

Protecting Civilians in Refugee Camps

*Unable and Unwilling States, UNHCR
and International Responsibility*

Maja Janmyr

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By

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Foreword

Millions of refugees and internally displaced persons live in refugee camps set up and run by a government, an international organization and/or a non-governmental organization (NGO), within or near their country of origin. Failure to provide adequate physical security to refugees and internally displaced persons in those camps is a pressing problem the world over. Basic standards of protection exist in international refugee law, international human rights law and international humanitarian law but, ultimately, who is (or should be held) responsible for failing to comply with these standards in the context of refugee camps?

The general rule is that the host state has primary responsibility for the safety of refugee camps. However, it is also accepted that the host state may be unwilling and/or unable to provide effective protection with regard to basic human rights. Do the international rules on responsibility allow for the possibility of holding more than one actor responsible under international law? Do these rules treat differently situations where the host state is unable to secure effective protection, as opposed to unwilling? Maja Janmyr argues persuasively for the possibility to hold actors other than the host state responsible for human rights violations in refugee camps, such as the United Nations High Commissioner for Refugees (UNHCR) and its NGO implementing partners. Her arguments are based on the International Law Commission's Articles on State Responsibility as well as its recent work on the Responsibility of International Organizations; these, she argues, open up for the possibility of shared responsibility among several actors.

This book is based on Maja Janmyr's Ph.D. thesis, which was successfully defended at the University of Bergen on 3rd December 2012. As a member of the Evaluation Committee, I was most impressed by the power of the arguments in the thesis. Now published in book form, this study makes an important contribution to existing literature in refugee law. Refugee camp insecurity is an acute problem. Any attempt (such as this book) to improve our understanding of the legal responsibilities of those who establish and administer such camps, is to be greatly welcomed. It thus gives me great pleasure to commend this book.

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The process of writing this book has in many respects been an incredible journey. Not only am I fortunate enough to have been granted the opportunity to spend 4 years trying to understand the theoretically and practically challenging topic of refugee camp security, but I have, in this pursuit, been supported by so many individuals and institutions in countless different ways. Many more people than I can name here deserve my gratitude as they have provided inspiration, company, reflection and encouragement over these past years. My greatest debt is nevertheless to those human rights professionals and others who took time to offer their reflections. During the course of this work, I have often been astonished by the experiences people have been willing to share with me. I hope that, at the very least, this book honors, and does justice to, the experiences entrusted to me.

I could not have written this book without the support and confidence from a number of institutions. The University of Bergen's Faculty of Law offered me a home and on-going support during my research. Much is owed also to my colleagues here for their encouragement and enthusiasm, and particularly to Ernst Nordtveit and Rune Sæbø for paving the way for my doctoral studies, and to my academic supervisors Jørgen Aall and Terje Einarsen. A special thanks to Ørnulf Rasmussen, Jessica Schultz, Knut Einar Skodvin and Hans Fredrik Marthinussen for reading and commenting on various parts of this book. Together with Catalina Vallejo and Marianne Nerland, Jessica has also been of invaluable help with proof-reading and editing.

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The people who deserve my deepest gratitude are my family and friends; during the course of this research I have been fortunate to have so many encouraging supporters. My family has offered uncompromising patience and inspiration, as well as a great deal of practical support. Magnus deserves special thanks for not only editing and revising the entire manuscript, but also for giving me everyday strength and peace, and showing me that there is more to life than work.

Maja Janmyr
Bergen, June 3, 2013

Select List of Acronyms

AI	Amnesty International
ARIO	ILC's Articles on the Responsibility of International Organizations
ARSIWA	ILC's Articles on State Responsibility
AU	African Union
DRC	Danish Refugee Council
ECTHR	European Court of Human Rights
EXCOM	Executive Committee of the UNHCR
GA	United Nations General Assembly
HRW	Human Rights Watch
IASC	Inter-Agency Standing Committee
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDP	Internally displaced person
ILC	International Law Commission
IRC	International Rescue Committee
JRS	Jesuit Refugee Service
LRA/M	Lord's Resistance Army/Movement
MINURCAT	United Nations Mission in the Central African Republic and Chad
MOU	Memorandum of Understanding
MSF	Médecins sans Frontières
NCA	Norwegian Church Aid
NGO	Non-governmental organization
NRC	Norwegian Refugee Council
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
PARINAC	Partnership in Action
POC	Protection of Civilians
R2P	Responsibility to Protect
RLP	Refugee Law Project
SC	United Nations Security Council
SGBV	Sexual and gender-based violence
SPLA	Sudan People's Liberation Army
SRS	Self-reliance strategy
SURGE	Supporting UNHCR Resources on the Ground with Experts on mission
UN OIOS	UN Office for Internal Oversight Services
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

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PART ONE

Introduction



Introduction

1.1 Origin of the Study

The ultimate responsibility for the physical safety of refugees and internally displaced persons (IDPs) falls upon the host state. However, when a sovereign state is *unwilling* or *unable* to provide meaningful protection to the camp population, under what circumstances does the United Nations High Commissioner for Refugees (UNHCR) have a duty to provide physical protection to these refugees? And under what circumstances may UNHCR be held internationally responsible for human rights violations taking place in refugee camps that the organization and its implementing partners administer? The theory and practice of international law are full of dilemmas related to the attribution of responsibility for internationally wrongful acts. It is essentially these issues that this book aims to address.

From the perspective of international law, refugees are commonly treated as figures of victimhood – individuals who have crossed an international border and are at risk or have been victims of persecution in their country of origin. Whilst refugee movements often take place in the context of armed conflict, once refugees have crossed an international border, they are in the view of international law *prima facie* civilian and humanitarian. As such, it is at the outset difficult to imagine a more humanitarian space than that of the refugee camp, whose foremost purpose is to provide refugees with temporary shelter, assistance, and protection until they are voluntarily repatriated to their country of origin, locally integrated in the host state, or resettled to third countries. It is increasingly acknowledged that comparable expectations of security apply in the context of camps for the *internally* displaced, people who for one reason or another have not crossed an international border.

The categorization of refugee and IDP camps as civilian and humanitarian is not, however, unproblematic. Refugee protection has always been deeply affected by greater security issues. In fact, the notion of refugees actively contributing to violent resistance predates the contemporary international refugee regime and has existed for as long as individuals have been forced into

exile.¹ And rather than serving as civilian and humanitarian safe havens, camps for refugees and IDPs have on a number of occasions become notorious for serious problems of insecurity, including armed attacks, arbitrary killings, torture, exploitation and military recruitment.² UNHCR has described refugee camps as “unnatural, closed environments which can leave refugees vulnerable to manipulation and exploitation.”³ Where combatants and other armed elements have infiltrated the camp, it may even approximate the conditions of a conflict zone. Such has been the recent situation in the Kenyan Dadaab camps, where reports of al-Shabaab’s militarization recently have surfaced.⁴ This insecurity may constitute a grave threat to the basic human rights and physical security of the individuals in these camps.

In view of this reality, this book aims to contribute to the discussion of how the protection of civilians in refugee and IDP camps could, and should, be strengthened. While it is generally uncontested that the sovereign host state holds primary responsibility for the human rights situation within its jurisdiction, it is relevant also to discuss issues of responsibility in relation to actors such as UNHCR and its non-governmental implementing organizations. Under international law, UNHCR is specifically mandated to provide “international protection” to refugees and to seek “permanent solutions for the problem of refugees.”⁵ Moreover, since 2005, UNHCR is the only UN agency that has formal institutional responsibility for the protection of IDPs.⁶ Thus, this book asks whether UNHCR has a duty to take action in response to security problems in camps and to maintain the refugee camp’s civilian and

1 See generally K.B. Harpviken, *From ‘Refugee Warriors’ to ‘Returnee Warriors’: Militant Homecoming in Afghanistan and Beyond*, GLOBAL MIGRATION AND TRANSNATIONAL POLITICS WORKING PAPER, no. 5 (2008).

2 UNHCR, *The Security, Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the ‘Ladder of Options’*, UN Doc. no. EC/50/SC/INF.4 (2000), para. 1.

3 UNHCR, *THE STATE OF THE WORLD’S REFUGEES 2006: HUMAN DISPLACEMENT IN THE NEW MILLENNIUM*, ch. 5: *Protracted Refugee Situations: The Search for Practical Solutions* (2006), at 84.

4 See HRW, *Stop Recruitment of Somalis in Refugee Camps* (2009); T. Odula, *Kenya Dadaab Refugee Camp Reports Small Blast*, THE HUFFINGTON POST (5 Nov. 2011); C. Ombati, *Explosion Kills Policeman in Dadaab Refugee Camp*, THE STANDARD (5 Dec. 2011).

5 See Statute of the United Nations High Commissioner for Refugees [UNHCR Statute], adopted by the UN General Assembly in Res. 428. See UN Doc. no. A/RES/428 (14 Dec. 1950), para. 1. For a discussion of what constitutes “international protection,” see Section 3.6.3.

6 See UNGA, *Report of the United Nations High Commissioner for Refugees*, Supplement no. 12, UN Doc. no. A/61/12 (2006), paras. 36–37. See also G. Loescher et al., *THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR): THE POLITICS AND PRACTICE OF REFUGEE PROTECTION INTO THE TWENTY-FIRST CENTURY* (2008), at 108–109.

humanitarian character? If so, what possible limits exist for the scope of its responsibility? Is the organization responsible for acts and omissions of the NGOs to which it often delegates the day to day management of refugee camps? The study explores these issues through a discussion of the refugee and IDP camp's civilian and humanitarian character and the rules of international responsibility, as well as in view of a case study of Sudanese refugee camps in Uganda.

Most studies on refugee camp militarization tend to be more anecdotal than empirical, and as such, little is actually known about the extent to which militarization occurs.⁷ Indeed, not all refugee camps are characterized by problems of insecurity and militarization; some are relatively safe havens. In the recent decade, a number of academics have therefore called into question the professed intensification of the problem. Lischer, for instance, has argued that the popular view of widespread refugee militarization is reinforced by media and certain academics that solely focus on a relatively small number of egregious cases.⁸ As such, the issue is at risk of becoming a manifestation of sensationalism and advocacy, rather than a phenomenon described by thorough empirical research.

It is nevertheless clear that the topic of refugee camp security warrants further, and arguably urgent, attention. Not only is the issue, particularly with

7 For discussions of the scope of refugee militarization, see G. Loescher, *REFUGEE MOVEMENTS AND INTERNATIONAL SECURITY* (1992); G. Loescher, *BEYOND CHARITY: INTERNATIONAL COOPERATION AND THE GLOBAL REFUGEE CRISIS* (1993); M. Weiner, *Security, Stability and International Migration*, 17 *INTERNATIONAL SECURITY* 3 (1992/1993), 91–126; F. Terry, *CONDEMNED TO REPEAT?: THE PARADOX OF HUMANITARIAN ACTION* (2002); S. Stedman & F. Tanner (eds.), *REFUGEE MANIPULATION: WAR, POLITICS, AND THE ABUSE OF HUMAN SUFFERING* (2003); H. Adelman, *Why Refugee Warriors Are Threats*, 18 *JCS* 1 (1998), 49–69; A.R. Zolberg et al., *ESCAPE FROM VIOLENCE: CONFLICT AND REFUGEE CRISIS IN THE DEVELOPING WORLD* (1989); M.B. Anderson, *DO NO HARM: HOW AID CAN SUPPORT PEACE – OR WAR* (1999); A. Suhrke, *Human Security and the Protection of Refugees*, in E. Newman & J. van Selm (eds.), *REFUGEES AND FORCED DISPLACEMENT: INTERNATIONAL SECURITY, HUMAN VULNERABILITY, AND THE STATE* (2004), 93–108; R. Muggah (ed.), *NO REFUGEE: THE CRISIS OF REFUGEE MILITARIZATION IN AFRICA* (2006); R. Muggah, *Once We Were Warriors: Critical Reflections on Refugee and IDP Militarization and Human Security*, in A. Edwards (ed.), *HUMAN SECURITY AND NON-CITIZENS: LAW, POLICY AND INTERNATIONAL AFFAIRS* (2010), 164–196.

8 It should be noted that Lischer's research is based on a single proxy indicator of refugee militarization, namely political violence. See S.K. Lischer, *Refugee Involvement in Political Violence: Quantitative Evidence from 1987–1998*, *NEW ISSUES IN REFUGEE RESEARCH*, no. 26 (2000); S.K. Lischer, *DANGEROUS SANCTUARIES: REFUGEE CAMPS, CIVIL WAR, AND THE DILEMMAS OF HUMANITARIAN AID* (2006).