Building Consensus within UNHCR's Executive Committee: Global Refugee Norms in the Making

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UNHCR's Executive Committee is the only specialized multilateral forum which contributes to the development of international guidance on refugee protection. Based on observation of the negotiation of ExCom Conclusion No. 107, this article examines global refugee norms in the making. It argues that empirical studies can further our understanding of global refugee policy, by re-embedding norms and policies that claim to be global into the specific configurations of state and non-state actors that produce them. The ethnographic approach in particular sheds light on how different stakeholders' conflicting interests, beliefs and legal frameworks are turned into a depoliticized and consensual narrative of global refugee protection, having an apparently positive and ambitious connotation. These narratives produce a hegemonic 'truth regime' on refugee issues but also windows for contestation. Moreover, the article illustrates how global refugee norms may not necessarily be about improving refugee standards for decision-makers but may be used for other, implicit, reasons such as perpetuating narratives, maintaining social prestige, making claims for political consideration, or legitimizing new bureaucratic interventions.

Introduction

Created in 1950 on a temporary basis to address the needs of populations displaced before 1951, UNHCR is today a permanent institution mandated to ensure the rights of all refugees worldwide.[1] Over the years, UNHCR has actively participated in universalizing the institution of asylum as defined in the 1951 Refugee Convention, by encouraging states to develop national asylum systems, contributing to the production and circulation of policies and norms on refugee issues at the global level, and promoting international

cooperation to resolve the 'global refugee problem'. It has become a major policy-making agency in the area of refugee protection, explaining why a number of scholars have closely examined its policies and norms. In her review of the literature on global refugee policy, Deardorff Miller (2012: 2–4) notes that the shifting policies of UNHCR over time, their degree of autonomy *vis-à-vis* its main funders and the ways they have been influenced by other, overlapping regimes, have been of particular interest for political scientists. In contrast, their concrete consequences for the everyday life of displaced persons have mainly been examined by socio-anthropologists who have highlighted their impacts in terms of control over human mobility through labelling processes and spatial confinement. While both approaches are useful to shed light on the content and implications of global refugee policy, they say little, however, about the social actors, the political processes and the social meanings that contribute to its initial framing within the organization. Scholars too often tend to present UNHCR as a homogenous actor and formal structure, rather than a space of confrontation between different interests and perceptions over what refugee protection should be.

This article argues that re-embedding global refugee policy in the epistemic communities and policy networks that produce it may further our understanding of what is meant by 'global refugee policy' and what may be its implicit functions beyond its stated goals. It examines how UNHCR's policies and norms are socially constructed out of a multiplicity of voices and interests and how the social actors involved in their very fabric utilize and perceive them.

While UNHCR's policy and norm-setting activities take place at different institutional levels, this article examines the normative production of its Executive Committee (ExCom), as one example of this process. ExCom is indeed an interesting space to observe, as it is the only specialized multilateral forum at the international level which contributes to the development of international standards relating to refugees. On a regular basis, ExCom members negotiate and adopt thematic 'Conclusions' on refugee protection which seek to address gaps in international refugee law and provide guidance on asylum matters (UNHCR 2007). ExCom Conclusions are said to have considerable moral and political authority for they are adopted by consensus by all ExCom member states. In legal terms, they are considered as international soft law (Sztucki 1989), defined as 'norms which, in principle, are not legally binding but can nevertheless have concrete effects' (Snyder 1993: 16). They are part of this 'transnational legal order' telling states how they should treat the people living on their territory and leading to moral condemnation if not respected (Merry 2003: 105).

Rather than analysing the influence ExCom Conclusions may have on the normalization of the attitudes of states and other stakeholders, this article takes an ethnographic approach to examine how ExCom Conclusions are drafted, negotiated and used by social actors involved in their definition. Who are these actors and which types of epistemological framework, expert

knowledge and legitimacy do they draw upon to produce 'global' norms? Which techniques do they use to build consensus out of conflicting interests and representations? And, ultimately, what are the official, but also less official, uses they make of the ExCom Conclusion process?

I argue that addressing such empirical questions may contribute to improving our theoretical understanding of global refugee policy. ExCom is indeed a privileged 'transnational policy space' where the process of global norm-setting can be observed in the making, and where some of the dynamics that frame the 'global agora' of refugee policy can be identified (Stone 2008, as cited in Deardorff Miller 2012: 5). As highlighted by Bauman and Deardorff Miller (2012: 25), 'there is a lack of clarity over refugee policymaking processes, venues and individuals in global refugee policy, just as in global public policy'. In response, taking an empirical stance may help re-localize norms and policies that claim to be global in the specific social and political configurations that produce them. It can shed light on the politics and power struggles behind policy and the ways and reasons why such struggles are turned into a consensual narrative with often progressive, ambitious and positive connotation (Mosse 2011).

The production of ExCom Conclusions may be further understood as an agenda-setting process and a policy formulation exercise, the first two stages of the policy 'cycle' generally identified in the wider public policy literature (Howlett and Ramesh 1995). Key in these initial stages are the ways in which a specific issue is constructed as a 'problem' calling for cooperative efforts, and the process by which these 'problems' come to appear on the formal agenda of decision-makers. Drawing on network and transnational approaches to the study of public policy (Deardoff Miller 2012; Lascoumes and Le Galès 2007), this article will emphasize the importance of going beyond the traditional divide between state and non-state actors, national and international spheres, to identify the multiplicity of actors and legitimacies involved in the framing of such problems as 'global'. It will also utilize socio-anthropological approaches to the study of global public policy and international organizations, especially those pertaining to development aid (Ambrosetti 2009; Mosse 2011; Müller 2013), to explore the role agenda-setting and policy formulation have in the construction of new truth regimes, legitimizing new bureaucratic interventions.

Methodology

This article is based on an in-depth case study and a qualitative methodology. It examines the process that led to the adoption of ExCom Conclusion No. 107 on 'Children at Risk' in October 2007, as an example of global refugee policy. Employed at that time by UNHCR as an education expert, I participated in the drafting of this Conclusion and observed the negotiation process, and was subsequently able to interview key stakeholders as a researcher.[2] I was thus both a practitioner partly involved in this norm-setting activity and

a researcher observing and reflecting on that same activity. This position, between participatory observation and auto-ethnography, provided unique access to the networks of actors, formal and informal dynamics but also the set of constraints and contingencies, which all contributed to the formulation of a new set of global norms on refugee issues. It also helped me to consider specifically how apparently consensual policy statements result from complex negotiation, which deeply influences their nature, legitimacy and outcomes.

Yet, this position within UNHCR also presented some limitations: first, because I had better access to the preparatory work of UNHCR experts than to that of the diplomats. Second, because my role as a former practitioner raises an epistemological question pertaining to the ability to keep enough distance from the policy network I was engaged in, and an ethical question on the legitimacy of 'denying others their cosmopolitan claims by contextualizing, localizing and placing them in relationships' (Mosse 2011: 22). In addition, this analysis is based on the observation of one negotiation cycle only, thus lacking the diachronic approach necessary to better differentiate the structural and conjectural variables influencing the content and the form of these norms. Yet, the added value of such an empirical study is less in its ability to generalize, than to shed light, through a concrete example, on some of the social, epistemological and political processes involved in global refugee policy in the making.

This article defines ExCom Conclusions as international 'norms' or 'standards', terms that are used interchangeably. They are seen as only one part of global refugee policy, which is understood to include all policies, decisions, rules, guiding principles and recommendations aimed at addressing 'global refugee issues' through a set of actions to be undertaken by a range of stakeholders, not just states. Refugee problems are generally defined as global both because they have a trans-boundary dimension and because they are encountered by many states (Bauman and Deardorff Miller 2012). The specificity of ExCom Conclusions, as compared to other global refugee policies and norms, resides in the fact that they are adopted within an established UN body through an inter-state process and by consensus.

The article will first discuss the framework in which Conclusion No. 107 was drafted and highlight how global refugee norms, which are presented as universal, are actually embedded in specific epistemological and cultural frameworks as well as in localized networks of actors. It will then describe how the Conclusion was negotiated, highlighting how social positions of state and non-state actors *vis-à-vis* the Conclusion were shaped and how multiple voices were turned into a consensual narrative through techniques of bargaining, coalition-building, mediation and depoliticization. The final section of the article builds on the case study to provide broader analytical insights into the nature of global refugee norms and the implicit functions they may have beyond their stated goals.

Drafting Global Refugee Norms

The UN General Assembly established the UNHCR Executive Committee in 1958 to act as a control body with regard to the financial and administrative activities of UNHCR but also as an advisory body for protection policy. It meets annually in Geneva to review and approve the agency's programmes and budget and to advise on international protection through the formulation of Conclusions (UNHCR 2008).

Originally composed of 25 member states chosen by the UN Economic and Social Council for their 'interest and devotion' to the refugee problem, ExCom progressively grew to include 85 members by 2012. While ExCom members include the main donor states (the US, some European Union countries and Japan), it also now counts non-donor countries hosting significant refugee populations, including countries that are not signatories to the 1951 Convention relating to the Status of Refugees. The steady expansion of ExCom is largely due to the increased membership of the United Nations but also to the hope that inviting countries that have not signed the 1951 Convention to join ExCom could help to sensitize them on refugee rights (Loescher *et al.* 2008). ExCom Conclusions were originally directed to advise the High Commissioner in his function of protecting refugees, but since the 1970s, they have also been directed at states and at the larger international community, leaving an ambiguity about who is ultimately responsible for their implementation (UNHCR 2008: 7). During the 1970s and 1980s, Conclusions were quite short and remained general, but their length and precision steadily increased during the 1990s as UNHCR's activities expanded. Their concrete effects on States' attitudes and refugee protection have never been fully assessed apart from an evaluation conducted by UNHCR in 2008. This report (UNHCR 2008) notes that, although their concrete impacts are difficult to assess in the absence of a monitoring mechanism, they appear to be mainly effected through UNHCR's supervisory role (such as when UNHCR comments on draft national legislations or intervenes in court cases) and operational guidance (in handbooks or guidelines produced by the UN agency), as well as through state practice on refugee status determination in the interpretation of refugee law.

ExCom Conclusions are officially adopted during ExCom's plenary session, in a highly ritualized meeting, which is convened in Geneva's Palais des Nations every October. Yet, this meeting is only the end point of a series of informal consultations between UNHCR and ExCom member states that are held throughout the year. In contrast with the plenary session, NGOs and other external actors cannot attend these meetings where real disagreements are discussed.[3] The plenary session is therefore only the visible tip of the ExCom iceberg and, as ExCom participants like to say, 'a good ExCom should be a boring ExCom'. It was through these informal meetings that Conclusion No. 107 on 'Children at Risk' was negotiated between May and September 2007, before being adopted in October 2007.

The Social Fabric of the First Draft

Although the Conclusions are supposed to reflect the deliberations of ExCom member states, in practice, the legal experts of UNHCR's Division of International Protection (DIP) play a dominant role in the agenda-setting and policy formulation processes. As opposed to representatives of ExCom member states, who tend to have multiple responsibilities across a range of issue areas, UNHCR staff members appear as the holders of both expert knowledge (on refugee law) and practical knowledge (related to their field experience). Presented as better positioned to 'see the need for, and the value of, additional Conclusions' (UNHCR 2008: iii), they not only propose possible topics for a Conclusion[4] but also write the first draft of the text. Barnett and Finnemore (2004) have highlighted that the expertise held by international organizations (IOs) provides them with the legitimacy to define the nature of the problems for which they propose solutions, enabling them to maintain a certain autonomy *vis-à-vis* their member states. In this section, I explore how the UNHCR experts' autonomy has expressed itself through the agenda-setting and policy formulation processes, while being constantly contested by member states.

In January of 2007, four themes for a Conclusion were proposed to UNHCR member states: rescue at sea, asylum seekers as victims of human trafficking, refugee self-sufficiency, and children at risk. These themes emerged after a process of internal lobbying and competition within UNHCR, whereby various policy-oriented sections within the organization, specialized in different areas of refugee protection (health, education, durable solutions, etc.), tried to bring to the attention of the Division of International Protection issues relating to their own section's priorities.

From the list of four options, legal experts from DIP saw the first theme as the most pressing one, for access to asylum procedures during rescue at sea operations suffered from major legal gaps (informal conversation with UNHCR legal experts). Yet, member states decided to pursue a Conclusion on children at risk, the last option. Two diplomats explained their choice as follows: 'We wanted to choose the less sensitive topic to avoid confrontations' (Mark, representing a European state, December 2007); and, 'to avoid making commitments in areas [where] we want to keep our entire sovereignty' (Scott, representing a North American state, November 2007). A topic therefore appeared on the international agenda, not because it was an 'urgent' protection problem to be addressed, but rather because it was the outcome of a compromise between what competing UNHCR sections wanted to see codified in a Conclusion, and the concessions states were ready to make in terms of international commitments.

Although the members of DIP were not able to impose their choice of theme, they remained the main authors of the first version of the Conclusion and thus of the definition of what was the appropriate attitude states and other stakeholders should adopt with regard to children 'at risk'.

The drafting process that followed was entirely coordinated by UNHCR legal experts from DIP together with the Head of the Child Unit. The latter was a former employee of UNICEF and part of a transnational advocacy network on child protection, whose members were employed in UN agencies (e.g. UNICEF, UNHCR), NGOs (e.g. Save the Children, Terre des Hommes) and academic institutions, and who had circulated from one institution to the other. Flexible and dynamic, this network had all the characteristics of a 'transnational epistemic community' (Haas 1992), as its members shared basic assumptions and common understanding on the situation of refugee children and worked, at least temporarily, for the common moral cause of advancing solutions to what they had defined as a new category of population at risk: 'child victims of armed conflict'. This network maintained that solutions could only come from a comprehensive and systematic approach to child protection, contained in the notion of 'child protection system'. The Head of the UNHCR Child Unit thus made it his priority to include this notion in the text, along with the principle of the 'best interest of the child', recognized in the 1989 Convention on the Rights of the Child. At stake was also the will to legitimize UNHCR's authority to determine the best interest of refugee children (Pouwels 2008).

Once the key concepts of 'child protection system' and 'best interest of the child' were included in the text, the remainder of the Conclusion was drafted through a consultative approach. Each policy section in UNHCR Headquarters was asked to write a paragraph for the Conclusion. As an 'education expert', this is how I became involved in the process and used this opportunity to highlight the main policy priorities of my Unit (quality and safe education, access to post-primary opportunities). With my colleagues, we were acting as 'policy entrepreneurs', hoping to convince member states to transform what we considered to be the priorities for child protection into international recommendations. Yet, none of us were inventing these solutions on our own. Instead, we were acting on the basis of shared understandings that circulated more widely within interagency networks to which we belonged, and in which we were socialized through various workshops. As we actualized these shared understandings in the refugee context, we contributed to their dissemination, but also their reinterpretation to fit the context.

The majority of proposals made by UNHCR policy sections and by NGOs were eventually incorporated in the first draft of the Conclusion. Like other IOs today, UNHCR is guided by a 'rights-based approach', which implies that basic human rights are all interdependent. Difficult to contest, this approach made it challenging to prioritize one action over others and partly explains why the first draft of the text was rather long (14 pages), looking more like a wish list than an attempt to target gaps in international refugee law.[5] The Conclusion followed an almost 'clinical' reasoning and structure, typical of policy and normative documents with a global scale (Müller 2013): first, the broader legal and policy instruments pertaining to child protection

were 'recalled' and reasserted, so as to inscribe the text and its legitimacy in the wider human rights regime. Then, a diagnosis was established to define the 'problem' through a long enumeration of all the risk factors threatening displaced children. This diagnosis was framed on the implicit assumption that displacement is an abnormality that can put children at higher risk and that children are a particularly vulnerable category. In the last part of the text, called 'prevention, solutions and responses', a list of remedies to tackle the 'problem' was defined, starting from the need to register refugee children 'at risk' and gain more knowledge about their situation, so as to better protect them. These remedies tended to take a technical approach to society, for they were based on the assumption that social reality could be modified through the implementation of a series of recommendations (Mosse 2011: 5).

Above all, the text placed the child at the centre of attention, simultaneously as a 'victim' but also as an agent capable of participation and self-organization, for example within child committees. The child was considered as the holder of individual rights, such as the right to individual protection, health, contraception, or homosexuality, the realization of which called for a moral imperative to intervene and for states to take on their 'responsibilities' in close collaboration with the UN and NGOs. Moreover, the interests of the child were seen to take precedence over the interests of the group to which the child belongs, and in specific circumstances the text called for UNHCR to determine what these interests should be (Pouwels 2008). The first draft was therefore embedded in a liberal and Western understanding of rights, childhood, sexuality and family as well as in a new institutionalism which dominates both international standards and instruments today (Mosse 2011: 4). It also reinforced the regime of truth on which refugee protection is based by framing displacement in terms of abnormality and vulnerability.

Negotiating the Text

Although not legally binding, the final text of Conclusion No. 107 was nevertheless the result of tough negotiation during several one-day sessions over a six-month period. Access to these sessions was restricted to delegates of ExCom member states, as member state representatives feared that NGO observers would make public the political games sometimes played during negotiations (interview with ExCom Rapporteur, Geneva, November 2007). As in other UN forums, ExCom Conclusions are adopted by consensus according to the UN principle that all member states are equal and have a potential veto. The text was reviewed paragraph by paragraph through several readings. Delegates proposed amendments, in principle, according to instructions they received from their governments. A paragraph was eventually adopted once there were no more objections. Discussions were moderated and facilitated by the ExCom Rapporteur, a representative of an ExCom member state, who, in 2007, was North American. The formal organization of the negotiations was supported by the Executive Secretariat of UNHCR,

who were also in charge of inserting proposed amendments directly into the text, projected on a power point in the meeting room. Finally, two of the DIP staff responsible for coordinating the drafting of the original text were also present. These four individuals (ExCom Rapporteur, one person from the Secretariat and two from DIP) were sitting on a stage, facing the delegates seated in rows. Despite the rather small size of the room and the fact that most delegates knew each other, modes of communication remained impersonal, mediated through translators, earphones and microphones.

The Diplomats

The diplomats representing ExCom member states were the most visible protagonists of the negotiations. Only 20 ExCom members participated in the process and fewer than 10 were truly acting as leaders. A minority specialized in asylum and humanitarian issues, while the majority were generalists. As observed within other multilateral forums (Buchet de Neuilly 2009), they were not acting as simple representatives of their states, but rather as brokers between various arenas (national and international), translating what could be thinkable and feasible from one to the other.

Negotiation theories have shown that multilateral negotiations under the consensus rule tend to dissipate structural power inequalities by granting minor actors—here, non-donor countries—a greater share of influence than they would normally have because of the veto power (Zartman 1994). This observation was confirmed in the ExCom negotiation process, although not for all smaller countries.

Indeed, power relations between delegates clearly favoured some non-donor countries belonging to the Organization of the Islamic Conference (OIC), many of whom had only recently become members of ExCom in recognition of the large number of refugees they hosted on their territory.[6] Forming a coalition led by three countries,[7] they used the ExCom arena less to develop international refugee law than to claim their rights to cultural differences and financial assistance. The leaders of this group were systematically opposed to paragraphs that were too explicitly embedded in liberal conceptions of childhood, family and sexuality, requesting that the notion of the 'best interest of the child' be complemented by statements underlining the importance of the role of the family as a whole (§b(6)). Likewise, the paragraph asking states to protect 'children who are transgressing social and gender roles', alluding to homosexuality, was contested on the basis that the latter was not recognized in their countries. The right to contraception was another issue of debate (here the OIC countries allied with the Holy See), as was the proposed naturalization of refugee children as a durable solution. OIC countries eventually asked for the inclusion of the 'principle of burden-sharing' in three different paragraphs of the text (two references are included in the introductory paragraph and a third one in §g). Overall, OIC states were very supportive of each other, acting *en bloc* and constituting a rather

stable coalition. They quite often used obstruction strategies to block amendments proposed by other countries, and eventually succeeded in having many of their amendments passed, including the deletion of any direct reference to homosexuality.

The position of OIC representatives was influenced at once by the political stance of their country *vis-à-vis* refugees, different national legislations (on contraception, homosexuality), different cultural representations of childhood and sexuality, economic considerations (the lack of means to ensure basic rights even to their own citizens), but also by issues of image and reputation on the diplomatic scene. Some issues, such as burden-sharing, contraception or homosexuality, were indeed not central themes to the Conclusion, but because the Group of 77 had taken strong positions on these questions in other UN forums, their diplomats were compelled to take a similar stance during ExCom negotiations. As explained by one diplomat, 'lots of people come with their habits from New York and just pick up the same themes of confrontation even though they may not have instructions' (conversation with the ExCom Rapporteur and Mark, December 2007). Yet, one could also add the fact that poorer refugee-hosting States may be 'fed up with rich northern States pontificating about the importance of protection while avoiding contact with refugees' (Barutciski 2010: 137).

Compared with the active presence of OIC countries, the relative absence of the main donor countries (the US in particular) was striking. Either they did not have an interest in the issue, did not attach sufficient importance and legitimacy to the process to be actively involved, or favoured other channels to influence UNHCR policies such as direct bilateral negotiations or earmarked funding. Moreover, those who participated on a regular basis were sometimes divided. On the one hand, some Scandinavian, European and North American countries defended actively what they called a 'progressive' development of the international refugee regime and had strong positions on issues such as contraception and homosexuality. This 'progressive' attitude was, however, to be understood in the light of their national legislation and cultural representations, which were, in their case, already in accordance with international standards, but also in the light of their geographical situation (fewer arrivals of refugees) and economic situation (more favourable to support them). On the other hand, other UNHCR donor countries facing significant migratory pressure, such as Australia, adopted a 'harder' line and were more incline to defend their national sovereignty, especially with regard to durable solutions. Yet, despite their internal divisions, all donor countries used a similar rhetoric against OIC countries, accusing them, and especially those not signatory to the Refugee Convention, of 'weakening' international standards and undertaking what they described as a 'social dumping' of the text.[8] The disqualification of these countries as being 'conservative' contributed to reinforce the impression of a strong divide between donor and non-donor countries, while obscuring the fact that, just like OIC countries, many donor countries were also trying to limit the development of new standards

when the latter were not in line with national contexts, or already had restrictive asylum policies on their own territories.

Yet, this divide still revealed the existence of growing North–South tensions over refugee protection within ExCom (Barutciski 2010), which culminated in 2011 and 2012 when, for the first time since the 1970s, ExCom members failed to adopt a Conclusion, arguing that the process of the negotiation should be discussed and reviewed. This 'crisis' reflected, more widely, the challenges raised by the democratization of ExCom and thus by the participation, within the debates over global refugee issues, of countries contesting the hegemonic discourse on refugee rights and actively pressing for burden-sharing (Barutciski 2010).

The Experts

As holders of specialized knowledge, the role of UNHCR experts was not restricted to the drafting of the first version of the Conclusion. Instead, they also acted as 'an actor in its own right, teaching states their interests' (Park 2004: 80) during the negotiation process. The legal experts and the Head of UNHCR's Child Unit regularly intervened in the negotiations to defend what they considered as being 'their text', and countered attempts by state representatives to amend it or to reduce its constraining dimension. Their strategy was to go back to the technical aspects of international law, by reminding states that some contested standards of the Conclusion had already been approved in other multilateral agreements and that 'agreed language' could not be renegotiated. By shifting towards legalistic and formalistic discussions, they contributed to the depoliticization of most debates, which otherwise would have led to complex discussions over the political, economic or cultural constraints related to the development of refugee rights, and the articulation of international norms with national legislations.

The capacity of experts to depoliticize debates is well known. Barnett and Finnemore (2004: 24), for example, note that: 'by emphasizing the objective nature of their knowledge, staff of IOs are able to present themselves as technocrats whose advice is unaffected by partisan squabbles.' Mandated to uphold refugee rights, experts also have the perception that they act for the sake of the public good and build their legitimacy on an objective difficult to contest: protecting human rights. Yet, whereas they perceive their role in moral terms, member states described UNHCR's approach as an 'arrogant' and 'dogmatic' attitude. As noted by one participant: 'the UNHCR should remember that the negotiation of ExCom Conclusions is a state process. They intervene too much and there is too much ownership on their part' (interview with ExCom Rapporteur, Geneva, December 2007). These criticisms revealed, once again, how wider structural tensions, this time between UNHCR's staff and members of its Executive Committee, may affect the EXCOM Conclusion process. Although states created UNHCR to protect refugee rights, they, indeed, hardly accept the way it has increasingly affirmed its

authority by depoliticizing, moralizing and making technical, issues that are inherently political. As Barutciski recalls (2010: 138): 'there are clearly limits to how much States will allow themselves to be led by the legal services of a multilateral institution in the implementation of important norms concerning refugees that seek access to their territories'. Criticisms of UNHCR also culminated in 2008 when various member states requested the UN agency to conduct an evaluation of the usefulness of the Conclusions, but also of the drafting process, showing clear indications of a growing mistrust *vis-à-vis* the agency and of a will to regain ownership of the process (UNHCR 2008).

Finally, although each paragraph was amended by diplomats, the technical and moral authority of UNHCR experts still allowed them to maintain in the final version of the text the two principles that were most important to them: the 'child protection system' approach (asserted right from the first paragraph a and §b(2) and then throughout the text), and the recognition of UNHCR's authority, alongside that of the state, with regard to the determination of the best interest of the child refugee (§g(2)).

Intermediaries and Lobbyists

Less visible and acting from the periphery, two other actors contributed to the negotiation dynamics: the ExCom Rapporteur, and international NGOs with an office in Geneva. The Rapporteur influenced the debates by choosing to whom to give the 'floor' and using strategies such as sequencing and postponement to overcome blockages. More significant was her role of mediation, as she took the initiative to convene informal working groups outside the official negotiations each time the formal negotiations were blocked after the second or third readings. It helped in reaching a compromise but, as observed in other multilateral forums (Barston 1997), it also created unequal opportunities to influence negotiations as not all stakeholders were invited to join these side meetings.

The Rapporteur also influenced negotiations by systematically informing Geneva-based NGOs about the evolution of the debates. NGOs could thus play an active role from the periphery of the negotiation process. They hosted informal lunches to lobby some member states on a number of controversial issues. Their technique was to sensitize them to the implications of certain recommendations they were opposed to, through concrete field-based examples. Their attitude was generally perceived as more pedagogic and less arrogant than that of UNHCR, also because their relation to the states was structurally different. During negotiations, NGOs also continued to meet with UNHCR staff (informal conversation with an NGO member of ICVA). Just as NGOs swayed UNHCR to incorporate their ideas during the drafting process of the Conclusion, UNHCR experts encouraged NGOs to push governments to soften their positions. Both were in fact acting towards the same goals, as many of them were part of the same epistemic networks and shared similar views on what child protection should be and

how it should be done. However, far from representing the diversity of positions within the non-governmental world, these NGOs appeared instead as institutionalized counter-powers well inserted in the wheels of Geneva's diplomatic machine.

Building Consensus

Overall, the negotiations over ExCom Conclusion No. 107 were a multi-actor and fragmented process involving diplomats, international civil servants and NGO activists. Each actor tried to influence the process, be it through techniques of coalition-building and obstruction (OIC countries), technicization of debates (UNHCR), mediation (Rapporteur) and lobbying (NGOs). If OIC countries and UNHCR experts appeared to have the largest capacity to influence, power dynamics remained diffuse and spread through various scenes, visible and invisible. They were characteristic of what Stone calls the 'global agora', defined as a public space of policy making, although it is one with 'blurred boundaries' between state and non-state actors, international and national levels, 'where authority is more diffuse, decision making dispersed and sovereignty muddled' (Stone 2008: 21 as quoted by Bauman and Deardorff Miller 2012: 5). Various representations of childhood and sexuality confronted each other, as well as diverse legal frameworks. Besides, there was a structural tension between the over-politicization of the debates by member states (amongst themselves and against UNHCR) and their constant depoliticization by UNHCR. How was it possible within this tense, politicized and fragmented arena to reach a consensus over a final text that was to become 'universal'?

Negotiation theorists have answered this question by focusing on bargaining strategies, argument and persuasion, coalition strategies (Zartman 1994). In the case of ExCom Conclusion No. 107, haggling and alliances did, indeed, play a significant role: consensus over certain paragraphs was reached through implicit agreements between two opposing camps arranged outside the main negotiation room, far from peers' social pressure. Yet, subtle reformulations and the use of reservations were also key in reaching a consensus. Many points of disagreement were indeed overcome by shifting debates from the actual content of the Conclusions to their form. After the second reading, discussions were increasingly focused on the choice of different verbs, apparently quite similar. For example, OIC states, but also certain Western countries, would stop blocking the process if constraining verbs such as 'ensure' were replaced by weaker ones such as 'make all efforts to' or 'facilitate' (see especially the subdivisions of §h which almost all begin by one or the other). Likewise, amendments focused on introducing reservations such as 'where feasible', 'as appropriate' or 'in accordance with national laws' (see especially under §§g and h on prevention). Discreet and not so visible to external readers, these reservations or 'weaker' language were actually a way for states to

incorporate reasons for not following the recommendations of the Conclusion.

To reach consensus on different conceptions of childhood, another technique was simply to include both liberal and non-liberal views in the final text: one asserting the need to consider the best interests of the child, and the other reaffirming the importance of taking into account the interests of the family (§b(5) and (6)). Furthermore, broad notions that were ambiguous enough to be interpreted in a variety of ways replaced precise formulations. By reformulating sentences at a higher level of generality, contentious issues could be successfully avoided. This was the case for the controversy about the reference to homosexuality implicit in the expression 'children who transgress social and gender roles' which was eventually reformulated into 'children who suffer from social discrimination' (§c(2)). These subtle reformulations were actually hiding fundamental oppositions between diplomats, or significant state resistance to the recommendations proposed by UNHCR. They were crucial in avoiding substantial discussions on the content that was politically too sensitive and impossible to resolve within a six-month negotiation framework. Expressing tense power relations between stakeholders that often had nothing to do with the theme discussed, the shift of debates from the content to the form was overall key to building a text which could be vague and contradictory enough to be agreed. Far from being specific to the negotiations on global refugee norms, this observation has been made with regard to other global policy models where 'the universal (is asserted) over the particular, the travelled over the placed, the technical over the political and the formal over the substantive' (Craig and Porter 2006: 120), in which 'processes take over from places and categories from relations' (Mosse 2011: 4).

This last observation also highlights the importance of the temporal dimension in the construction of consensus. The Conclusion had to be negotiated in a six-month timeframe to be officially adopted during ExCom's plenary session. Both member states and UNHCR knew they had to reach a compromise at some point, and both wanted to avoid having to display their divisions in the public arena of the plenary session. As the deadline approached, the participants in the negotiations were more open to compromise. Stakeholders therefore also acted under the pressure of having to display publicly their commitment to developing the refugee regime in a spirit of consensus.

Formally adopted in October 2007, Conclusion No. 107 appeared in its final version as a long and weak text, written in watered-down language. Yet, it included at least three new notions, which were important for both UNHCR and NGOs: the recognition of the category of 'children at risk' in the realm of asylum, the formulation of a new systemic approach to child protection and the recognition that UNHCR had authority to determine the best interests of refugee children. These three elements all contributed to reinforce the framing of displaced children in terms of abnormality and vulnerability, while at the same time strengthening UNHCR's authority and legitimacy to decide, in certain circumstances, children's futures.

Global Refugee Policy in the Making

The case of ExCom Conclusion No. 107 has a number of implications for the study of global refugee policy. Although it cannot allow for generalization, the ethnographic approach adopted provides important insights on the nature of the refugee norms produced by the only multilateral forum dedicated to refugee protection, but also on the implicit functions they may have beyond their stated objectives.

First, our case study suggests that global norms formulated by a multilateral forum such as ExCom cannot be described as the simple product of interstate bargaining or of Western imperialism, nor do they appear as an expression of the autonomy of international organizations, signalling the decline of the sovereign state. Their social fabric involves a wide variety of powers and counter-powers whose boundaries are not clear-cut and whose capacity to influence is rather diffuse. Among these actors, 'trans-institutional' epistemic communities, made up of experts from IOs, NGOs and academics, sharing the same knowledge and beliefs on certain issues, play a key role, especially in the agenda-setting phase. They at once frame the content of 'global' problems, build new categories of actors as objects of intervention and propose recommendations for actions. As observed in other public policy processes (Howlett and Ramesh 1995: 112), their legitimacy is based on their knowledge rather than their democratic representativeness, and their influence resides in their ability to gain a 'policy monopoly' on certain issues: on the one hand, they control the interpretation of these issues according to specific epistemic and cultural assumptions and legal frameworks, often based on a logic of human rights and moral interventionism which is hardly questionable and thus easily hegemonic; on the other hand, they have a unique access to decision-makers from different spheres or institutions.

Yet, governments, which may not always belong to these knowledge-based networks and act primarily according to their political and material interests, also play a significant role in the agenda-setting and policy formulation stages of global policy making. Their role may vary according to the nature of the policy forum and decision-making process observed. In our case, for example, the interstate and consensual nature of ExCom made it possible for state actors to play a role in setting the agenda by choosing among the various 'problems' framed by epistemic networks. The nature of this forum also led to the emergence of a coalition of non-donor countries playing an active role, thanks to their veto power, in restricting the constraining dimension of the solutions formulated by experts, supplying them with counter-hegemonic claims or, in extreme cases, blocking the process of their negotiation. At work in the social fabric of global refugee norms are thus three types of legitimacies: technocratic expertise, state representativeness and moralism, which at once enhance the production of a hegemonic 'regime of truth' on how to understand social reality, and provide openings for the incorporation

of counter-hegemonic claims. Global policy models thus seem to 'not work to impose universal modernist designs from the center but rather to disembed and recombine' localized sets of interests, ideas, networks and institutions (Mosse 2011: 5).

Although they are promoted by various actors, our case study also stresses that global refugee norms do not necessarily incorporate the diversity of positions and interests of all stakeholders involved in refugee issues, nor do they include the voices of refugees or citizens at any stage. Indeed, global refugee problems and solutions appear to be shaped by extremely localized configurations of actors, ideas and interests, raising serious questions about the representativeness of ExCom norm-setting activity as an example of global refugee policy. Conclusion No. 107 remained the expression of a compromise reached within a very localized network of actors: a bunch of technical and legal experts from UNHCR headquarters, less than a dozen active member states, and a couple of institutionalized, Geneva-based NGOs. The notion of 'global' may thus be misleading to describe the nature of the norms produced by ExCom, for it tends to gloss over 'how global politics actually results from village politics' (Mosse 2011). Moreover, it generates the implicit assumption that they are based on a widespread agreement, whereas the depth of their support is never really known (Barston 1997). In fact, global standards, just like most consensus produced by international organizations and NGOs, conceal the conflicting interests and the lack of coherence behind them: they 'hide how fragile and responsive to politics expert consensuses actually are' (Mosse 2011: 12) and as shown by Mosse, what should be remarkable is not the gaps between practice and global policy models, but rather the capacity of the latter to produce success and preserve, by the operation of expertise, policy as a structure of representation (Mosse 2011: 13). Lastly, global norms may not be as protective of refugees as often assumed. Instead, the veto power of the consensus rule gives the final say to conservative forces, leading stakeholders to agree on the lowest common denominator and contributing to the preservation of the status quo.

The Implicit Functions of Global Refugee Norms

The ethnographic approach can also shed light on some of the implicit functions global refugee policy may have. Allowing for an in-depth analysis of the multiple ways in which social actors utilize global norms in real life, the case of ExCom Conclusion No. 107 shows that the stakeholders involved in their very fabric do not always understand them as having a problem-solving function (addressing protection gaps) but rather as having a politico-symbolic function of contestation, of legitimation and mobilization and of perpetuating narratives and social prestige.

For non-donor countries hosting large refugee populations, the ExCom Conclusion process is indeed not utilized to develop new refugee standards, but rather as a means to assert their cultural, religious or legal differences,

contest certain standards perceived as too 'hegemonic and Westernized', claim rights for financial assistance and finally assert their state power against donor countries and UNHCR pressuring them to protect refugees on their territories. The ExCom arena thus provides an opportunity for these countries, with no financial power to influence UNHCR policy, to use their veto power to assert their own perspective and interests. The ExCom Conclusion process can therefore be seen as having an implicit function of contestation for non-donor countries. Just as in a ritual of inversion, it allows non-donor countries to exercise power and be considered, at least temporarily, as equal partners, thus restoring a certain balance in power relationships between ExCom member states. If global norms have sometimes been described as a vehicle of Western hegemony, they can therefore also be infused with counter-hegemonic views or appear to be contested narratives right from their adoption.

UNHCR experts also make use of the ExCom Conclusion process for additional reasons than their official goals. It is first of all used to provide an international legitimacy to the problems and solutions they have defined in the first place, and subsequently to have member states recognize the UN agency's authority over new issues. Referring to ExCom Conclusions in various policy documents then becomes a strategy to legitimize appeals for funding to support new bureaucratic interventions. But the ExCom Conclusion process is also utilized by the UN agency to maintain the credibility of the institution of asylum. It contributes to perpetuating the narrative that the international refugee protection regime continues to improve, in a context where asylum policies are actually increasingly restrictive worldwide. In that respect, the Conclusions act as an authoritative discourse and convey what refugee rights and standards should be in the ideal world, as well as what states and other stakeholders should do to guarantee them. More than a tool for normalizing the attitude of states or providing direct operational guidance, they are thus perceived above all as a way to contribute to maintaining the issue of asylum on the international agenda and sustaining the mobilization of a large number of actors around it.

Finally, the ExCom Conclusion process is used by states to maintain a form of social prestige: by adopting Conclusions by consensus, member states publicly display their official commitment to improving standards in the area of international refugee protection, although they may actually have restrictive asylum policies at home. Perpetuating this myth is fundamental for their international reputation. As Barutciski (2010: 135) writes, 'Self-promotion, whether by states or organisations, is a key part of the international refugee regime.' States often commit themselves to international law by reciprocity, conformity, and the desire to be part of the international community or to appear 'civilized' (Merry 2003). They also care about international legitimacy because it has become 'an essential contributor to perceptions of domestic legitimacy held by their own citizens' (Finnemore and Sikkink 1998: 903). This important political function may explain why, although some

delegates recently contested the problem-solving function of ExCom Conclusions and obstructed the negotiation process in 2011–2012, UNHCR and ExCom member states eventually restarted the annual negotiation of ExCom Conclusions in 2013.

In the end, we may hypothesize that global refugee norms may not only be about improving refugee standards and providing guidance on protection gaps. Just like any global (but also national) policy, they may also be about perpetuating narratives, exercising power and making claims for political consideration, maintaining political reputation or mobilization (Van Gastel and Nuijten 2005: 101).

These conclusions finally point at a crucial question: can norms formulated and adopted by a few social actors only, on the most consensual theme and the lowest denominator, and sometimes for other purposes than the official ones, claim to be international standards enhancing refugee protection? This brings into question, again, the legitimacy and representativeness of global refugee norms, all the more when social actors involved in their definition express serious doubts about their effectiveness. Strikingly, despite their serious shortcomings and doubts about their legitimacy as international standards, ExCom Conclusions seem to be used as an authoritative source by a number of stakeholders, not only by UNHCR to justify new areas of intervention or morally condemn national legislations, but also by judicial institutions or NGOs involved in the practice of refugee status determination (UNHCR 2008). They are 'alive documents as the social processes that produced them and they have a "performative quality" and social effects, even though the salience of policy ideas that they convey summarize and hide this "politics of interaction"' (Mosse 2011: 12). Since it was not within the scope of this article to review the many ways in which ExCom Conclusions are activated after their adoption, we will conclude with the hypothesis that just as during the process of their definition and adoption, they may work in practice either as instruments of control producing a new truth regime and legitimizing the expansion of bureaucratic power, or as a means for agency and as instruments for political claims, moral or judicial condemnation of states disrespectful of their international commitments.

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1. Apart from Palestinian refugees in Syria, Lebanon, Jordan and the Occupied Palestinian Territories, who are under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

2. Interviews and informal conversations were held with the ExCom Rapporteur, NGOs, UNHCR legal experts and seven ExCom member states. The author was not able to interview delegates from non-donor countries, who all declined requests for an interview. Fictional names are used when referring to respondents.

3. Only the European Union has obtained access to informal consultative meetings as an observer.

4. It is, however, possible for ExCom member states to suggest topics for new Conclusions (UNHCR 2008).

5. A 2008 UNHCR report notes, however, that the form and length of ExCom Conclusions are different from one year to the other and depend on the team in charge of drafting them.

6. OIC countries constitute a regional bloc of the Group of 77, which has been very active in UN fora since the 1960s. Other non-donor countries, such as those from sub-Saharan Africa, were either absent or in compliance with the position of OIC leader countries, due to the absence of instructions from their capitals, their lack of expertise or the small size of their diplomatic missions.

7. Lebanon, Pakistan and Bangladesh. Iran would sometimes play a significant role as well.

8. Synthesis of various statements made by European and North American states, as well as the ExCom Rapporteur, November–December 2007.

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