitarian organizations do not have their own autonomy. Thinking otherwise is similar to only looking at the organization as it was at its inception without understanding changes and deviations over time.

Constructivism

As a response to realism's assumption of anarchy in international political order, an emerging set of scholars developed the theory of constructivism in the late 1980s and early 1990s. Constructivism is a theory based on the notion that change occurs over time and involves the construction and general evolution of ideas and organizations. Alexander Wendt, a key constructivist theorist, set forward the idea that, while the international system may be inherently anarchic, the emerging international system plays a role not only in how states interact in international relations but also how international relations help form the interests and identities of states. He also argues, that while states may remain the main actors in international politics,

the increase of transnationalist identity and organization has been under-examined and cannot

continue to be ignored in international relations theory.[70] Two of the founders of constructivist

thought, Michael Barnett and Martha Finnemore have written in conjunction extensively about

constructivism and international organizations. Finnemore and Barnett view international

organizations as autonomous actors that become established over time and quickly separate

themselves from the dominance of donors. While Barnett and Finnemore, like realist theorists,

focus on the interaction between donors and the organization as being an important part of

decision-making,[71] they believe knowledge and influence flow both to and from international

organizations. Barnett and Finnemore base this on the constructivist nature of the mission and

decisions of international organizations. They focus on the way in which international

organizations create and define the paradigms for their own actions and mandate. Humanitarian

organizations are the ones to decide who to help, in what ways, and when.[72] Constructivist

theorists view the creation of humanitarian and international organizations as a way states try to

help rationalize management of the world in its complexity. Constructivists believe humanitarian

institutions are in constant flux, as they are constantly expanding their knowledge. This is most

in line with humanitarian theory in its view that changes are not for personal gain but improved

knowledge on the subject area in discussion. Under this theory, the UNHCR's primary reason for

changes and deviations would be the evolution of knowledge for both the UNHCR and donors.

  Constructivism also adds to the theory set forth in this paper. In this theory, humanitarian

organizations not only change to appease donors but also help donors change to better

understand the issue area in which the organization is an expert. It is also key to understand that

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[70] Wendt, Alexander. "Anarchy Is What States Make of It: the Social Construction of Power Politics." *International Organization*. 46.2 (1992): 391-425. Print.
[71] Oesterich, Joel. "Introduction" *International Organizations as Self-Directed Actors.* Taylor & Francis; Oxford. 2012.
[72] Barnett, Michael and Finnemore, Martha. "Rules for the World" p. 7

knowledge changes over time. However, constructivism focuses on change as being primarily

knowledge based. It does not take into consideration many of the realities humanitarian

organizations face in terms of needing to survive as organizations through funding and

legitimacy.

Problems and Gaps in Existing Theory

It is key to understand the ideas presented above to understand organizational change

within a humanitarian organization. However, each theory is incomplete. Liberalism and

humanitarianism grasp the importance of a mission to the organization and people's desire to

truly help the population they serve. This theory states that the decisions of humanitarian

organizations originate autonomously and fails to include the importance of donors in the

decision making process. Realist theory views donors as the actors that motivate the change in

humanitarian organizations, but it fails to observe the growing autonomy of these organizations.

Constructivism begins to address and embrace the complexity that many of the other theories

simplify, including constant change over time and that the relationship between donors and

humanitarian organizations allows both to create change in the other. However, constructivist

theory views the majority of change over time as stemming from the desire to change to better fit

the mandate and its purpose in a changing world. It fails to consider the change as reliant on

factors such as donor funding and the necessity for mandate deviance when an organization no

longer has as many clients to help. These theories vary in their views of the roles of donors, the

autonomy of international organizations, and the goals of international organizations without

taking into account the legitimacy of parts of other theories. There is no mainstream

comprehensive theory on change in humanitarian organizations that takes into account

simultaneously the significance of a humanitarian mandate, the reliance on donors, and the level of organizational autonomy of humanitarian organizations.

3.3 The Theory of Organizational Survival

International humanitarian organizations are motivated by the desire to survive as organizations. Many existing theories do, in fact, highlight the need of organizations to survive. Realism assumes that international organizations are only able to be the extension of their donors' interests because of their inherent need for financing and legitimacy from founders and donors. In *The Empire of Humanity,* even constructivist Michael Barnett notes the importance of funding for the continued existence of humanitarian organizations.[73] However, the theory I put forward reaches past the well-known fact that funds are necessary for an organization's endurance. I theorize that the UNHCR's need to survive extends past simply donor funding, and that there are many complex factor the UNHCR must deal with in order to extend its tenure. Their reasons for wanting to survive are complex and spread across the other theories examined. There are individual motivations, such as the continuation of a career, the prevention of failure, or the creation of a legacy and an institution too important to fail. However, it also stems from a commitment and passion for the cause the humanitarian organization is responsible for. Those involved in a humanitarian organizations care about its survival because they believe in their mandate – if they cease to exist or play an important role in international relations, the people or issues they are responsible for will lose the support, funding, and importance the humanitarian organization was designed to create and uphold. For human rights based organizations, this may mean the rights they were created to uphold would no longer be enforced. For humanitarian organizations, this could mean the needs of those in dire situations would not be met, leading to

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[73] It is important to not that he sees fundraising as a part of the work of humanitarian organizations, not an influence on their decisions.

the suffering and death of many. It is with these views and understandings that humanitarian organizations take seriously the importance of their survival and legitimacy. There are three key parts of this survival; donor funding, permission to operate in host governments, and legitimacy and authority to carry out its mission. Because of the nature of humanitarian organizations, they are reliant on donor funding for all operational costs. To operate, humanitarian organizations must have the permission of governments to work within their borders. Humanitarian organizations also must fulfill and adhere to their central mission in order maintain legitimacy.

Should this theory hold true, one would expect to see three main implications. While the institution will have to take all three into consideration during decision-making, it will likely follow the one most important to its survival at that time. First, humanitarian organizations will cater to funders. Second, they will follow the priorities and decisions of host governments. Third, they will make decision in adherence to their mission.

The first expected implication is that humanitarian organizations make decisions based on the desires of donors. This stems from the realist perspective on international organizations, as they are created by and funded by external actors. Because of this, the decisions of the organization are based on funding. Going against donor priorities could prevent an organization from carrying out the alternative it chooses to donor priorities. It also could lead to a decrease or removal of future funding, which could prove a threat to survival. Without funding, the institution is unable to operate. However, donor governments do not have strong interests in and preferences about all refugee situations. Generally, the humanitarian institution has been delegated to make many of these decisions based on their mandate. The other hypotheses may also be more important in a given situation, making donor funding less important. Therefore, donor interests are not always the strongest motivational factor.

The second implication is that the humanitarian organization will make decisions in line with the priorities and decisions of host governments. Because humanitarian organizations often operate in developing countries and are not funded by the host governments, they rely on support and coordination from host governments. While humanitarian organizations can play an important role in the security and well-being of host governments and their citizens, host governments they can also become burdens on the host government or push the limits of the host government's generosity. At times, when the host government makes a specific request or decision regarding operations under an organization's mandate, the organization will follow these decisions. This may occur when the host government wants to act against the mission of the organization because the humanitarian organization is eager to continue working with the host government or prevent a domino effect from leading other host governments to act similarly. If an organization loses its relationship with a host government, it is prevented from dealing with new emergencies within that country. If it loses several relationships, its ability to operate will be severely compromised. Many organizations strive to carry neutral and apolitical policies so that governments are less likely to expel them for having a motive or speaking against the host government. However, even neutral organizations can be expelled from countries. Therefore, it is important humanitarian organizations cooperate with host government and make decisions based on their relationship and the governments priorities.

The third implication is that an organization will make its decisions to appear in adherence to its mission. At times, humanitarian organizations make decisions that look based on their mandate because, if they fail to adhere to their mandate, they will lose their legitimacy and the authority they have over their mission and expertise. Also, often donor priorities and host government preferences contradict with this an organizations mandate. However, if the

organization chooses to blatantly contradict its mandate too frequently, it will lose its credibility. Therefore, some decisions are made in order to appear in adherence to the UNHCR's mandate.

To examine this theory and its, this thesis will focus on examining how organizational survival influences the actions and policies of the United Nations High Commissioner for Refugees (UNHCR) in the context of the Great Lakes region of Africa. The UNHCR is an important example of a humanitarian organization because it was created only shortly after the Universal Declaration of Human Rights and has had considerable time to evolve as an organization. It is also interesting because it was formed with only a three year mandate and thus had to recreate itself in order to extend its existence. If my theory is correct, I expect three hypotheses for the UNHCR's decision-making. Each of these hypotheses should come up at different points based on the UNHCR's need for survival in the particular situation.

- H1: The UNHCR makes decisions based on donor interests and financing.
- H2: The UNHCR makes decisions based on priorities and decisions of host governments.
- H3: The UNHCR makes decisions in order to appear to uphold its mission to protect refugees.

While the UNHCR operates in almost every region, this thesis will examine the Great Lakes region of Africa. Sub-Saharan Africa as a region has developed much slower than other regions. Within the Great Lakes regions, there have been two multi-country wars and other conflicts that have led to ongoing influxes of refugees and many protracted refugee situations. The countries in the region have been key countries for donors at certain points and much less important at others. Therefore the Great Lakes region of Africa is an ideal area within which the UNHCR's actions and the reasons for them can be examined. In the next section, the situation of refugees in the Great Lakes Region and the UNHCR's role will be described in much more depth.

Conclusion

Since the Universal Declaration of Human Rights was signed in 1948, humanitarian organizations have grown both in number and in size. As they have become increasingly important actors in the fields of international affairs and international development, it has become important to understand how and why they change over time. Various international relations theories have also been used to address humanitarian organizations and understand the changes they make. However, all of these fail to understand that the underlying cause of mandate change by international humanitarian organizations combines both humanitarian ideals and donor needs. International humanitarian organizations make their decisions to deviate from their mandate based on their need to survive as organizations.

Conclusion

Since the Universal Declaration of Human Rights was signed in 1948, humanitarian organizations have grown both in number and in size. As they have become increasingly important actors in the fields of international affairs and international development, it has become important to understand how and why they change over time. Various international relations theories have also been used to address humanitarian organizations and understand the changes they make. However, all of these fail to understand that the underlying cause of mandate change by international humanitarian organizations combines both humanitarian ideals and donor needs. International humanitarian organizations make their decisions to deviate from their mandate based on their need to survive as organizations.

4. Background of the Rwandan Refugee Crisis

The Great Lakes refugee crisis of the 1990s is often regarded as one of the largest humanitarian failures in history, raising questions about humanitarian effectiveness and motivation. While the official refugee crisis has ended, there are still Rwandan refugees who have not returned to Rwanda and continue to lack confidence in calls to do so. This situation has turned into a protracted refugee situation for which the UNHCR struggles to find support from host countries and financing from donors. Recently, the UNHCR has declared that all Rwandan refugees from this crisis should lose their refugee status, which will lead to new rounds of migration in the Great Lakes Region and further decision-making by the UNHCR. Therefore, examining the UNHCR's actions and policy choices during and following the 1994 Rwandan genocide add significant insight into the decision-making mechanisms and reasoning the UNHCR uses.

The borders of the countries in the Great Lakes region, as is true for most of Africa, were established after the 1884 Berlin Conference, which was held by European countries to carve up Africa and create new boundaries based on territories each country wanted to claim[74]. This is significant when looking at any conflicts or international relations among African countries. The conference drew borders without fully taking into account nationalism and unity or the location of different ethnic groups, some of which historically fought each other for decades beforehand. It also meant some boundaries were built across ethnic lines, separating ethnic groups into different states and paving the way for cross-boundary conflicts and the questioning of some people's citizenship. These issues have had and continue to have a significant impact on refugee movements, definition, and citizenship, as will be discussed later.

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[74] Englebert, Pierre, Stacy Tarango, and Matthew Carter. "Dismemberment and Suffocation: a Contribution to the Debate on African Boundaries." *Comparative Political Studies*. 35.10 (2002): 1093-1118. Print.

4.1 Rwanda: A History

Rwanda is one of the few African countries where the borders, arbitrarily drawn during

the Berlin Conference of 1884, encompassed more or less one people – the Banyarwanda.

However, some of these Banyarwanda did fall outside of the borders, creating a heavily

Banyarwandan population in Burundi and minorities in the neighboring countries of DRC and

Uganda. Within the Banyarwanda there are two distinct groups – the Hutus and Tutsis.[75] It is

unclear where the origin of these two distinct groups came from. Some claim the Tutsis are from

Ethiopia while others claim the Belgians invented an ethnic distinction. Regardless, it is clear

that the distinction between Hutus and Tutsis was exacerbated by the Belgians during colonial

rule from 1916 to 1962 so as to better rule the population and maintain control.[76] The Belgians

systematically categorized the two groups, ending any mobilization between groups, and then

trained and utilized Tutsis to run their affairs in government. Just before leaving and granting

Rwanda independence on 1 July 1962, the Belgians had a shift in their own governance and this

led them to started focusing on the rights and empowerment of the masses instead of the elites.[77]

After years of training and elevating Tutsis above Hutus, the Belgians left power in the hands of

the Hutus at independence. This added to already high ethnic tension between groups. The

government has been controlled by one ethnic party ever since independence.

Around the time of independence, the Tutsi king died in 1959, spurring conflict between

Hutus and Tutsis. With a large Hutu majority and a Hutu-controlled government, violence

against the Tutsi led many Rwandan Tutsis to flee the country and live in exile as refugees in

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[75] Hutu is the majority population of Rwanda. Supposedly shorter and wider than they're Tutsi counterparts, traditionally Hutus were peasants that cultivated and were under Tutsi leadership.
Tutsi is the minority ethnic group in Rwanda. Allegedly taller and thinner than their Hutu counterparts, Tutsis traditionally grazed cattle and were considered to be wealthier than Hutus. The Banyarwanda were previously ruled by Tutsi kings.
[76] Newbury, Catharine, "Ethnicity and the Politics of History in Rwanda." *Africa Today* , Vol. 45, No. 1 (Jan. - Mar., 1998), pp. 7-24
[77] Mamdani, Mahmood, "When Victims Become Killers"

nearby countries including Tanzania, Uganda, Burundi, and DRC. A number of the children of refugees in Uganda, having grown up in Uganda and not having experienced Rwanda except perhaps as young children, banded together to reclaim Rwanda and called themselves the Rwandan Patriotic Front (RPF).[78] It is important to understand the background to the Rwandan genocide to gain a better understanding of the complexity of ethnic conflict, victims, perpetrators, and blame because the perceptions of who is to blame greatly influences priorities and decisions regarding refugee groups.

In October 1990, the RPF invaded Rwanda, creating a sense of insecurity for both the Hutu-dominated government of President Jean-Baptiste Habyarimana and the general Hutu population, who feared a Tutsi takeover. The government and media started antagonizing all Tutsis under the assumption that every Tutsi was in favor of the RPF takeover. This antagonism continued to grow. President Habyarimana finally travelled to peace talks in Arusha in the beginning of April of 1994. The two sides reached a deal, setting the stage to end the war. However, on his return trip, on April 6, Habyarimana was killed when his airplane was shot down.[79] It is widely debated whether the RPF shot down this airplane or his own government did it to create a catalyst for what was to become genocide.[80] At the time the shooting was represented to Rwandans as the work of the RPF. By the next morning, several roadblocks and checkpoints had been set up to stop any Tutsis attempting to leave. Over the next month, it is estimated that around 800,000 Tutsis were killed in what was later recognized as a massive genocide. There is much controversy over whether the government had planned and organized

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[78] Mamdani, Mahmood. *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton, N.J: Princeton University Press, 2001. Print.

[79] Christian Science Monitor; "A Rwandan History Lesson." 4/7/2004, Vol. 96 Issue 92, p10, 0p, 2 Color Photographs, 2 Black and White Photographs

[80] Genocide is, according to the United Nations, a series of "acts committed with the intent to destroy, in whole or in part, a national, ethnic, religious or racial group"

the genocide ahead of time, since it had ordered many basic weapons beforehand and in a matter of hours had mobilized roadblocks and organized troops, both of government soldiers and Hutu civilians.

Finally, the RPF put an end to the genocide by seizing control of Kigali on 19 July 1994. On their way through Rwanda into the capital, they carried out human rights violations of their own, a chapter of history often overlooked. Over 4 million people fled and became refugees in nearby countries, including the Democratic Republic of Congo, Tanzania, Uganda, Burundi, and Zambia.[81] While some fled for fear of retaliation, others left because they feared being prosecuted for the crimes they had committed. These countries had no filter for the entry of genocidaires, making the separation of criminals and refugees difficult.

During the genocide, there was what is now widely considered a failure to act by the international community. After the killing of Belgian peacekeepers, Western governments pulled humanitarian and aid workers out of Rwanda, including many of the peacekeepers posted in Rwanda. For the most part, this was the extent of the mobilization by Western governments in response to the genocide. The UNHCR, an organization in charge of assistance and protection for refugees, by mandate was to wait until individuals fled their country for fear of persecution to provide protection and assistance. However, most Tutsis were killed before ever crossing the border. The complete failure by UN agencies and any Western governments showed a breakdown in humanitarian efforts but also highlighted the importance of humanitarian intervention efforts, as the results without such could be dire, as was illustrated.

After the end of the genocide, hundreds of thousands of Rwandans fled, some because of fear of retaliation and some because of fear of the RPF, and went to nearby countries including Zambia, DRC, Uganda, Burundi and Tanzania. This time, the international community was

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[81] Mamdani, Mahmood, "When Victims Become Killers"

prepared to give humanitarian assistance to these victims of conflict. However, these countries and actors found themselves unequipped and unable to separate true refugees from war criminals fleeing conviction, a failure that would lead to further turmoil in both the near and distant future. This time the international community had acted, administering aid to all in need regardless of their past. Later, this would also be seen as a major failure of the humanitarian community, but for very different reasons. The evidence and data section will discuss how the UNHCR made its decisions regarding repatriation during this crisis based on its need to survive as an organizations and not solely on what would be best for the refugees.

While many of these refugees returned to Rwanda shortly after the RPF created stability in Kigali and the rest of Rwanda, many refugees also continued to fear returning. Strife in Western Rwanda also continued from 1996-1997, when Interhamwe attacked Rwanda from refugee camps in Eastern Congo, which led more Rwandans to flee. However, the situation in Rwanda soon stabilized, ending the open war between forces.[82]

This led many, including the Rwandan government and many host governments, to question the reason these refugees refused to return. Many, including both government officials and aid workers, came to the conclusion that these were genocidaires and war criminals fearing retribution and punishment. The Rwandan government has been heavily advocating to receive all of its refugees back in Rwanda. The government claims this is because every Rwandan deserves the opportunity to experience and live in freedom in Rwanda. However, it is more likely that the Rwandan government, having itself started out of refugee camps in Rwanda, seeks to bring all Rwandans back to Rwanda so as to not have to worry about the threat of insurgencies building form outside Rwanda. Those refugees that were women and children may not have been

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[82] There has been continued conflict since this event. However, it has been much less continuous and deadly, so Rwanda is still considered peaceful in this sense. The Rwandan government continues to fear intensified attacks and acts on it.

perpetrators but were held by the Genocidaires and influenced not to return through lies and misinformation. Had any of these refugees not actually participated in the Genocide, any remaining outside of Rwanda were socially branded as perpetrators of Genocide, which would have a heavy influence on their treatment upon return to Rwanda. In this period of ambiguity and suspicion about outside refugees, there were two major forced repatriations of refugees back to Rwanda. The first forced repatriation was from Zaire to Rwanda in 1996 and the second was from Tanzania to Rwanda a month later. While these violate the principle of non-refoulement set out by the UNHCR charter, the UNHCR acted based on its need to survive as an organization instead of strictly obeying its mandates. The UNHCR's reasoning behind its decision making in these instances of refoulement will be explored further in the data and evidence section.

4.2 An Oppressive Rwandan Government

To fully understand the controversy surrounding the forced repatriation of Rwandan refugees and the cessation clause, it is important to first understand why refugees do not want to return and what conditions they are returning to. The Rwandan government has committed many human rights violations since taking power, leading new refugees to flee Rwanda as old refugee caseloads are encouraged to repatriate.

While civil war and conflict may have ended in Rwanda, the new Rwandan government quickly became repressive and used the genocide as leverage to ban free speech and make arrests of dissidents. The government gained international prestige for having brought an end to the genocide in Rwanda. However, the RPF had also committed a number of war crimes while coming to power which it refused to examine or try in court. Soon after the new government came in, it banned discussing ethnic identities. It also put down a series of vague laws such as the banning of promotion of genocide ideology that have since been used to target opponents. The

new government has gradually restricted freedoms such as freedom of speech. By many accounts, these have gotten worse since 2003.

Most recently, former RPF members have fled Rwanda and gone into exile to become political dissidents. In 2010, the government of Rwanda banned the director of Human Rights Watch from entering the country. In the 2010 elections the president had no political opposition. According to a recent Human Rights Watch report, there have been recent crackdowns on freedom of speech, especially for the press. The government arrested six journalists in 2010 on charges related to defamation. It closed two newspapers on charges of endangering national security and their editors fled. One journalist who was investigating sensitive cases also was murdered. While three new opposition parties operate in Rwanda, the government did not allow any to nominate candidates for the presidential elections. The government arrested some candidates or party members on various crimes such as endangering national security or promoting genocide ideology.[83]

As seen, there is strong evidence to show the Rwandan government has been oppressive since it took power and has grown more and more oppressive over time. This is an important background to understand when examining the UNHCR's decision regarding the repatriation of refugees to Rwanda and the cessation of Rwandan refugees, as will be discussed further in the evidence and analysis discussion.

4.3 Rwandan Refugees and Their Host Countries: Three Refoulements

This thesis examines three instances in which Rwandan refugees were forcefully repatriated to Rwanda and the decisions the UNHCR made in each situation. After understanding the situation in Rwanda under its current government, we can better understand why many refugees do not want to return to Rwanda. This next section summarizes the backgrounds to the

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[83] Human Rights Watch, "Rwanda Country Summary," January 2011.

situation of Rwandan refugees in each of three host countries, Zaire, Tanzania, and Rwanda and the forced removal they encountered in each location.

Forced Repatriation and Conflict in Eastern Congo

Eastern Congo has been an area of concern in the Democratic Republic of Congo for years. Much of this conflict originated from ethnic divisions in the region, the most important of which involves native Banyarwandans. The conflict in Eastern Congo is generally concentrated in two provinces of the DRC – North Kivu and South Kivu. While both conflicts include Banyarwandans as key actors in the conflict, each has a slightly different background with the group. There have been multiple waves of Banyarwandan arrival in the DRC. First, as mentioned before, some Banyarwandans are native to DRC and were separated from other Banyarwandans by the 1884 redesignation of borders. Then Rwanda and Burundi were handed over from the Germans to the Belgians at the end of World War I. When there were too few workers in the Kivus for agricultural plantations, the Belgians decided to bring over workers from Rwanda and Burundi and actually created their own immigration service to do so.[84] While Belgian authorities brought over many, many Banyarwandans also chose to migrate on their own account for work and land – Rwanda was heavily overpopulated. Additional Banyarwandan refugees moved to Eastern Congo in the periods of conflict in DRC, including 1959-1960, 1963-64, and 1973.[85] While there have been instances of discrimination and conflict between the Banyamulenge and other ethnicities in the group over time, the conflict existed for all purposes in 1992. In 1992, the Hunde (local Congolese) attacked the Banyamulenge and killed many of their cattle, the source of pride and livelihood for the group. In retaliation, the Banyamulenge murdered and disfigured a

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[84] Prunier, Gérard. "The Catholic Church and the Kivu Conflict." *Journal of Religion in Africa*. 31.2 (2001): 139-162. Print.
[85] The timeline and details compiled in this history are derived from a number of sources, among them Gerard Prunier's "African World War," Mahmood Mamdani's "When Victims Become Killers," and John F. Clark's "The African Stakes of the World War."

Hunde chief. Starting in March 1993, heavy conflict broke out between the two groups until a peace deal was brokered by Mobutu and various local parties invited to participate. However, the peace did not last long, as soon Rwandan refugees fled into the Kivus, shaking the political and social balance in place. The arrival of Rwandan refugees was particularly threatening to locals because, should some of these refugees attempt to locally integrate, the numbers in North Kivu could make the Banyarwanda / Banyamulenge the most powerful group in the region. This political instability and redistribution of power showcases one of the key reasons host governments hold reservations about assisting refugees. Following the urging of the Hunde and other local groups, the Congolese government signed a declaration stripping all Banyarwanda of their Congolese citizenship on April 20, 1995.[86] Mobutu ordered that all Rwandans leave the country shortly after. By July, ethnic tensions had risen dramatically and conflict broke out. By November of 1995, the violence both from and to refugees had become widespread.[87]

Matters were even more complicated because, as mentioned before, a number of the refugees were Hutu Interhamwe, who used the refugee camps as a location to rebuild, gain strength, and rely on as a base from which to attack Rwanda. Feeling threatened, by 1996 the Rwandan government offered the Congolese government an ultimatum – close the refugee camps or expect an attack. Soon after, the RPF attacked the refugee camps along the border, starting what would be the first of many direct or indirect attacks from Rwanda on Congo. These attacks on refugee camps blatantly violated the rights of refugees, putting them in danger. At the same time that these attacks were happening, the UNHCR encourage refugees to return to Rwanda and live under the very government that was attacking them and killing not only men but women and children. The

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[86] Vlassenroot, K. "Citizenship, identity formation & conflict in South Kivu: the case of the Banyamulenge." Review of African Political Economy 29.93-94 (2002):499.
[87] Reyntjens, Filip. *The Great African War.*

Other countries in the region quickly got involved, including Uganda, Burundi, and Angola,

leading the period of 1996-1997 to be called the First African War. With the help of the

Rwandan and Ugandan government, Laurent-Desire Kabila led the FPLA through Congo to take

over the country. However, the UNHCR is rarely examined as much more than a passive,

powerless force in the situation. As the primary organization in charge of refugees and refugee

protection, it is important to examine the decisions made in a term of such turmoil and

importance and why the UNHCR made the decisions it did. The refugee crisis in the Great Lakes

Region brought to attention a number of questions about the UNHCR's mandate and the proper

labeling and treatment of refugees. Therefore, this is one of the points in UNHCR's history

where its decisions, and subsequent decisions in the region, make a significant impact on its

ability to survive as an organization.

Changing Refugee Policies in Tanzania

Up until their response to the post-Rwandan genocide refugee crisis, the Tanzanian

government was known in the international humanitarian community for its welcoming and

friendly refugee policies. During this time, the government characterized refugees as "resident

guests[88]." Julius Nyerere, the long-time leader of Tanzania, was a Pan-Africanist[89], which led

him to welcome refugees into Tanzania without hesitation. These refugee policies were also

formed at a time when the Tanzanian population was much sparser, so incoming refugees were

also a good source of labor for clearing some areas and beginning cultivation on unused land.[90]

Tanzania also naturalized some of its Rwandan refugees as Tanzanian citizens, which was the

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[88] Chaulia, Sreeram S. "The Politics of Refugee Hosting in Tanzania: from Open Door to Unsustainability, Insecurity and Receding Receptivity." *Journal of Refugee Studies*. 16.2 (2003): 147-166. Print.

[89] Pan-Africanism is the idea that all Africans should unite into one large, massive country instead of being by the borders assigned by Europeans. This idea gained some momentum after many states had recently reached independence but quickly fell out of favor and was seen as unrealistic.

[90] Collier, Sarah. "Refugees in Tanzania: from 'resident guests' to 'threats to national security'" *Think Africa Press*. 20 June 2011 http://thinkafricapress.com/refugees/refugees-tanzania-%E2%80%9Cresident-guests%E2%80%9D-%E2%80%9Cthreats-national-security%E2%80%9D

first time local integration had been applied in Eastern Africa. However, once the RPF became the government of Rwanda, many of these citizens immediately left Tanzania and returned to Rwanda, calling into question the viability of extending citizenship.

After the Rwandan genocide of 1994, over 500,000 refugees fled to Tanzania. Initially, Tanzania received abundant support from donors to handle the situation. However, over time donor interest both waned and was redirected towards rebuilding Rwanda instead of helping refugees. Feeling like it had an unfair share of the burden, and having seen the massive orchestrated repatriation of Rwandan refugees from Zaire, the Tanzanian government then called a cessation of refugee status for all Rwandan refugees. This was a turning point in Tanzania's strategy for refugees. There were likely a number of factors at play in this decision including the lack of funding, the high number of incoming refugees, and a lack of necessity for refugees to cultivate plots to stimulate the economy. However, the Tanzanian government did not want to send people back to Rwanda to be killed. Therefore, it allowed refugees to confess to committing genocide, after which they would be kept in a refugee camp in Tanzania instead of being sent back to Rwanda to face what would likely be a death sentence. This created a situation where only those who had committed crimes kept refugee status while those that were innocent were forced to return to Rwanda. After this, many of the refugees returned to Rwanda only briefly, found their homes destroyed or taken over, and continued on to Uganda, where they were once again granted refugee status.

After the massive repatriation, the Tanzanian government continued to accept refugees from Rwanda and other countries such as Burundi. However, it was evident that their priorities regarding refugees had changed drastically. The UNHCR decide to be supportive of Tanzania's

declaration of cessation for Rwandan refugees. In the data and evidence section, the reason for the UNHCR's supportiveness will be examined thoroughly.

The Ugandan Government and its Refoulement

Uganda is a key country for the UNHCR because many of its neighbors have been tumultuous, including Sudan (before the division), South Sudan (now), DRC, Kenya and Rwanda. The massive influx of refugees into Uganda began before the country's independence and continues through today. Of the different groups of refugees in Uganda, the Ugandan government has always had a particularly complex relationship with Rwandan refugees. Despite their roots, both Rwandan migrants and refugees have played an active role in Uganda and been used as scapegoats and political tools by politicians. While there are a number of earlier instances of this being done, it is key in particular to understand the treatment of Rwandan refugees as President Yoweri Museveni came into power. Because of the early involvement of Rwandan refugees in Museveni's march to power, many Rwandan refugees won important military positions. In 1987, Fred Rwigyema was named Deputy Minister of Defense in Kampala and Paul Kagame became the acting director of the Ugandan government's intelligence. Other Rwandans held high positions as well. Media started covering the issue and brought much attention to the Rwandans' positions in the military. Soon, descent became a more important requisite than experience for promotions and Rwigyema was demoted to a ceremonial position instead.[91] Then, in September 1990, Museveni declared that all Rwandan refugees living on ranches or elsewhere should return to settlements.[92] While the Rwandan refugees had formed the RPF before this, they did not begin to attack Rwanda until they were no longer welcomed as citizens in Uganda.

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[91] Ibid. P. 159-184

[92] Mamdani, Mahmood. "When Victims Become Killers"

Subsequently, in October 1990, the RPF invaded Rwanda.[93] While it is widely viewed that Museveni supported the RPF, the main reason seemed to be less supportive. Because of domestic political debate surrounding Rwandan refugees and their role in Rwanda, Museveni wanted the RPF out of Uganda and was willing to support them in their campaign if it meant having them leave for good.[94] This set up a complicated relationship between Rwanda and Uganda. Uganda chose not to forcefully repatriate all of its refugees when Tanzania did and the Rwandan government was able to do in Zaire. Instead, Uganda was willing to be the country where once-expelled refugees turned to in order to reinstate their status as refugees. After 1998, the Rwandan and Ugandan governments both sent forces into the DRC to support rebel groups to overthrow the recently installed (and previously supported) leader, Laurent Kabila. However, these forces ended up fighting each other, meaning the Rwandan and Ugandan governments were at war with each other. More recently, the Rwandan and Ugandan governments have been improving relations. However, one of the key parts of the conflict between governments is the remainder of Rwandan refugees in Uganda. While Uganda has organized voluntary repatriations in the past, the Rwandan government wants all refugee back and not only those who choose to return.

In July 2010, the Rwandan government and Ugandan government orchestrated a refoulement of refugees from two refugee settlements in Uganda. In one settlement, the government told refugees they would be given food and in the other they were told they would be told their refugee status. The refugees were then surrounded by Ugandan police and rounded up onto trucks to be driven back to Rwanda. A couple of people jumped off the backs of the trucks and died or were severely injured. The Rwandan and Ugandan governments claimed that these were all asylum speakers that had been denied refugee status and, because people who fail to gain

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[93] Ibid. P. 159-184
[94] Kuperman, A. J. "Provoking genocide; a revised history of the Rwandan Patriotic Front" Journal of Genocide Research. 6 (1) 2004. p. 69

refugee status often stay in Uganda or even in the camps illegally, the governments decided to round them up when they were supposed to tell them their status to prevent this. However, there is evidence that some of those sent back to Rwanda were refugees. The way in which the refoulement was conducted also meant that some families were split up and some children had to stay or leave without their parents. In the data and evidence chapter, the reasoning behind the UNHCR's decisions about its actions during this refoulement will be uncovered.

4.4 The UNHCR's Final Decision: The Cessation Clause

The fourth case to consider is the cessation clause, which marks the beginning of the end of the Rwandan refugee crisis. This is an important decision to examine because it is tied not only to one particular host country but all countries hosting Rwandan refugees simultaneously. This is then a much wider and more final decision than any of the other case studies examined. Starting in early 2010, the UNHCR has announced plans to apply the cessation clause to all Rwandan refugees who fled Rwanda before December 31, 1997. Because of the lack of free and fair elections, the UNHCR postponed the cessation date and has since postponed the cessation a second time. As of now, cessation is supposed to take effect on 30 June 2013. This is being applied on the grounds that the conflict these refugees were fleeing has been resolved and therefore the conditions of fear no longer exist. However, many human rights organizations assert that the Rwandan government is oppressive and is unlikely to treat these former refugees, many of whom they suspect to be genocidaires, with respect and equality. In the evidence section, it will be explored why the UNHCR decided to announce the implementation of the cessation clause for Rwandan refugees and how it was for the purpose of organizational survival.

5. Evidence

Over the course of its operations with Rwandan refugees since 1994, the UNHCR has made many decisions that run counter to the directions they are given in their mandate. Of course, at any given point in time, the UNHCR faces complex pressures and influences from donors, host governments, and human rights organizations. These pressures have consistently pushed the UNHCR to contradict its mandate and endanger refugees in order to preserve its survival as an organization.

We expect to find that the UNHCR makes its decisions based on its need to survive as an organization. This would be demonstrated if the UNHCR makes its decisions based one each of the three hypotheses laid out in chapter 3.

- H1: The UNHCR makes decisions based on donor interests and financing.
- H2: The UNHCR makes decisions based on priorities and decisions of host governments.
- H3: The UNHCR makes decisions based on upholding the perception that they are carrying out their mandate.

These hypotheses will be examined in the role the UNHCR chose to play in four different incidences of forced repatriation. In Zaire, the UNHCR encouraged and promoted the repatriation of refugees as rebel forces attacked the refugee camps and forced refugees towards Rwanda. In Tanzania, the UNHCR cooperated with the Tanzanian government and provided financial and material aid when the government decided to expel Rwandan refugees from Tanzania. In Uganda, the UNHCR failed to prevent or curtail refoulements carried out in Uganda. Now, despite many instances of voluntary and forced repatriation of Rwandan refugees back to Rwanda, a little over 100,000 Rwandan refugees remain outside of Rwanda, many of whom have been refugees since 1994. In 2009, in response to donor fatigue and host government agitation, the UNHCR decided to recommend that all host government declare cessation of

refugee status for all Rwandan refugees. Examining all four of these cases allows us to test my theory in a series of different contexts.

5.1 Methodology and justification:

To examine the UNHCR's decision-making mechanism I used a comparative study of four separate violations of the rights of refugees. This seemed the best approach with which to evaluate the work of the UNHCR because of the complex nature of refugee crises. To establish my theory, it was necessary to conduct an in-depth analysis of the UNHCR's decisions in complex cases. A quantitative analysis would not have been conducive to exploring the complexities the UNHCR faces in making decisions. Because of the complexities of refugee situations and the variation between caseloads, academics in the field of refugee studies rarely attempt quantitative analyses. UNHCR should look to improve its available information and transparency.

I attempted a statistical analysis and discarded it for two primary reasons. First, there was a lack of clear information regarding the details and categories of refugee movements over time. Second, a matter such as refugee treatment is complex, event-based, and highly variable. A number of factors inevitably go into decisions regarding refugees, many of which cannot be quantified. It is also difficult to draw a line between the end of one refugee movement, crisis, or repatriation and the start of another – some involve ongoing crises or are part of a series of conflicts or events, especially when refugees become a cause of further conflict as is true in Eastern Democratic Republic of Congo.

The theory I set forward in this paper seeks to recognize the complexity of decision making for the UNHCR. Organizational survival includes a number of components including donor funding and interest, cooperation of host governments, and upholding the mandate to help

refugees. However, each of these variables is not independent from one another or from case to case. For example, decisions regarding adherence to mandate may be dependent on global perception of a previous decision made regarding refugees by the UNHCR. Therefore, it is only through the development of comparative case studies that this can be evaluated with integrity. Initially, I planned to do a comparative analysis of different time periods so as to demonstrate the effect of the end of the Cold War on donor attitudes and influence. However, I determined that because of the change in the nature of conflicts, it would be difficult to thoroughly examine a cross-comparison. The comparison will focus only on the diaspora and return of Rwandan refugees because, should different refugee crises be compared, it would be more difficult to account for and control for differences in the backgrounds of each case. I thus chose to examine the UNHCR's decision-making processes in four separate incidences of forced repatriation of Rwandan refugees.

The research period for this project took place between October 2011 and November 2012. The first two months of research involved field research in Uganda.

The field research in Uganda was conducted over the period of six weeks between October 24 and December 4, 2011. Four weeks were spent in Kampala and two were spent at Kyaka II Refugee Settlement. In Kyaka II Refugee settlement, research was conducted using key informants and Rwandese refugees. The translator was a Rwandan refugee who worked for the Ugandan Red Cross. Twenty five in-depth one-on-one interviews were conducted with various Rwandan refugees. Most were chosen by location, but selection was random. I also conducted five focus groups, (two all-male and three all-female) in each of which there were between four and seven individuals. The combined number led to account of over 60 Rwandan refugee respondents in Kyaka II.

I gave those interviewed a form of consent that explained the research and gave them options as to what methods of recording would be used. Most Rwandan refugees were asked a certain set of questions that was altered slightly over time. The questions asked to various key informants differed drastically based on their area of focus. However, there were a set of questions asked to each of them for the purposes of cross-checking. Two separate surveys were conducted. One was conducted at Kyaka II using seven survey questions. The other was conducted in Kampala using eight similar questions altered due to the different environment. Key informant interviews included the Camp Commandant, a Refugee Welfare Council 2 member (RWC 2), and another key informant wishing not to be identified.

In Kampala, refugees were targeted in a different manner. I helped to conduct English classes for a week to gain the trust and understanding of Rwandan refugees. Then I held interviews with five Rwandan refugees. Later, I hosted a workshop with the help of YARID[95] on the topic. The workshop involved gathering 18 Rwandan refugees including human rights researchers, political dissidents, and other refugees. After the topic was thoroughly explained, the people (17 men and 1 woman) who were broken into three groups and came up with summarized answers to four sub questions. At the end, they presented the summaries and a discussion ensued. Afterwards, two with outstanding stories and experiences were interviewed in depth. Key informants were also interviewed through meetings set up and often rescheduled a few times. Key informants included a senior immigration officer at the Ministry of Affairs, a Legal / Protection Officer at the Office of the Prime Minister, the advisor on economic affairs for the Ministry of East African Affairs, and the First Secretary of the High Commission of Rwanda to Uganda.

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[95] YARID stands for Young African Refugees for International Development and it is a community based organization which works to improve the lives of urban refugees in Kampala.

In the United States, I conducted an extensive literature review and gathered primary sources including internal US and UNHCR documents, human rights reports, and key interviews. For resources unavailable online, I made trips to the Library of Congress, the National Archives, and the National Security Archives. I also conducted three interviews were conducted online or via telephone with key stakeholders, including the former secretary to High Commissioner Sadako Ogata and former commissioner of UNRWA in Palestine and two formed heads of mission for USAID in the DRC.

5.2 Limitations and Constraints

There were a number of constraints regarding the gathering of information from and about the UNHCR. The UNHCR's records are stored in Geneva and thus many of the records that may have been crucial to this research due to financial, geographic, and time constraints. For these, some secondary sources cite various documents and the information is then cited in this research through a secondary source. The UNHCR has dramatically increased its transparently in recent years. There is a report for every year since 1999 regarding regional spending and donor amounts. Unfortunately, the years where this information would be most important for the purposes of this research, between 1990 and 1999, do not have such reports. I gathered data from UNHCR's Refworld, which has statistics regarding refugees. Unfortunately, no database or list yet exists to explore a full list of cessations or voluntary repatriation efforts. Most information on countries is based on the most up-to-date information or conflict and does not have an extensive historical archive available online. These are areas where the

The research also requires use of inference, as rarely if ever do organizations directly state their motives for decision-making.

5.3 Case Study Introduction

While the UNHCR had to deal with a complex set of factors in each of the three forced

repatriations I examine, each has a factor that ultimately influences the UNHCR's decisions. If

my theory is correct, I expect to find that the UNHCR makes each decision based on donor

financing, host government support, and adherence to mandate. If the UNHCR always makes its

decision because of the same reason, this would prove my hypothesis incorrect. To show that the

UNHCR makes decisions based on its need to survive, it is necessary that it makes decisions

based on different factors based on the circumstances it faces. Below is a table that outlines each

of the case studies that will be evaluated this chapter. This table allows us to compare each of the

cases and the actions that were taken to each other so as to understand the different reasons for

UNHCR's varied actions.

	Zaire	Tanzania	Uganda	Cessation Clause
Action	Rebel groups attacked refugee camps.	Forced repatriation of refugees.	Refoulement of refugees.	Rwandan refugees will lose their refugee status.
UNHCR Role	Encourage and assisted forced repatriation.	Cooperated with and supported forced repatriation.	Condemned the refoulement.	Recommended this cessation to all host countries
UNHCR stated reasoning	There are international observers.[96]	Improved conditions in Rwanda.	Claims to be unaware.[97]	Safety and peace in Rwanda
Contradiction	Rwandan government supported attacks on camps.	Refugees were returned using force against their will.	Logistically, the UNHCR could not have been unaware.	Evidence shows Rwanda is still dangerous for returnees.
Influencing Hypothesis	H1: Donor support and interest.	H2: Priorities of Tanzanian host government.	H3: Mandate appeared to be upheld without contradiction.	H1 and H2: Lack of donor funding and host government agitation.
Why This Matters for UNHCR's Survival	Needed funding for handling refugees.	Didn't want to appear out of control of the situation.	Needed to appear to uphold its mandate to maintain legitimacy.	Needed to ensure continued donor and host government support.

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[96] "Ogata Urges Rwandan refugees to consider repatriation." United Nations High Commissioner for Refugees. 25 October 1996.

[97] Integrated Regional Information Networks (IRIN), *Rwanda-Uganda: Kampala urged to end "gunpoint" deportations*, 15 July 2010, available at: http://www.unhcr.org/refworld/docid/4c4562b01e.html [accessed 21 October 2012

5.4 Zaire: Repatriation through Massacre, the UNHCR, and Donor Priorities

In June 1996, the Rwandan president warned the US government that if Zaire or the international community did not effectively end the militarization of refugee camps in Eastern Congo, they would take action.[98] Soon after, by September 1996, a rebel force supported by and including the Rwandan military began attacking refugee camps[99][100]. While initially aiming to kill Interhamwe that continued to be militarized and had killed Tutsis during the genocide, the attacks on refugee camps quickly turned against women and children who were not participants in genocide or continued attacks.[101] The Rwandan government wanted all refugees to return for the reasons discussed in the background chapter. During the attacks on refugees in Zaire, even before the UNHCR recommended that refugees repatriate, the Rwandan government had recommended that refugees return so as to avoid the conflict.[102]

The UNHCR searched for solutions, including the creation of an armed security force. However, the primary solution the UNHCR offered and endorsed for refugees was repatriation to Rwanda. While numerous UNHCR documents indicated an interest in promoting repatriation, it became official in a radio announcement made by High Commissioner Sadako Ogata, on October 25, 1996. In the announcement, Ogata reiterated that refugees could choose where they'd prefer to stay but that they should consider whether they would be safer in Rwanda or Zaire. She used the example of refugees repatriated from Burundi living peaceful lives and spoke

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[98] Prunier, Gérard. *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. Oxford: Oxford University Press, 2009. Print.
[99] While the Rwandan government didn't officially admit to its support of the rebel forces until later, there is extensive evidence that the Rwandan government was involved, including newspaper articles with threats form the Rwandan government and even a quote from a general reporting Rwandan attacks on dangerous elements in Zaire. Evidence from Voices of America, Reuters, and USAID was uncovered within a week after Ogata's radio announcement, but UNHCR continued to encourage repatriation.
[100] Reyntjens, Filip. *The Great African War: Congo and Regional Geopolitics, 1996-2006*. Cambridge: Cambridge University Press, 2009. Print. Pages 52-56
[101] Internal US government document discussing the attacks on refugee camps.
[102] Reyntjens, Filip. *The Great African War*.

of the Rwandan government's commitment to peacefully resettling returned refugees. She also

emphasized the presence of the international community and international observers in Rwanda.

While the UNHCR did not transfer refugees directly from the camps, they set up three transit

centers with materials such as blankets and agricultural supplies for returnees, as well as busses

to take refugees back to their home districts.[103] The UNHCR decided to endorse and support

repatriation, but only made its repatriation services available at the Rwandan borders because of

the tumultuous situation in the refugee camps. The UNHCR claimed they decided to encourage

and assist in repatriation because Rwanda was moving towards peace and the international

community was there to assist returnees with reentering Rwandan society.[104]

However, in reality the Rwandan government was attacking and killing many of the same

refugees being told by the UNHCR it was safe to go home. As stated in an Amnesty International

Report,

"It quickly became apparent to Amnesty International and other observers who were present in
Gisenyi between 15 and 19 November that the Rwandese authorities had wrested control of the
operation from the United Nations High Commissioner for Refugees (UNHCR) and non-
governmental humanitarian organizations.[105]"

Despite losing control of the situation, the UNHCR did not change its endorsement of

repatriation and even claimed the operation went well. If a government was willing to kill its

own citizens, including innocent women and children, and felt the need to take over repatriation

operations from the UNHCR in order to force the refugees to repatriate, there is no basis for a

claim that these same refugees would then be safe in Rwanda. While it may not yet have been

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[103] Much of this paragraph is from "Ogata urges Rwandan refugees to consider repatriation"

[104] While the UNHCR could make a strong argument that Rwanda was safer for refugees than remaining in
Zaire, the Rwandan government was able to persecute its refugees across borders in order to create the
conditions that made Zaire less safe than Rwanda, thereby encouraging the pursuance of refugees across
borders.

[105] Amnesty International, *Human Rights Overlooked in Mass Repatriation*, 1 January
1997, AFR/47/02/97, available at: http://www.unhcr.org/refworld/docid/3ae6a9912c.html [accessed 2
December 2012]

directly proven, there was significant evidence indicating the Rwandan government's role in the

rebel camps, including the warning given to the US government. When examining this evidence,

it is clear the UNHCR did not believe the situation in Rwanda was safe for the repatriation of

refugees. If the UNHCR's decision-making follows my first hypothesis, the UNHCR made this

decision based on donor interest and funding.

While initially heavy funding rolled in for Rwandan refugee camps,[106] the militarization

of refugee camps and the heavy presence and influence of genocidaires soon became apparent

and changed donor attitudes. Many governments had originally been eager to make up for their

failure to stop the genocide by supporting refugees. However, the change in perception led these

governments to instead assist the new Rwandan government. Donors gathered in Geneva,

Switzerland for a roundtable meeting in June 1996, a little over two years after the refugee crisis

began. At the roundtable donors came to agree that funding should be focused on repatriation

and reintegration of Rwandan refugees into Rwanda instead of continuing to fund emergency

and humanitarian aid.[107] This roundtable indicated what decisions they thought should be made

and were willing to support the UNHCR in making. While the UNHCR has a significant amount

of discretionary spending within its general budget, it did not have the funds necessary to cover

the size and complexity of its caseload of Rwandan refugees. The UNHCR subsequently lost its

ability to financially or materially support the hundreds of thousands of refugees now abandoned

by the international community because of this change in perception. If the UNHCR chose to

continue supporting these refugees, they would likely both lose the support of many donors and

would run into bankruptcy or keep refugees in camps without suitable living conditions and

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[106] This actually led to profits for many humanitarian organizations (though there is no evidence that the UNHCR received profits).

[107] Whitaker, B. "Document. Changing Priorities in Refugee Protection: the Rwandan Repatriation from Tanzania." *Refugee Survey Quarterly*. 21 (2002): 328-344. Print.

assistance. The proposition of the donors also offered the UNHCR the opportunity to gain

significant funding for both repatriation and improvement of conditions in Rwanda, a relatively

new role the UNHCR was expanding to fill.[108]

In addition to financial support, the US government, the UNHCR's largest funder, also

offered detailed plans regarding logistical help and other help for the UNHCR that they would

not normally offer. According to confidential US documents, plans outline what the US wanted

to assist the UNHCR in doing, including finding refugees to tour Rwanda and report back

findings, setting up border points, and providing other assistance for the organization.[109][110] This

level of interest and involvement by the United States government was much higher than usual,

in part because of the US government's strategic interests in an alliance with the Rwandan

government.[111]

This is strong inferential evidence supporting my first hypothesis that the UNHCR's

decisions in the case of the massive repatriation of Rwandan refugees from Zaire were based on

the priorities and interest of donor governments. The UNHCR's decisions clearly aligned with

the priorities of donors and there is significant evidence that the UNHCR would not have been

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[108] This offered the UNHCR an enticing opportunity to expand its role in the emergence of hanging priorities regarding refugees. This changed moves refugee aid away from protracted humanitarian assistance and asylum toward country of origin development so as to speed along repatriations. While expansion of mandate could have motivated the UNHCR's decisions, it is unlikely because, during this period, the UNHCR was already overextended and did not need to consider expansion. The UNHCR has since expanded its development operations so that, to assist in preparing countries of origins for the return of refugees, the UNHCR helps with development efforts to make return conditions more favorable. This is a drastic change in its role but also allows it to expand and be more effective as an organization.

[109] Multiple US internal documents now available on the state department website outlined the plans of the US government. These documents can be found at: http://www.state.gov/m/a/ips/c43954.htm.

[110] European interests were not as aligned with Rwanda as neatly aligned with Rwanda. In fact, France and the US often disagreed. In her book, Ogata notes this but praises the assistance and support of the US and condemns the Rwandan government for aligning with the former Interhamwe government, with whom it had close relations. Indeed, the United States' high levels of donor funding often makes its decisions and priorities more important than those of other countries.

[111] Gribbin, Robert E. *In the aftermath of genocide: The US role in Rwanda*. iUniverse, 2005.

able to financially support decisions conflicting with these priorities nor able to guarantee the continuing support of these donors in future refugee crises.

While it is evident that the UNHCR made this decision based on donor funding, it is still important to examine how my other hypotheses supported or contradicted the first hypothesis. First we must assess whether the UNHCR's decisions align with the priorities of the host government. In this situation, the host government of Zaire had little authority or influence. Dictator Mobutu Sese Seko was dying of cancer and had not named anyone to take his place. As Zaire's central government was crumbling, it had little authority over Eastern Zaire, where it had never held significant support.[112] Within two years of this forced repatriation, the rebel forces that were attacking refugees had taken over the government and were running Zaire and renamed it the Democratic Republic of Congo. Therefore the host government's opinions about repatriation were not important to the UNHCR's decisions.[113] We must also evaluate whether the UNHCR's were in line with the preservation of its mandate. In the context of Zaire, the UNHCR's lack of effective action regarding the militarization of refugee camps had already called into question its mandate and even its existence,[114] as the refugee camps were leading to further conflict and the refugees were not receiving protection. The UNHCR was almost seen as a nonfactor and observer. The literature on the crisis makes only scarce mentions of the UNHCR.[115] When UNHCR is mentioned, it is often to cite UNHCR statistics or observations

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[112] Zaire did send troops to secure the refugee camps. However, the numbers were low and the Zairean soldiers found themselves struggling to defend the refugee camps, which was unsurprising considering the same rebel forces defeated the Zairean army soon after.

[113] It was, in fact, the initial lack of action from the government of Zaire to curtail camp militarization that led the Rwandan government to support rebel forces. During this time, Zaire's all-powerful dictator Mobutu Sese Seko was sick with cancer and left no one in charge of making decisions in his absence.

[114] Koser, Khalid, and Richard Black. "The end of the refugee cycle." *The end of the refugee cycle* (1999): 2-17.

[115] Reyntjens, Philip, *The Great War* and Prunier, Gerard *African World War* are two prominent examples

and not actions.[116] Therefore, while the UNHCR would be going against its mandate by promoting return to Rwanda when conditions were not safe, decisive action was more important for the UNHCR's legitimacy than strict adherence to the mandate. However, because this reasoning could not be stated without leading the UNHCR to lose credibility, the UNHCR promoted repatriation as a safe option where returnees would be met with peace and easy reintegration when it knew this would not likely be the case. Therefore, the UNHCR did make an attempt to appear in line with its mandate even though its actions clearly endangered the refugees it was supposed to support.

5.5 Tanzania: The Decision of a Host Government and UNHCR Cooperation

After seeing the massive repatriations from Zaire take place, the Tanzanian government decided it wanted to repatriate refugees from Tanzania as well. The government of Tanzania and the UNHCR together drafted a plan to invoke the cessation clause for refugees in Tanzania. Together, they announced on December 5, 1996 that all Rwandan refugees were expected to leave by December 31, 1996.[117] The announcement led many refugees to flee the camps into the Tanzanian bush so they would not be sent back to Rwanda. In response, the Tanzanian government used armed forces to redirect the refugees towards Rwanda. Under the cessation clause, individuals were able to appeal for asylum if they could prove they would face harm and persecution upon returning to Rwanda. Because this was an organized cessation, the Tanzanian government was willing and able to work with the UNHCR to help those that could prove

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[116] In fact, the UNHCR was confused about its own role. When a UNHCR official was asked by Amnesty International why the UNHCR didn't prevent the Rwandan government from overtaking a refugee camp hospital, the official stated it was not the UNHCR's responsibility.

[117] It was unlikely that the UNHCR had intentions to undertake such a repatriation until the Tanzanian government came forward with the decision. According to an internal USAID memorandum, the UNHCR had predicted in October of 1994 that less than ten percent of Rwandan refugees would repatriate from Zaire within three years.

persecution, which was not an option during the Zairean repatriation. Unfortunately, circumstance led this to contradict one of the main incentives actors had to return refugees – the return of genocidaires to Rwanda for trial and prevention of further attacks from refugee camps. Because many genocidaires were at risk of hanging or death in Rwanda, refugees admitting to be genocidaires were allowed to maintain asylum in Tanzania. However, innocent Rwandan refugees were forced to return to Rwanda against their will. If the main concern about refugee camps was militarization under genocidaires, this repatriation effectively separated the innocent from the genocidaires. Unfortunately, it stripped innocent refugees of their refugee status in the process. Many of these refugees chose to flee Rwanda again, this time to Uganda, creating a new influx of refugees instead of effectively reintegrating refugees into Rwanda.[118]

At the time of the declaration of cessation of refugee status for Rwandans in Tanzania, the UNHCR claimed that conditions had improved significantly enough that the conditions under which the refugees fled no longer existed in Rwanda, allowing for the cessation of refugee status under the law.[119] Later, after facing much criticism for decisions made in Tanzania, High Commissioner Ogata wrote in her memoir "We might have disassociated ourselves from the operation. Instead, what we did was compromise, to save what little there was to save.[120]" This indicates that UNHCR realized it was going against its mandate and had consciously decided to do so. However, at the time they were again unwilling to admit to this contradiction because doing so would quickly lost the UNHCR legitimacy and would undo the support it would be able to maintain from the Tanzanian government by participating in the orchestration of the repatriation. In this case, the UNHCR admits to contradicting its mandate but claims to have

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[118] This is based on numerous interviews conducted in Kyaka II refugee settlement.

[119] For more information on the circumstances in Rwanda at this time, read the background chapter.

[120] Ogata, Sadako N. *The Turbulent Decade: Confronting the Refugee Crises of the 1990s*. New York: W.W. Norton, 2005. Print. P. 255

done this so as to have a role in the repatriation instead of leaving it entirely to the Tanzanian government. If my second hypothesis is correct, the UNHCR decided on its actions based on the priorities and decisions of the host government of Tanzania.

Having seen massive refoulement of Rwandan refugees from Zaire with UNHCR encouragement, the Tanzanian government wanted to carry out a massive repatriation. The Rwandan government strongly supported any effort to repatriate refugees back to Rwanda and pressured Tanzania to repatriate refugees so it would not be sucked into the regional conflict that was unfolding.[121] This was both a warning regarding the refugee population and a threat from the Rwandan government. The pulling of funding from the international community also left the Tanzanian government worried it would be responsible for the funding of assistance that the international community was no longer willing to give. Tanzania saw the refugee population as a burden that the international community was not willing to share, as the concept of "burden sharing" often stems from the financial support of international donors and physical and land support from the host government. This time, the lack of financial aid available for refugee camps influenced Tanzania's actions more so than the UNHCR's. However, because financial aid and burden-sharing is often a key bargaining-chip for the UNHCR to use to entice host governments to cooperate, losing the support decreased the UNHCR ability to work with the host government. In less developed countries, the UNHCR is often able to maintain power because developing countries worry that donor governments will pull their aid if they break the protocol they signed. However, the Tanzanian government has more money and independence than another of other governments. As the host government had decided to do so whether or not the

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[121] Chaulia, Sreeram S. "The Politics of Refugee Hosting in Tanzania: from Open Door to Unsustainability, Insecurity and Receding Receptivity." *Journal of Refugee Studies*. 16.2 (2003): 147-166. Print.

UNHCR chose to help in the efforts. This narrowed the UNHCR's choices for action, as it was no longer making the decision of whether or not the repatriation would take place. The UNHCR relies heavily on Tanzania to continue supporting refugees fleeing a diverse set of conflicts in East Africa. Because Tanzania has often cooperated in hosting refugees in the past, the government has had a positive relationship with the UNHCR. In anticipation of future conflicts, it is then important for the UNHCR to maintain a positive relationship with the Tanzanian government. Ms. Karen AbuZayd, former Secretary to Commissioner Ogata, noted in an interview that the UNHCR relies on host governments to be asked to help with refugee situations, putting the organization at the whim of host governments. Also, if the UNHCR chose to step away and condone the Tanzanian repatriation of refugees to Rwanda, it would be allowing a massive refoulement to take place without making any serious efforts to stop it and once again it would be seen as a bystander. This could lead other host countries to believe they could just as easily commit refoulement without being stopped by the UNHCR. This led the UNHCR to cooperate with Tanzania instead of condemn its actions.

While it is evident that the UNHCR made this decision based on my second hypothesis, it is still important to examine how my other hypotheses supported or contradicted the second hypothesis. My first hypothesis is that the UNHCR's decisions are based on donor funding. The funding for this repatriation was similar to that of the repatriation from Zaire. There was a heavy focus on repatriation from the international donor community, leaving little money for refugee camps. This situation was not considered as urgent by the international community because the camps had not become militarized and started attacking Rwanda as was the situation. However, under the assumption that power dynamics in Tanzanian camps were similar to those in Zaire, the international community supported repatriation over the maintenance of refugee camps.

Internal documents from the US government indicate that, while the US government recognized the importance of reconciling the situation in Tanzania, it was more of an afterthought in comparison to Zaire.[122] The international community had made its priorities clear, but was significantly less focused on oversight for this repatriation. This supports my first hypothesis that UNHCR's decisions are in line with donor priorities. My third hypothesis is that UNHCR makes decisions based on the appearance of adherence to its mandate to protect refugees. In this case, the UNHCR supported my hypothesis by making a decision that would make it look as though it was helping the refugees even though, as admitted later by Commission Ogata, this was a forced repatriation and not in the refugee's favor[123]. While the militarization of the refugee camps in Zaire made the UNHCR's violation of its mandate less clear, in the situation of Tanzanian refugee camps it was clear to the UNHCR that, unless the safety of Rwanda was exaggerated, Tanzania was about to take part in a massive refoulement[124]. This had the potential to do a lot of damage the UNHCR's reputation implications for the UNHCR, already in a crisis of legitimacy as many had lost confidence in its role and abilities. If UNHCR participated in the refoulement, called it a repatriation, and lent credence to it, the UNHCR would have a role in the repatriation. While the UNHCR was aware of the possibility of criticism from human rights organizations, donor governments, the Rwandan government, and the Tanzanian government were all in favor of repatriation. Indeed, the UNHCR did receive condemnation from Amnesty International and

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[122] According to an internal report by the US Mission to Dar Es Salaam filed as early as October 1994, "The demands imposed…elsewhere in the world make it harder for the Tanzanian part of the Rwandan / Burundian crisis to the the attention it needs to avoid a worsening of the solution."

[123] Ogata, Sadako. *The Turbulent Decade.*

[124] In her book, *The Turbulent Decade.* Commissioner Ogata admits that decisions were made in part because the UNHCR understood the implications of the Tanzanian government's decision and wanted to be able to somehow help the refugees.

Human Rights Watch.[125] Therefore it is evident that the UNHCR's decisions in the Tanzanian repatriation were made in order to appease the Tanzanian government and in alignment with donor priorities, even though it conflicts with its ission to protect refugees.

5.6 Uganda: A Coordinated Refoulement and UNHCR's Questionable Condemnation

On July 14 and 15 in 2010, the Government of Uganda and the Government of Rwanda together carried out a refoulement of 1,700 asylum seekers and refugees back to Rwanda. They informed several asylum seekers at Kyaka II refugee settlement in Western Uganda that they would receive food rations in the fenced in area where World Food Program kept food stored on 14 July. The asylum seekers who showed up were surrounded by Ugandan police officers, who shot blank rounds to intimidate the refugees, rounded them up onto trucks, and drove them back to Rwanda. A similar incident occurred in Nakivale settlement on the same day. In Nakivale, refugees were instead told they would be informed whether or not they would receive refugee status. Two people jumped out of the trucks, one of whom died. One Rwandan refugee who lived near the center stated that he found the situation suspect because the asylum seekers had been told to bring their families and the Government of Uganda was giving out the food, a role the Norwegian Refugee Council usually played as an implementing partner of the UNWFP and UNHCR[126][127]. According to the Camp Commandant, these were not asylum seekers or refugees but illegal immigrants. They had entered the country illegally and internal affairs was in charge of deporting illegal immigrants. He claimed "There is no single Rwandan refugee or asylum

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[125] Amnesty International, *Human Rights Overlooked in Mass Repatriation*, 1 January 1997, AFR/47/02/97, available at: http://www.unhcr.org/refworld/docid/3ae6a9912c.html [accessed 2 December 2012]

[126] These organizations often hare information and have a positive relationship.
[127] Rwandan refugee, Interview. Kyaka II, Uganda. 11 November 2011.

seeker who was taken back. Each country has its immigration laws and they have to be followed. We screened them.[128]" However, rejected asylum seekers are also required by law to be given the opportunity to appeal the rejection of refugee status and many of these refugees had not yet been told that they were rejected. Also, UNHCR records showed many of the refugees were in fact asylum seekers. Therefore there is substantial proof that this was an instance of refoulement.

This refoulement had long-lasting detrimental effects, not only on the refugees forced back to Rwanda (many of whom soon returned to Uganda) but for all Rwandan refugees living in refugee settlements in Uganda. The incident came up without provocation in every interview and focus group held, both in Kyaka II and in Kampala. Some refugees interviewed felt this confirmed the fact that the Rwandan government was not peaceful and stable but oppressive enough that it was not even willing to allow individuals the choice of whether or not to return. Many also felt anger and resentment at the UNHCR for failing to protect them. Many refugees lived in constant fear that they would be sent back. A few refugees stated that, after the refoulement, they had hidden in the bush surrounding the refugee settlement and only returned to take care of their plots. One or two stipulated that they continued to do so through the end of 2011.

The UNHCR claimed to have no prior knowledge of the refoulement and condemned the repatriation shortly after it took place. A statement issued by the UNHCR stated to the contrary that "The operations were targeted at failed asylum seekers, but UNHCR has received confirmation that recognized refugees were among those returned to Rwanda.[129]"

However, it is likely that the UNHCR was aware of the refoulement. A Ugandan government official claimed in an interview that "the UNHCR knows about. It was not done in

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[128] Kyaka II Camp Commandant. Interview. Kyaka II, Uganda, 8 November 2011.
[129] UN, "UN agency deplores forced returns of Rwandan refugees from Uganda," 16 July 2010.

secrecy[130]." Because of the set up of refugee settlements, it would have been difficult if not impossible for the government of Uganda to carry out the operation without UNHCR knowledge. The government would be taking over a role that the World Food Program (WFP) or its implementing partner was responsible, which would be suspicious and require investigation. Already, the Government of Uganda was notorious for bias against Rwandan asylum seekers by the Ugandan government, as even the UNHCR had previously noted.[131] Informing those who were to be at the meeting would also have taken coordination and information would have spread to the UNHCR. Finally, there are not many roads into the settlements. The UNHCR would have seen the deportation trucks entering the refugee settlements. If the UNHCR knew about the refoulement, the question remains as to why they allowed it to happen and then condemned it afterwards, instead of taking a part to ensure safety as it had done in Tanzania. If my theory is correct, this repatriation should support my third hypothesis that the UNHCR makes decisions based on adherence to its mandate to support refugees and support by human rights organizations.

The UNHCR's decision took into account its legitimacy through its mission. If the UNHCR had officially taken part in the refoulement, it likely would have received condemnation from human rights organizations and, possibly, donor governments. Unlike the other larger forced repatriations, this plan depended on secrecy so that the governments could return the asylum seekers and refugees it wanted to return. Many of these undocumented immigrants were asylum seekers who had been denied status as refugees but still did not want to return to their host countries. According to the Kyaka II Camp Commandant, the Ugandan government estimated that there were almost as many illegal immigrants living in the refugee settlements as

[130] "Rwanda-Uganda: Kampala urged to end "gunpoint"deportations" *IRIN* 15 July 2010.
[131] International Refugee Rights Initiative and Refugee Law Project. "A Dangerous Impasse: Rwandan Refugees in Uganda," Citizenship and Displacement in the Great Lakes Region. Working Paper No. 4. June 2010.

there were refugees, putting a further strain on resources, security and space[132]. It can be inferred that this problem also caused problems for the UNHCR. The governments of Uganda and Rwanda decided that a forced round-up of the asylum seekers was the best way to cope with this and ensure the return of some unsuccessful asylum seekers. However, a round-up can and did lead to the round up of some refugees who were not there illegally and suffered, a consequence which the UNHCR could not be associated with. However, the decision to stay silent and not play a role until condemning the action afterwards did not have a detrimental effect on legitimacy. In the case of Tanzania, the UNHCR's legitimacy had already been called into question before the refoulement and the refoulement was much larger (hundreds of thousands of refugees), whereas in this case the UNHCR's legitimacy was not being questioned and the number of refugees repatriated was less significant.[133] Therefore, the UNHCR had much more to risk in terms of its legitimacy and survival as an organization by assisting with the refoulement than by claiming to be unaware of the plan, despite the fact that many refugees and asylum seekers were denied their rights and some were hurt. The UNHCR was successful in avoiding criticism. Because they lacked evidence that UNHCR was involved, human rights organizations such as Human Rights Watch and Amnesty International condemned the governments of Rwanda and Uganda and used the UNHCR as a source to describe the violation.[134] This reinforced the UNHCR's adherence to its mandate even though it had allowed a refoulement to occur from two separate refugee camps simultaneously.

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[132] Kyaka II Camp Commandant, Interview. Kyaka II, Uganda. 8 November 2011.

[133] In an interview with a former USAID Congo Mission Director, a discussion of the number of refugees that would constitute a repatriation effort came up and he noted that, in the context of the Rwandan refugee crisis, even 10,000 would be relatively insignificant when, at its peak, there were over 1.5 million refugees who had fled Rwanda. This puts the insignificance of 1,700 in perspective.

[134] Amnesty International: 'Uganda forcibly returns 1,700 Rwandan asylum-seekers' 16 July 2010. And Human Rights Watch, "Uganda: Halt Forced Returns of Refugees" 16 July 2010.

While it is evident that the UNHCR made this decision based on my second hypothesis, it is still important to examine how my other hypotheses supported or contradicted the second hypothesis. The first concern is donor funding. Donors have little interesting in funding Rwandan refugees in protracted situations, so little funding was flowing to help accommodate these refugees and asylum seekers. The UNHCR was also running out of space and plots available for incoming refugees. However, money would also not be available for a small-scale repatriation, as large repatriations and full cessation has become the focus of the international community. Similarly, donor interest in the situation is low. No foreign governments officially condemned the refoulement after it happened. It is also important to take into consideration the will of the host government. The UNHCR relies heavily on the generosity of the Ugandan government. The Ugandan government is generally very generous to other groups seeking refuge in Uganda, though asylum seekers from Rwanda have become an exception.[135]   However, because of Uganda's important position with regards to refugee flows from (South) Sudan and the Democratic Republic of Congo, it is important that the UNHCR cooperate with Uganda to maintain its legitimacy and ability to operate within Uganda.

5.7 The Invocation of the Cessation Clause

The UNHCR has been assessing the situation in Rwanda to consider whether cessation should be invoked for Rwandan refugees in Uganda since 2002. In Uganda there were large rounds of voluntary repatriation in both 2005 and 2009.[136] In 2009, the UNHCR decided to invoke the cessation clause for December 31, 2011. But the complexity of the situation led the UNHCR to

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[135] Kron, Josh. "Tricked, Rwandan refugees are driven home, UN says," 16 July 2010. New York Times. http://www.nytimes.com/2010/07/17/world/africa/17uganda.html?_r=0
[136] Kyaka II Camp Commandant. Interview. Kyaka II. 8 November 2011.

push the date back until June 30, 2012 and again until December 31, 2013.[137] The UNHCR

argues that, under the legal definition, the cessation clause may be invoked because the

circumstance that allowed in the mass influx between 1994 and 1998 – war – is no longer in

existence.

However, the current situation in Rwanda brings the invocation of the cessation clause into

question. Before the UNHCR officially declared the invocation, the Rwandan government began

informing refugees that the cessation clause was to be invoked on December 31, 2011[138],

showing the Rwandan government's willingness to stretch the truth regarding the cessation

clause. A number of different reports have cited Rwanda's blatant advocacy for the UNHCR's

invocation, including Human Rights Watch, an IRIN report, the Refugee Law Project, and the

International Refugee Rights Initiative.

Indeed, even a UNHCR evaluation of whether cessation should be invoked mentions three main

concerns about the current situation in Rwanda; lack of political freedom and freedom of speech,

lack of fairness in the justice system and specifically the Gacaca process, and lack of fairness and

effectiveness in resolving land issues.[139] The Gacaca courts were originally being held open so

that returned refugees could be tried if they were suspected to be genocidaires. However, in part

as a bid to get Rwandan refugees to return, the Gacaca courts were closed on June 18, 2012.[140]

The report, "Questions and Answers on UNHCR Comprehensive Strategy on Rwandese Refugee

Situation," sidesteps a definitive evaluation. Instead, it includes about the allegations such as

phrases such as "what they claim," "what they say," and "several asserting" so as to avoid

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[137] Okoth-Obbo, George "Follow up on Implementation of the Roadmap for the Comprehensive Conclusion of the Rwandan Refugee Situation, including invocation of the Cessation Clause," Memorandum, UNHCR, 30 September 2011.
[138] Integrated Regional Information Networks (IRIN), *Rwandan refugees reluctant to repatriate,* 2 November 2011, available at: http://www.unhcr.org/refworld/docid/4eb3d3702.html
[139] UNHCR Comprehensive Strategy for the Conclusion of the Rwandan Refugee Chapter.
[140] BBC Online "Rwandan 'Gacaca' Courts Finish Work."18 June 2012. http://www.bbc.co.uk/news/world-africa-18490348

confirming or denying the allegations.[141] On the other hand, UNHCR lends legitimacy to these

claims because it registers many asylum seekers each year who are fleeing persecution relating to

these allegations.

The conditions presented above indicate that, not only is Rwanda already an oppressive

state, but conditions will likely be worse for returning refugees, already assumed guilty before

innocent, than it is for other Rwandans. These claims are strong enough that refugees can argue

they continue to fall under the UNHCR's definition of having "a well-founded fear of

persecution." However, the implications of the cessation clause do not end at the repatriation of

refugees.

If my first hypothesis is correct, the UNHCR has made its decisions because of the

interests and priorities of host governments. The UNHCR's ability to continue to assist in

protracted refugee situations is difficult, as more and more refugee situations have become

protracted despite the fact that donor governments stop putting money towards protracted

situations often after the first year. By repatriating refugees, the UNHCR has fewer refugees to

take care of and can decrease costs. While repatriation efforts can be expensive, the cost-benefit

is generally considered to make repatriation more cost effective. Donors who have lost interest in

funding a protracted refugee situation may be more interested in helping fund a repatriation. Ms.

Karen AbuZayd, former Secretary to High Commissioner Ogata (and head of UNRWA)

explained "People are more excited about repatriation operations… yes funding is easier to get

for the end of a situation and also what could be a long-standing refugee situation.[142]"

If my second hypothesis is correct, the UNHCR made its decisions based on the priorities

of host governments. Host governments are heavily motivation to repatriate refugees. For host

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[141] Questions and Answers on UNHCR Comprehensive Strategy on Rwandese Refugee Situation.
[142] AbuZayd, Karen. Interview with, 25 July 2012.

countries, refugees often use up land and resources the government may wish to use in other ways or for new refugee influxes. For example, in Kyaka II refugee settlement the camp commandant saw the repatriation of refugees as crucial to make space for new influxes of Congolese refugees.[143]

With little advocacy or money to maintain Rwandan refugees and extensive pressure to repatriate Rwandan refugees, a number of external factors have led the UNHCR to invoke the cessation clause for Rwandan refugees. While the UNHCR can do nothing more than encourage host countries to invoke the cessation clause, few governments choose to keep refugees when unnecessary and against the recommendation of the UNHCR, as refugees are often viewed as a burden. Because governments are expected to prove that conditions have significantly improved in the country of origin, they often leave it to the UNHCR to decide when conditions have significantly improved.

At the UNHCR's declaration that they planned to implement the cessation clause, policy changes were created that affected the refugees. Information about the cessation was also unclear, leading to many policies and actions that negatively affected refugees in ways that both directly and indirectly conflict with the UNHCR mandate.

While most Rwandan refugees were knowledgeable about the implementation of the cessation clause, but most believed the cessation date was 31 December 2011 and were unaware that this date had been changed. When asked about their plans and thoughts for the cessation clause, several refugees claimed it made them feel sick, unable to sleep or unable to eat. Last time there was a voluntary repatriation, many of the refugees did not believe it was going to be voluntary and decided to flee the settlement and hide in nearby areas until the repatriation was over. According to one Rwandan refugee, many individuals continue to sleep outside of the

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[143] Kyaka II Camp Commandant. Interview. Kyaka II. 8 November 2011.

settlement at night because they fear being taken back to Rwanda.[144] A few refugees promised to commit suicide if forced back to Rwanda. One man exclaimed "I would hide in my house and not open my door. I would stay until they shot me with bullets.[145]"

One of the largest misconceptions regarding the cessation by both refugees and officials concerns the population affected by the cessation. The Kyaka II Camp Commandant, when asked about who the affected population would include, admitted to needing to check his records before giving an answer. Only one UNHCR document states specifically what group of Rwandan refugees will be affected, stating there would be "cessation of status for Rwandan refugees who fled the county as a result of events occurring on or before 31 December 1998."[146] Others only allude to the approximate time period and still others use the phrase "Rwandan refugees" without qualifying which refugees this includes.

To encourage Rwandan refugees to return, the Ugandan government also issued a ban on further cultivation of the land. Because of the nature of cultivation, they claimed further cultivation would make refugees reluctant to leave when they had the option of profiting off of long-term crops such as bananas.[147] Many refugees claimed they were told they could not harvest the crops they had already planted and that Congolese refugees, upon hearing that Rwandan refugees could no longer use their land, took over the land for their own cultivation. Because of the way the settlement system is set up, refugees with land for more than five years also no longer receive food from the World Food Program, so these refugees were essentially bing starved into repatriation, which violates the most basic rights of refugees. The application of the

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[144] Rwandan refugee, Interview. Kyaka II, Uganda. 10 November 2011.
[145] Rwandan refugee, Interview. Kyaka II, Uganda. 5 November 2011.
[146] Okoth-Obbo, George "Follow up on Implementation of the Roadmap for the Comprehensive Conclusion of the Rwandan Refugee Situation, including invocation of the Cessation Clause," Memorandum, UNHCR, 30 September 2011.
[147] Protection / Legal Officer, OPM. Interview. Kampala, Uganda. 28 November 2011.

land cultivation ban has been implemented for not only those affected by the Cessation clause but all Rwandan refugees, violating the rights of more recent asylum seekers with legitimate and recognized claims to asylum. When asked about this, the Kyaka II Camp Commandant responded that the majority of refugees arrived before 2000.[148] Reports have also found that new Rwandan asylum seekers have been denied much more frequently since the cessation clause has been announced.[149]

It has now been well established that in many ways, the cessation clause both directly and indirectly violates the mandate of the UNHCR by endangering the very refugees the UNHCR was created to protect by sending them back to an insecure situation where they may be endangered, forcing refugees back to Rwanda against their will, failing to educate the Ugandan government and the refugees about the implications and applications of the cessation clause and thus endangering newer refugees granted direct asylum from the current government, and indirectly leading to the denial of food, asylum, and consistent information about their immediate future. It is now important to examine the reasons behind the UNHCR's decision to invoke the cessation clause for Rwandan refugees.

Conclusion

In all four cases examined, I have demonstrated through inferential evidence that the UNHCR made its decision based on its need to survive as an organization by following at least one of the three hypotheses I set forward. The UNHCR encouraged and assisted the repatriation of Rwandan refugees from Zaire because they needed to follow the priorities and interests of donor governments in order to maintain funding for current and future operations. They co-

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[148] Kyaka II Camp Commandant, Interview. Kyaka II, Uganda. 8 November 2011.
[149] International Refugee Rights Initiative, Refugee Law Project, and Social Science Research Council, "A Dangerous Impasse: Rwandan Refugees in Uganda." Citizenship and Displacement in the Great Lakes Region Working Paper Number 4, June 2010.

organized the massive forced repatriation of refugees with the Tanzanian government because it needed to maintain a positive relationship with the Tanzanian government and other host governments. They condemned the refoulement of refugees from Uganda instead preventing it or participating in it because it needed to uphold its general mission of protecting refugees in order to maintain its role as a humanitarian organization. The UNHCR has since recommended the cessation of refugee status for Rwandan refugees because both donors and host governments have more interest in repatriation and the cessation of refugee status than in the continuation of funding and hosting of Rwandan refugees. This leaves the UNHCR in a position of vulnerability and risk of donor-fatigue and host-fatigue if it fails to end the protracted refugee situation.

This comparative case study demonstrates that the UNHCR's efforts cannot follow the assumptions set forward by humanitarianism, realism, or constructivism. First, it is evident that in all of these situations, the UNHCR was not following humanitarianism because it made decisions that put refugees in danger. Second, while the UNHCR's decisions in these events did not go against donor priorities, the UNHCR was often motivated first and foremost by other factors. This was especially true when donors did not put heavy emphasis on a refugee situation, leaving the UNHCR to make its own decisions. The UNHCR's decisions did not follow constructivist theory because, while the UNHCR was able to autonomously make its own decisions, these decisions were heavily influenced by the interests and priorities of other actors. The UNHCR's decisions are then, first and foremost, determined by its need to survive as an organization.

6. Conclusion

UNHCR is not likely to change the current date it has set for the cessation clause. Yet cessation doesn't mean the refugees will return to Rwanda. Instead, many will flee into other parts of their host country and live as undocumented immigrants. Nor will cessation's effects be limited to those officially covered by the clause, refugees who fled in or before 1998. It already has and will continue to affect those fleeing the oppressive leadership now in power in Rwanda. Many have been denied refugee status already. The cessation may not benefit refugees, but it will certainly reduce the burden Rwandan refugees are currently putting on host governments, donor governments, and the UNHCR itself. As we observe the implementation of the cessation clause in the June of 2013, it is important that we understand what led up to it and the implications going forward.

The United Nations High Commissioner for Refugees makes its decisions based on its need to survive as an organization. The framework my theory sets forward for understanding the UNHCR's decisions takes into account the complexities the UNHCR faces when making choices. This includes direction from donors it relies on to fund operations, priorities of host governments who the UNHCR relies on for permission to operate, and the appearance that it adheres to its mission enough that it can maintain its authority as the primary organization in charge of refugees. It would be negligent to claim that one of these factors always influences the UNHCR more than the others.

Liberal theory, or humanitarian applied theory, views the decisions of humanitarian organizations as autonomous actions of organizations created through the cooperation of actors to create peace and enforce human rights for all individuals. Realist theory, on the contrary, believes donor governments make the decisions on what humanitarian organizations, who lack

any autonomy, will do. Construcitvisms searches for a middle ground and finds that humanitarian organizations are fairly autonomous actors that evolve and change based on evolving ideas and knowledge. All three theories fail to take into account the complexities involved in the decision-making of humanitarian organizations.

As a concluding thought, it is key to speculate about the reasons the UNHCR believes it is important to survive. First and foremost, the UNHCR's survival is important for the reasons any organization or company desires to survive. Employees want to keep jobs and the UNHCR wants to continue its existence and create a legacy. As is set forward by constructivism, the UNHCR has enough autonomy that it is up to the UNHCR itself to make the decisions necessary for its own survival. However, it also needs to survive to help its constituents. Indeed, its continued existence benefits the groups assumed to benefit within each of the other theories. While the UNHCR does not necessarily make its decisions based on what is best for refugees, as humanitarian theory sets forward, the UNHCR's survival guarantees refugees the continued existence of an international organization that serves to coordinate resources and protect the rights of refugees. Without the UNHCR, the rights of refugees would likely be violated much more frequently. Similarly, while the UNHCR does not make all of its decisions based on the priorities of donor governments, its survival benefits donor governments because it allows them to pool money and resources to advance their priorities through regulation of refugee situations, which is important for international stability. Similarly, the UNHCR's survival helps host governments deal with large refugee populations that cross their border pleaing for help. These groups continue to support the UNHCR because its survival also benefits them. The UNHCR's makes its decisions in order to ensure these different groups continue to perceive the UNHCR's existence as a benefit to them as well. Therefore, the UNHCR's survival supersedes all other

theories about the UNHCR's decision-making because it takes into account the complex factors involved in UNHCR's survival and thus its decisions.

This study offers a framework for further study. In addressing the UNHCR, I recommend that the theories set forward in this paper are applied to a more diverse set of cases. It may be possible to code different motivations for a quantitative analysis now that I have established specific motivations that should be examined. This theory of organizational survival should also be applied to other humanitarian organizations in order to demonstrate the wider application of this research.

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