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## UNHCR in Hong Kong: the local NGOs' friend or foe?

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**Institut d'études politiques de Grenoble**

2011-2012

Elodie Maude LACOUR

# UNHCR in Hong Kong: The Local NGOs' Friend or Foe?



Dissertation of Master's Degree « Organisations internationales »

Under the supervision of Pr. Yves Schemel



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I am particularly grateful toward all my colleagues at the UNHCR Sub-office in Hong Kong, who have always been available to answer my questions, to help me to learn and to freely share their opinions on any given issue. They have taught me a lot and made my experience in this office unforgettable. I also would like to thank my Professor Yves Schemeil, supervising this thesis, for his availability, suggestions and useful advice for my research and questions.

## ACRONYMS

AS: Asylum-seeker

ASTC: Asylum-seeker and torture claimants

CAT: Convention against Torture

CPA: Comprehensive Plan of Action

HKRAC: Hong Kong Refugee Advice Centre

IOM: International Organization for Migrations

IP: Implementing partner

IRC: International Rescue Committee

ISS: International Social Service

POC: People of concern

SWD: Social Welfare Department

PRC: People's Republic of China

RSD: Refugee Status Determination

SAR: Special Administrative Region (Hong Kong and Macau)

SOHK: Sub-office in Hong Kong

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

UNICEF: United Nations International Children's Emergency Fund

VF: Vision First

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## **Preliminary Remarks about the UNHCR and its Sub-Office in Hong Kong**

The United Nations Office of the High Commissioner for Refugees (UNHCR) is accountable to the UN General Assembly and the Economic and Social Council (ECOSOC). This agency in charge of the refugee issue worldwide is related to the United Nations through its Executive Committee, which is composed of 78 members, who approve the agency's biennial programs and budget. These are presented by the High Commissioner, currently António Guterres, appointed by the UN General Assembly. The UN refugee agency's mandate is defined by the 1950 UNHCR Statute<sup>1</sup>. In 2003, the General Assembly voted the extension of the organization's mandate "until the refugee problem is solved." The High Commissioner reports annually to ECOSOC and the General Assembly on the work of UNHCR.

As head of the organization, the High Commissioner directs the work of UNHCR. The agency has a national and international staff of about 7,685 persons working in more than 125 countries<sup>2</sup>.

Most UNHCR operations are in the field, where the agency's core work is managed from a series of regional offices, branch offices, sub-offices and field offices. The UNHCR Sub-Office in Hong Kong (UNHCR SOHK) is one of those.

The following map illustrates the localization of UNHCR SOHK, and highlights its central situation in East Asia.

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<sup>1</sup> <http://www.unhcr.org/3b66c39e1.html>, consulted on September 1st, 2012

<sup>2</sup> [http://www.unhcr.org/hk/unhcr/en/about\\_us/office\\_of\\_unhcr.html](http://www.unhcr.org/hk/unhcr/en/about_us/office_of_unhcr.html), consulted on August 28th, 2012



Source: <http://www.unhcr.org/pages/49e45b276.html>

The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states. UNHCR is an Office which was created to enforce the 1951 Convention. The 1967 Protocol removed geographical and temporal restrictions from the Convention.

According to the Convention, a refugee is someone who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group of political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>3</sup>

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<sup>3</sup> Convention relating to the Status of Refugees, 1951, <http://www.unhcr.org/3b66c2aa10.html>, p. 5

In Hong Kong, the Sub-Office is a small structure whose composition is frequently changing, because the staff turnover is very high. There are two separate units, the “operations” one and the “PSFR” one, this acronym standing for “private sector & fundraising”. Beside from conducting very distinct mandates, those two main parts are also physically separated, in different buildings in Hong Kong, though only five-minute-walk away from each other. If the operational unit was created in 1989, the PSFR one is much more recent, funded when awareness about the wealth of the Hong Kong territory was raised. The PSFR unit’s staff has a dozen people, whereas approximately twenty staff members work in the operational unit. The latter is itself composed of a Head of Office, a Administration/Finances Unit, a Programme Unit, a Resettlement Unit and a Protection Unit. In a nutshell, the Programme Unit deals with humanitarian assistance for asylum-seekers and refugees, whereas the Protection Unit covers Registration, Refugee Status Determination (RSD – where the staff is the most numerous) and non-refoulement issues. The Resettlement unit is responsible for finding a durable solution for refugees – in the case of Hong Kong, the quasi-only solution being resettlement in a third country.

Among the staff, only a few persons are foreigners or international civil servants. Most staff members are employed locally or under UNOPS contracts.

When thinking of a potential research question for which my internship could be used as a field of research, it was logical that it would be linked to UNHCR’s operations within the Hong Kong context. What was decisive to define a precise topic was actually my first impression, at the start of the traineeship: there is a complex network of actors involved in the sphere of UNHCR’s work here in Hong Kong. I thus started wondering whether such interweaving of organizations was something unique to the Hong Kong situation, or if UNHCR globally works in constant interactions with third organizations such as NGOs. Besides, soon after my starting day, an incident occurred with one of the NGO “partner”, which triggered the question of the essence of the relationship between UNHCR SOHK and the NGOs: are they really cooperating, or are competition and conflict also a prevalent risk in defining their relations?

It is based on these initial feelings and observations that it was decided it would be interesting and sensible to study in detail the work of UNHCR SOHK along with its different fellow organizations, their relationships and how those influence the implementation of the UN Agency's international mandate.

We also considered that the particularities of the Hong Kong Special Administrative Region (HKSAR) would make this research especially interesting. Hong Kong ceased to be a British colony in 1997 and the territory was handed over to the sovereignty of the People's Republic of China (PRC). However, despite the United Kingdom, the PRC and Macau being signatories of the Convention relating to the Status of Refugees, HKSAR is still excluded from this regime. The Hong Kong government thus doesn't recognize refugees as such, and it is in that context that UNHCR is present to fill the gap in terms of refugee determination and protection. The SOHK mandate is hence to process refugee claims, to protect refugees and to find a "durable solution" for them – either local integration, voluntary repatriation or resettlement in a third country.

The History of Hong Kong made it a territory in which freedom of speech and human rights are generally respected. There is an important fabric of NGOs, in the humanitarian field but also in the human rights field. One could wonder about the impact of the newly established Chinese sovereignty on the human rights situation in HK, and on the general acceptance of UNHCR's mandate implementation on the territory.

## **Introduction**

Considering the UNHCR's presence in Hong Kong and the peculiar political and social characteristics of this territory, the issue of the relationship between UNHCR and local NGOs in Hong Kong will be under scrutiny in this thesis. Our research questions are: Do organizations compete or cooperate, and how has their mutual relationship evolved through time? What kind of linkages and constraints imposed by the local government prevail in implementing the organization's mandate and in enforcing refugees' human rights? Is the refugee situation in Hong Kong common to

other UNHCR operation fields, or very peculiar? To answer those questions, an analysis of the observations of the situation will be carried out, following a presentation of the local context to better understand its particularities, and combined with relevant theoretical inputs. Such analysis will allow us to stand back in a bid to get a more global perspective, and to draw comparisons with other situations the UNHCR can face.

Going further into the question, this study can be an opportunity to examine and put to the test various organizational theories, like the principal-agency approaches. Indeed, one can consider the UNHCR either as an intergovernmental agency or as an agent with multiple principals – the UN member States. According to Hawkins, Lake, Nielson and Tierney, “to be a principal, an actor must be able to both grant authority and rescind it”<sup>4</sup>, and States do grant authority to the UNHCR. In parallel, we could also consider UNHCR SOHK as a principal whose multiple agents, or contractors, are the local NGOs, with the added complexity of the role played by the Hong Kong government. This myriad of actors involved in UNHCR’s work could make one foresee a phenomenon of autonomization on the part of the UNHCR local office, by strategically adapting and getting more influence among the loose network of agents. It could indeed fall under such theoretical scheme, and we will attempt to discover whether the reality corroborates it, or proves it wrong.

Even though one of the main tasks of the SOHK is Refugee Status Determination, for which local staff is the most numerous along with the fund-raising unit, we will not go deep into the technical elements of this process in this dissertation, as we aim at focusing on the UNHCR’s interactions with external actors. Similarly, even though we will introduce the refugee population of Hong Kong, a further analysis on their motivations for seeking asylum will not be conducted as it falls out of the delimitations of our selected research questions.

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<sup>4</sup> HAWKINS Darren, LAKE A. David, NIELSON Daniel, TIERNEY J. Michael, *Delegation and Agency in International Organizations*, Cambridge University Press, Cambridge, 2006, p.7

The data used for this study will be primarily sourced from a six-month field experience as a full time trainee within UNHCR SOHK. Such immersion allowed me to observe and record first-hand relevant information for the purpose of this research: this includes everyday interactions among staff members, with refugees and asylum seekers, as well as with NGO and government workers. The observations carried out on a day-to-day basis in such working environment thoroughly fueled this study.

Casual chatting and interviews with UNHCR colleagues and NGO workers happened regularly, and were rich in the sense that most colleagues have an extensive experience in different refugee settings around the world. Others have always worked in Hong Kong, thus their analyses are insightful on the many changes that occurred locally regarding the refugee situation.

Nonetheless, because of the high confidentiality of all internal information, it was not feasible to carry out formal interviews with actors of the refugee field. This is the main rationale behind the choice of basing the study of data gathered informally, throughout the participant observation.

The implementation of the 2012 “Age, Gender and Diversity Mainstreaming” (AGDM)<sup>5</sup> exercise was also an excellent opportunity to gather inputs from NGOs and UNHCR’s persons of concern. In simple terms, this is an annual evaluation of the living situation of refugees and asylum seekers in Hong Kong, through a series of meetings aiming to address issues such as access to shelter, food, healthcare, education and freedom of movement.

NGO coordination meetings and in-site visits to food suppliers and to persons of concern’s homes also gave me the chance to do some research in those different environments, out of the Office. It was clear that the context in which information is shared influences the content of such information.

In an attempt to provide an answer to the questions under scrutiny in this paper, a first part will be dedicated to presenting the historical and political characteristics of the

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<sup>5</sup> Available as Annex 3

Hong Kong territory, and of the refugee issue in such context. We will then focus on UNHCR Hong Kong office's relationship with the local NGOs, before moving to a third part opening the perspective to broader questions and comparisons.



# **PART I- Distinctive characteristics of the Hong Kong SAR situation**

Hong Kong is, by its geography, localization and history, a very specific territory at the crossroads of East Asia. Its particulars have an impact on its people, but also on people abroad through attraction, and they are crucial for understanding the evolution of UNHCR on the territory.

## Chapter 1: UNHCR Sub-Office in Hong Kong, from the Vietnamese to the Somali refugees

### *I. Overview of the Office's operations over time*

UNHCR's presence in Hong Kong dates back to the Comprehensive Plan of Action period, when over 200 000 Vietnamese Boat people fled to Hong Kong to seek asylum. At that time and in the Cold War context, newly independent Vietnam was a war-torn country, between the Communist North and the South supported by the Americans. In 1975, the fall of the city of Saigon was the final step in the victory of the Communist troops, and a communist authoritarian regime was set up. The new government implemented repressive measures toward people who supported the old government<sup>6</sup>, which led to massive migration of those who became referred to as "boat people".

The Government of Hong Kong confirmed at the International Conference on Indo-Chinese refugees held in Geneva in 1979 that Vietnamese boat people would be exempt from usual procedures for illegal immigrants and asylum seekers. Hong Kong agreed with the international community to continue granting automatic refugee status

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<sup>6</sup> DESBARATS, Jacqueline. [Repression in the Socialist Republic of Vietnam: Executions and Population Relocation](#), from *The Vietnam Debate* (1990) by John Morton Moore.

to those who arrived from Vietnam, on the understanding that the rate of arrival would be matched by an international program for resettlement<sup>7</sup>.

Nonetheless, by 1985, the international community became less and less ready to accept Vietnamese refugees for resettlement, and there was a continuing flow of asylum seekers coming to Hong Kong.

The Comprehensive Plan of Action (CPA) was implemented from 1989 to 1996. Adopted in June, 1989 at a conference in Geneva held by the Steering Committee of the International Conference on Indo-Chinese Refugees, it was designed to deter and to stop the continuing influx of Indochinese boat people, and to cope with the third countries' increasing reluctance to offer resettlement opportunities for every Vietnamese or Laotian asylum seeker.<sup>8</sup>

Following such policy, those who arrived at the camps in Hong Kong after June 16, 1988 would no longer automatically be considered as "prima facie" refugees. Prima Facie refugees is a term referring to massive groups of people who fled a country at a certain time, following generalized violence or persecution; when it happens, UNHCR does not have the means to conduct individual asylum interviews for everyone who has crossed the border, thus such groups are identified as prima facie refugees<sup>9</sup>. In the case of the CPA, they would be considered only as asylum seekers, and would have to be screened to qualify for refugee status, following the Refugee Status Determination (RSD) procedure by UNHCR staff. Those who were screened-out would be sent back to Vietnam and Laos, under an orderly and monitored repatriation program.

The CPA was put to an end in 1996, and refugee camps in northern Hong Kong were closed. In view of the fact that the 1951 Convention relating to the Status of Refugees hadn't been extended to the territory, the UNHCR office in Hong Kong started to undertake Refugee Status Determination under its own mandate. We could consider

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<sup>7</sup> <http://www.hklii.hk/cgi-bin/sinodisp/eng/hk/cases/hkcfi/1990/201.html?stem=&synonyms=&query=refugees>, consulted on August 27, 2012

<sup>8</sup> <http://www.un.org/News/Press/docs/1996/19960306.ref1135.html>, consulted on August 27, 2012

<sup>9</sup> <http://www.unhcr.org/pages/49c3646c137.html>; consulted on August 27, 2012

that the organization's legitimacy and competence in implementing Refugee Status Determination procedures were two key elements allowing it to maintain an office in Hong Kong. Indeed, scholars assert that for an organization to carry out a successful adaptation, it requires competence, resources and some degree of legitimacy<sup>10</sup>. In the context that we just described, those three components were all present and may explain why the agency succeeded in its adaptation.

This was both a strategy of adaptation from SOHK facing the end of its mandate under the CPA, and a necessary response to the new waves of asylum seekers coming from new parts of the world. Such a change also took place in the very particular context of the "handover", when the territory of Hong Kong was transferred from British sovereignty to Chinese sovereignty. Such a complex transition time, during which many vexing negotiations took place, may also have been a window of opportunity for the agency to be maintained on the Hong Kong territory. Even though UNHCR's mandate toward the Vietnamese refugees ended at that moment, one cannot deny that the agency established a successful adaptation to "survive" by keeping on the operations in Hong Kong, following the evolution of the situation. Indeed, if the Vietnamese situation progressively got settled, new conflicts in the world were the causes for new waves of immigration, for instance from Sri Lanka in the 1990s. Since 1983, a civil war started in that country due to the separatist group known as the Tamil Tigers; the conflict last for over 25 years, until 2009, and drove hundreds of thousands of people to flee their region or their country. Nowadays, even though the war officially ended with the defeat of the Tamil Tigers, Sri Lankan asylum seekers keep fleeing because of ethnic tensions and persecutions in the North of the country.

Along with Sri Lankans, more and more Pakistani and Afghan asylum seekers crossed China to reach UNHCR in Hong Kong, because of those countries' instability. More recently, toward the end of the years 2000, more and more Somali asylum seekers arrived to Hong Kong, fleeing both the violence of the Al-Shebab militias and the ethnic conflicts, and paying smugglers to be able to flee the country.

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<sup>10</sup> EBERWEIN Wolf-Dieter, SCHEMEIL Yves, *Coalesce or Collapse: Mandate Enlargement and the Expansion of International Organizations*, The University of Grenoble, 2010, unpublished manuscript, p. 7-8.

In 2012, Somalia, Sri Lanka and Pakistan remain the first three countries of origin of refugees in Hong Kong. Paradoxically enough, asylum seekers do not mostly come from those three countries, but are mainly from Indonesia, India and Bangladesh. This discrepancy is a very interesting phenomenon to observe, which stems from misinformation about the role of UNHCR to strategies of legal overstay on the Hong Kong territory, for instance for business purposes. Unfortunately, we will not elaborate more on that issue here, as it is off the topic of this research paper. The table below gives an overview of the “People of Concern”<sup>11</sup> to UNHCR in Hong Kong.

Statistical Snapshot*	
<b>Residing in Hong Kong (Special Administrative Region of China) [1]</b>	
Refugees [2]	152
Asylum Seekers [3]	597
Returned Refugees [4]	0
Internally Displaced Persons (IDPs) [5]	0
Returned IDPs [6]	0
Stateless Persons [7]	1
Various [8]	0
<b>Total Population of Concern</b>	<b>750</b>
<b>Originating from Hong Kong (Special Administrative Region of China) [1]</b>	
Refugees [2]	15
Asylum Seekers [3]	5
Returned Refugees [4]	0
Internally Displaced Persons (IDPs) [5]	0
Returned IDPs [6]	0
Various [8]	0
<b>Total Population of Concern</b>	<b>20</b>
Notes +	* As at January 2012

Source: <http://www.unhcr.org/pages/49e488026.html>

## II. Presentation of the key changes in terms of partners and strategies

As the UNHCR Sub-office in Hong Kong is hosted by the Hong Kong government, it always had to sustain good communication and relationship with it, in order to maintain the agency’s presence and keep the operations authorized on the territory. For the recent change we evoked, about the humanitarian assistance which has been

<sup>11</sup> “People of Concern” is the official denomination used by the UNHCR to refer to refugees, asylum-seekers, IDPs and stateless persons.

transferred from UNHCR to the government, the role of the latter is reasserted. The change happened thanks to intense negotiations for the government to get involved in this responsibility toward refugees hosted on its territory. In order to push forward the negotiations, UNHCR implemented a strategy of making its assistance to refugees closer to the government's ASTC (Asylum-Seekers and Torture Claimants) program, so that the merging of governmental assistance programs for asylum seekers, torture claimants and refugees be easy – no actual change, rather an extension of the existing project. That UNHCR's strategy was carried out by changing the implementing partner, switching from Caritas to ISS (International Social Service), an NGO already operating for the government. Indeed, both the government and the UNHCR use an NGO as “implementing partner”, following UNHCR's appellation, sometimes called by the government an “operator” or a “service provider”. It basically consists in delegating a task and its related budget to other actors, since the agency in charge lacks material and human resources to carry it out on its own. By switching from Caritas to ISS, UNHCR thus brought its assistance into alignment with the government's position and then became an additional strong argument in its successful advocacy to incite the government to take the program over. After years of tough negotiations, the transfer was finally implemented on January 1<sup>st</sup>, 2012.

Since this change occurred a few months ago, it is difficult to evaluate its impact so far, and to know whether governmental assistance to refugees meets international standards and refugees' needs –or not. It is however interesting to point out that following such a change, UNHCR's role in Hong Kong has shifted from humanitarian operator to monitoring agent. As it is not in charge of this assistance anymore but still has the mandate to protect its persons of concern, it can now observe, analyze and assess the government's action in that field. It considers itself as the agent responsible for monitoring a smooth transition, and providing criticism to ensure the international standards for refugees' protection are enforced. In that sense, such a change can be seen from two different perspectives: it could first be a loss of power for the agency, as this transfer is a big operation less to be implemented. However, it is also a victory and gain of power for the agency: it was possible due to efficient and long run advocacy for change, and because it asserted the UNHCR's role as an “umbrella body” heading all actors in the field of refugees, including NGOs and the government.

What can be assessed so far is that this change, like any changes, is modifying the Hong Kong refugees' lives and hence produces some disorder. It has been noticed that some refugees refused to be referred to ISS when they were told about this change, showing some feelings of incomprehension and mistrust. For beneficiaries, or "clients", as informally referred to by UNHCR, it is difficult to understand who is who because of the numerous organization providing different services. It also illustrates a certain fear of losing part of the assistance with such a change of funding actor. Among numerous complaints, several refugees criticize the new system especially seriously, for instance regarding the return from food assistance in cash to in-kind assistance. Such a change, which is the government's choice and positively allows it more framing and control, also implies less flexibility and freedom for the refugees to spend their money allowance.

Regarding food assistance, it gives refugees less choice to pick the food items they prefer, especially when they have specific needs for health, cultural or religious reasons. Reports also indicated that the large part of dried food items was quite unappreciated. Another criticism which has been raised so far is also the fact that in-kind food items are to be collected every ten days, and represent quite a heavy and bulky load of products to carry home. As the refugees do not necessarily live next to the food distribution center, some of them, especially when they suffer from health problems, highlighted that in-kind food is too difficult to carry home.

The persons of concern with specific needs are of paramount importance. The term "persons with specific needs" refers to individuals, families or groups requiring a particular response to ensure that they are enabled to overcome the challenges they face and to ensure equal access and equitable impact (UNHCR, 2003).

Groups with specific needs include older persons, separated children, the chronically ill, persons with mental and physical disabilities, ex-combatants, single heads of households, survivors of violence, and others, depending on the specific situation (UNHCR, 2006).

Among the refugee population in HKSAR, part of them falls into this category. It should be underlined that lots of them get nervous and frustrated because of their refugee situation. Indeed, it may be rooted in the fact that between the three durable

solutions that exist for refugee situations, voluntary repatriation and local integration are generally undoable in Hong Kong. Voluntary repatriation is generally not possible because the situation in the country of origin remains dangerous, and local integration is denied to refugees by the Hong Kong government, which fears that it would encourage more and more people to come. Thus, the third option, resettlement, is the only solution that can be implemented by SOHK. The resettlement countries are solely the United States and Canada. As they have to deal with very numerous applications, the waiting time for refugees in Hong Kong is very long, generally lasting more than two years. Another characteristic of such delay is that neither can the UNHCR nor the refugees themselves have any control on it, the issuance of a decision depending uniquely on the State. Such a long waiting time implies a lot of stress and tension for the refugees, which could explain why some of them suffer from mental health issues or certain types of physical pain.

Facing the new governmental handling of humanitarian assistance to refugees, there might be some gaps between the assistance provided and the standards and needs of refugees. Such gaps are likely to exist especially at the beginning of the transition, and UNHCR SOHK has a key role in making sure that refugees have all their needs covered by the government, by monitoring such transition. However, due to budgetary constraints, SOHK can only do so on a case by case basis, when judging that a gap is making a refugee vulnerable. No caps are decided in advance for this case by case help, but there is a dependence on the yearly limited budget. The budget for 2013 has been decided in March 2012; if it is too close to evaluate quantitatively the amount needed for this assistance, one should take it into account. At the UNHCR, there is a “Community Service Officer”, responsible of social issues faced by clients, and able to mobilize her network of contacts in the NGOs to refer them. She also has to coordinate services, and communicate with ISS when a client has problems or complains about the assistance.

The fact that the UNHCR transferred humanitarian assistance for refugees to the government has consequences regarding its role, but also in terms of budget allocation. Indeed, each the office is allocated a given budget annually, depending on the operations it is in charge of on a given territory. When such a transfer is done, it is a large part of the budget which will not be spent anymore, and we can thus wonder

what budgetary consequences this change has. Does it allow the Office to reallocate saved money to other projects? Does it have the autonomy to do so? How do the Headquarters interfere in such a case? When exploring sources in the office about such an issue, I was explained<sup>12</sup> that the Headquarters in Budapest followed closely all budgetary events going on in every office in the world. Thus, Budapest is well aware of such a transfer, and anticipated it in budget planning: it decreased the SOHK budget accordingly, for this money to be spent on other operations in the world. The local office's leeway is thus quite reduced in this domain; there is no autonomization with spare budget to reallocate even temporarily, as one could have assumed.

On that issue, we can thus observe that an individual UNHCR office is much dependent on the Headquarters for budget spending and allocation, and has little autonomy. Conversely, the UNHCR itself as an agency is quite powerful and independent in how it spends its money. This is due to the fact that only a small part of its money comes from the UN member states, and this money is earmarked to administrative and functioning costs<sup>13</sup>. For its operations, the agency receives no UN funding. It always had to raise its own money, independently, from States and other organizations, but also from corporations, trusts, foundations and individual citizens<sup>14</sup> through active fundraising units inspired on the UNICEF experience. We will go deeper into that issue later on.

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<sup>12</sup> Various discussions with senior colleagues, including the Community Service Officer and Programme Officer.

<sup>13</sup> Chapter III, article 20, of the Statute of UNHCR: "[...] no expenditure other than administrative expenditure relating to the functioning of the Office of the High Commissioner shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions".

<sup>14</sup> UNHCR Fund-raising, <http://www.unhcr.org/pages/49c3646c119.html>, consulted on August 31, 2012



## Chapter 2: The dense NGO fabric in Hong Kong, a unique feature in the PRC

### *Influence of the context and diversity of organizations*

As we will describe thoroughly in the next part, the Hong Kong political system and situation is very particular, and differs a lot from the mainland Chinese system. The difference is especially blatant regarding civil freedom – namely, freedom of speech, freedom of association, freedom of media. Thanks to such characteristic linked to the British long-lasting sovereignty, numerous non-governmental organizations exist on the Hong Kong territory, focusing on a very wide range of issues – fighting poverty, defending the environment, the human rights, the culture. The territory's tradition of political liberalism allowed civil society to thrive freely, in a unique way in comparison with China, which makes the Hong Kongers very proud.

Within this broad network of organizations, several are targeting the issue of migration, and the life of migrants in Hong Kong. It has always been a very open territory with many foreigners, mostly coming and going for business, attracted by the harbor's prosperity. Hence, apart from the western expatriates working in Hong Kong, mostly in the banking sector, there are also enormous flows of migrants coming from all over Asia and Africa. When many south-east Asians – Indians, Pakistanis, Bangladeshis- come and go for business purposes, lots of Filipino and Indonesian women migrate to Hong Kong to work there as domestic helpers. Among those migrants with very different profiles, some have very tough lives in Hong Kong and are thus helped by NGOs aiming at providing this specific group of people with advice and basic services.

Further into the topic of migration, we can then notice the small bunch of NGOs specifically working for asylum seekers and refugees. In that field, we can name organizations such as the Hong Kong Refugee Advice Centre (HKRAC)<sup>15</sup>, which provides free legal advice to asylum seekers and refugees. Some NGOs have humanitarian purposes, such as Vision First<sup>16</sup> which is entirely dedicated to refugees. Other NGOs do not only serve those people, even though they might have a branch

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<sup>15</sup> <http://www.hkrac.org/>

<sup>16</sup> <http://visionfirstnow.org/>

specially dedicated to them. For instance, Christian Action<sup>17</sup> and provide them with a lot of social services. Caritas<sup>18</sup>, International Social Service (ISS)<sup>19</sup>, Crossroads<sup>20</sup> and Society for Community Organization (SoCO)<sup>21</sup> are other examples. Those are the organizations with which UNHCR SOHK has the more contacts.

However, asylum seekers also approach the NGO HandsOn<sup>22</sup> for activities, Pathfinders providing services for women, Kadoorie Farm, a private farm implementing projects for migrants. Food banks such as Tung Wah and St James's Settlement provide them, but also all people in need, with emergency food. The International Rescue Committee works with the office too, regarding issues linked to the procedures of resettlement to the United States. Amnesty International produces advocacy about asylum-seekers and refugees' rights in Hong Kong, especially for the promotion of the right to work, about which we will say more in chapter 3.

Some of those organizations have strong links, and have been created out of each other. For instance, Vision First and HKRAC both arise from Christian Action – the funders of Vision First wanted an organization which would promote stronger advocacy for the beneficiaries' rights and situations. HKRAC separated because it was willing to focus on the provision of legal advice to asylum seekers and refugees.

As mentioned earlier on, Hong Kong is a very wealthy territory, where the economy is conducted according to ultra liberalism principles. Tax rates are very low, and business and banking companies can thus freely make enormous profit when based in Hong Kong. Strategically located, a harbor on the Pearl River Delta and the Pacific Ocean linking North and South-East Asia, it benefits from being the transit point for many goods exported from China. As a consequence of the large profits made in Hong Kong, many companies and individual billionaires give some of their money to philanthropic foundations or charities. The Jockey Club Foundation is the biggest of them, which regularly offers generous funding to the selected local NGOs. In a

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<sup>17</sup> <http://www.christian-action.org.hk/>

<sup>18</sup> <http://www.caritas.org.hk/eng/main-eng.asp>

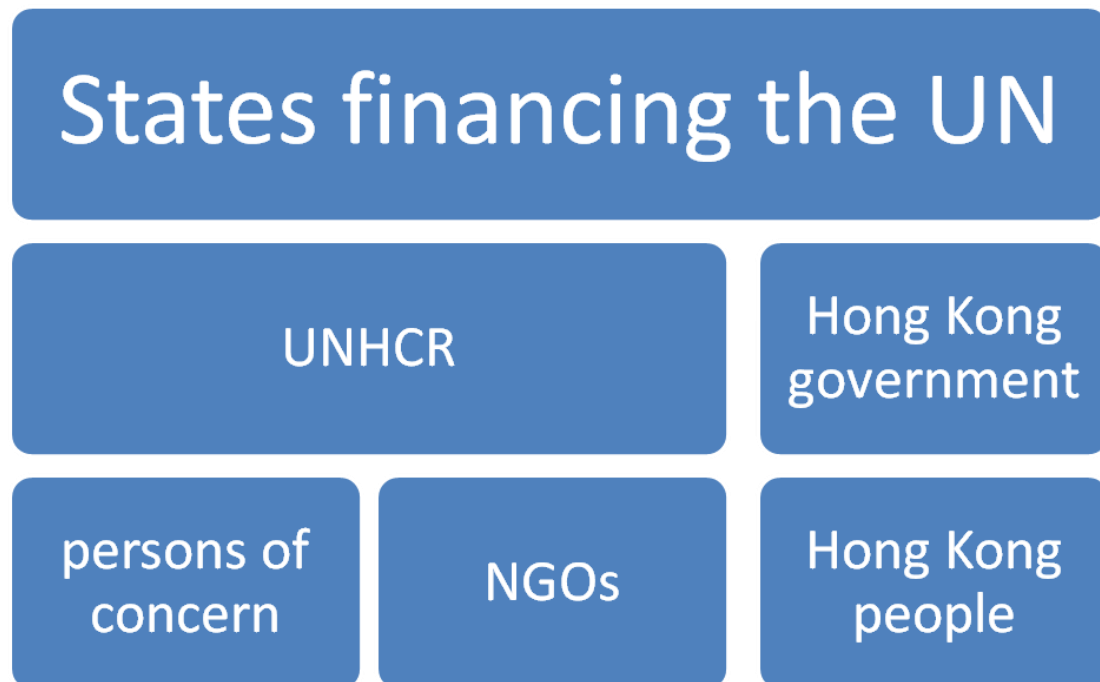
<sup>19</sup> [www.isshk.org](http://www.isshk.org)

<sup>20</sup> [www.crossroads.org.hk](http://www.crossroads.org.hk)

<sup>21</sup> [http://www.soco.org.hk/index\\_e.htm](http://www.soco.org.hk/index_e.htm)

<sup>22</sup> <http://handsonhongkong.org>

nutshell, UNHCR in Hong Kong is surrounded by a large number of actors of different nature, as illustrated by the following figure.



Among the multiplicity of actors surrounding the UNHCR, the Hong Kong government is the main public authority the agency has to deal with to foster a fruitful collaboration. Although the UNHCR depends on UN State members for part of its funding –the part earmarked to its administrative functioning, they do not interfere in the agency’s field operations which are financed by the latter’s autonomous fundraising. For the operations, it is the local government, sovereign on its own territory, which has the last word on what is allowed or not. In the case of Hong Kong, the government we are referring to is the HKSAR one and not the Beijing one, since the former still controls all “internal” issues such as the ones related to immigration - and thus the issues of interest to UNHCR.

## Chapter 3: A third powerful actor, the HKSAR government

### *I. Presentation of HKSAR political system and the recent changes*

First of all, it may be useful to keep in mind that Hong Kong is not only a city but a whole territory, including a part of the Chinese mainland continent and over 230 islands<sup>23</sup>, as illustrated on the following map.



Source: <http://www.guidehongkong.com/voyage/wp-content/uploads/2009/02/hong-kong-map-small.gif> )

For the purpose of contextualization, let us give a brief historic overview of the territory.

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<sup>23</sup> John Mark Carroll, *A Concise History of Hong Kong*, Rowman & Littlefield, 2007, p. 1

A major characteristic of this territory is the British sovereignty, which last from 1841 until 1997. After the British conquerors' invasion in 1840, following the Opium War, the Treaty of Nanjing was ultimately signed, in which the Qing dynasty indefinitely ceded the Hong Kong Island to the British Crown. However, the Kowloon peninsula was only ceded in 1860 with the Treaty of Peking, and the New Territories were leased to Britain in 1898, for a period of 99 years. It is within such frame that negotiations started between the PRC and the United Kingdom, in perspective of the pending expiration of the lease in 1997.

Hong Kong always has had a political importance as a city out of China. It is there that Sun Yat-Sen, who led the revolution overthrowing the last dynasty in 1911, was educated. As explained by J. M. Carroll, "from its early colonial days, Hong Kong served as a haven for Chinese refugees". That being said, it has lost such role since 1997, as the border between Hong Kong and China is now an internal border, and as to be a refugee, the definition specifies that an international border must be crossed. Under British sovereignty, the Hong Kong territory increasingly became an imperial outpost, and was soon transformed into the "pearl" of the British Empire and of the Orient.

After years of vexing negotiations, the Sino-British Joint Declaration was signed in 1984 between Margaret Thatcher and Deng Xiaoping, agreeing on what is referred to as "the Handover". The transfer took place on July 1<sup>st</sup>, 1997, with Hong Kong returning under Beijing sovereignty with the negotiated status of SAR, Special Administrative Region. This administrative division is only applied to Hong Kong and Macau, formerly a Portuguese colony that returned to China in 1999. As a matter of fact, it is also interesting to note that such status was envisioned as a model for the eventual reunification with Taiwan. As such, the two existing SAR enjoy a high degree of autonomy, except in the domains of Foreign affairs and Defense<sup>24</sup>. They have their own political system, with a Chief Executive and a constitutional Basic Law. It is the "one country, two systems" principle which is applied, an idea developed by Deng Xiaoping in the early 1980s, by suggesting that there should be only one China, but that independent regions (Hong Kong, Macau, Taiwan) could

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<sup>24</sup> [http://www.basiclaw.gov.hk/en/basiclawtext/chapter\\_2.html](http://www.basiclaw.gov.hk/en/basiclawtext/chapter_2.html), consulted on September 2<sup>nd</sup>, 2012

have their own capitalist economic, judiciary and political systems. In the Basic Law, it stipulates that “The socialist system and policies shall not be practiced in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years”<sup>25</sup>. What will precisely happen in 2047 in Hong Kong has never been publicly stated, as it will depend on the economic and political evolution of Mainland China. The handover already made some Hong Kong locals to worry about the situation and the fear of losing some of their political rights by returning under Beijing sovereignty<sup>26</sup>. Such fear was illustrated for instance during the last election of the Chief Executive, through a “small circle election” where the winner ended up being the one who had the support from the PRC’s communist Party<sup>27</sup>. More recently, public outrage was raised following the introduction in primary school curriculum of a new subject called “Moral and National Education”, in a bid to strengthen young Hong Kongers’ patriotism – for many locals, it is judged as Orwellian brainwashing from Beijing<sup>28</sup>, and is likely to increase the anti-mainland sentiment.

Despite the major political change introduced by the Handover since 1997, we were informed that home affairs continue to be dealt with by the autonomous Hong Kong government. Consequently, all issues related to immigration and asylum are still under HKSAR’s authority.

## *II. HKSAR’s position towards refugees and UNHCR over time*

When the United Kingdom ratified the Refugee Convention in 1954, it chose not to extend it to its colony of Hong Kong because of the fear that flows of Chinese

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<sup>25</sup> Ibid., chapter 1, article 5

<sup>26</sup> Observed following daily talks with lots of Hong Kong locals

<sup>27</sup> “Hong Kong: CY Leung chosen as new chief executive”, *Global Post*, March 25, 2012, <http://www.globalpost.com/dispatch/news/regions/asia-pacific/china/120325/hong-kong-election-cy-leung-new-chief-executive>

<sup>28</sup> NG Jason Y., « Virtue of the Vicious », *South China Morning Post Blog*, 27 August 2012, <http://www.scmp.com/comment/blogs/article/1023322/virtue-vicious>, consulted on September 3, 2012

migrants would come. According to Lord Trefgarne, Under-Secretary of State for the Armed Service, such decision was due to “the territory’s small size and geographical vulnerability to mass, illegal immigration”<sup>29</sup>. After the handover, the PRC, which is also a signatory of the Convention, opted for the status quo. The HKSAR is thus an exception in China, where it is the only piece of territory not applying the 1951 Geneva Convention. As a result, asylum and refugee issues in Hong Kong are neglected, and the UNHCR has to be present on the field to fill the gap and enforce its international mandate. In the past, the Hong-Kong government only put into force some legislation toward refugees for the targeted period of Vietnamese refugees in the late 1990s, a policy to control that flow which stopped in 1998. Such non-recognition of asylum-seekers and refugees has been constant on the territory, as well as its consequences, like the interdiction for asylum-seekers and refugees to work in Hong Kong, and to settle in Hong Kong. As the UNHCR SOHK is conducting Refugee Status Determination, the people of concern are only permitted to remain pending resettlement or deportation, depending on the UNHCR’s final decision. They are thus simply considered in transit in Hong Kong, even though the waiting time linked to their file may last for several years.

This stance toward asylum is particularly paradoxical when we observe that Hong Kong is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was signed and ratified by the PRC in 1986, and it has been extended to the Hong Kong territory<sup>30</sup>. However, the ratification includes two major reservations. First, the PRC does not recognize the competence of the Committee as in article 20. Second, it is not bound by the article 30§1, which refers to the possible arbitration by the International Court of Justice.

Since April 2006, the government, through the Social Welfare Department, provides asylum-seekers and torture claimants with humanitarian assistance<sup>31</sup>.

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<sup>29</sup> WHITNEY K.M., “There is no future for Refugees in Chinese Hong Kong”, *Boston College Third World Law Journal*, Volume 18, 1998, p. 4

<sup>30</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en#5](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#5), consulted on August 27, 2012

<sup>31</sup> [http://www.issk.org/e/customize/migrants\\_assistance.asp](http://www.issk.org/e/customize/migrants_assistance.asp), consulted on September 2<sup>nd</sup>, 2012

Conversely, the humanitarian assistance provided to refugees used to be funded by UNHCR, through the implementing partner ISS, International Social Service. In January 2012, the Hong Kong government accepted, after years of vexing negotiations, to extend its humanitarian assistance project to refugees. Before, this project was only dedicated to asylum-seekers and Convention against Torture (CAT) claimants, and under a program called the ASTC program (Asylum Seekers and Torture Claimants). The UNHCR thus had to manage the assistance to refugees, though in theory, it is the government's responsibility to assist refugees in humanitarian needs on its territory.

This change is a major step forward in the handling of the refugee issue in the HKSAR, and also a progress in the cooperation between the UNHCR and the Hong Kong government.

It is of paramount importance to keep in mind that Hong Kong immigration policies are very tough, although the territory is very easy to enter, by getting a three-month-long stay tourist visa, for many nationalities. This largely open border, which is pretty unusual among developed countries, is a major reason why Hong Kong has served as a magnet for asylum seekers. In his masterpiece, Professor Gordon Matthews met with many of them, and a Somali man once told him: "Why did I come to Hong Kong? Because I knew they would let me in!"<sup>32</sup>

Nevertheless, if the entry is easily obtainable, the authorities are then very strict with immigration rules especially toward visitors who overstay. Thus, the same suspicion that was the initial British rationale for not extending the Refugee convention is still omnipresent. The Hong Kong authorities fear that their small and wealthy territory would be overwhelmed by an excessive number of migrants. Nowadays, this fear is still a reason why the government holds a hard line toward asylum seekers and refugees, making them heavily dependent on the UNHCR and NGOs' assistance.

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<sup>32</sup> MATHEWS Gordon, *Ghetto at the Center of the World: Chungking Mansions, Hong Kong*, University of Chicago Press, 2011, p. 79



Considering the government's deliberated neglect in regards to the UNHCR's persons of concern, the latter has to ensure their protection to fulfill its mandate, and to do so, has to count on its NGO partnerships and cooperation.

## PART II- The Office's relationship with NGOs

In this paper, the issue under scrutiny is linked to the many NGOs gravitating around the UNHCR SOHK. As we will see, their relationship with the UNHCR has its origins in the foundation of the agency, and in Hong Kong, they can be separated in two main fields of action, humanitarian and human rights issues.

### Chapter 1: Background information on the theoretical framework of UNHCR/NGO cooperation

#### *I. A partnership rooted in UNHCR's foundation*

It is the Statute of UNHCR, especially in Chapter II, Article 10, that are the seeds of the relationship between UNHCR and NGOs, at that moment referred to as “private and appropriate public agencies”:

*10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance.*<sup>33</sup>

The UNHCR must delegate to NGOs, because even though it raises its own funds, these resources are earmarked to operations; as for the small funding it perceives from the United Nations it is earmarked to administration and staff expenses, according the Chapter III, article 20, and cannot really be increased. Consequently, the UNHCR cannot hire more staff to implement its mandate, and has to depend on NGOs to help it to carry it out.

More precisely, the UNHCR cooperates with different types of partners: wherever it is located, it considers the host government as the “governmental partner”, be it active or passive in the relationship. Regarding NGOs, they are either considered as operational partners or implementing partners. It is a key distinction because it really impacts on

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<sup>33</sup> UN General Assembly, *Statute of the Office of the UNHCR*, 1950, <http://www.unhcr.org/3b66c39e1.html>

the relationship itself. The operational partners are other organizations, mostly NGOs that independently provide services to the UNHCR's people of concern, in any domain. To do so, they use their own resources and thus work in parallel to UNHCR in an autonomous way. Those partners are nonetheless essential for the well-being of the people of concern, and the UNHCR thus attempt to coordinate their work, to have regular meetings and to maintain a good relationship with such partners. As we will study later on, as those agencies rely on their own resources, they might cooperate or compete with the UNHCR, depending on the situation. Conversely, implementing partners also provide services to the same people of concern, but they do it with the UNHCR funding. Indeed, among the existing organizations, the UNHCR may select some of them to carry out specific missions related to assistance and protection, included in the IO's mandate but that it is unable to implement itself due to lack of human resources. Hence, it is an NGO that will carry out such service, following the UNHCR's instructions and agreement. This framework of cooperation is generalized, and takes place both in urban settings and in refugee camps, as explored in Part III.

The UNHCR in Hong Kong has one implementing partner, International Social Service, and in daily work, cooperation based on this special status can be difficult.

## *II. Recent developments and debates*

Even though cooperation with other agencies is a practice dating back from the UNHCR's Statute, the increased scale and complexity of its work required a greater sophistication of this cooperation. The Oslo Conference, in 1994, aims at taking into account the context of increased humanitarian and protection needs, and creates the Partnership in Action programme. The PARinAC establishes a framework for cooperation between the UNHCR and the more than 800 NGOs around the world with whom it works. The conference developed a broad plan of action including over 130 recommendations in areas including refugee protection, internally displaced persons and emergency preparedness<sup>34</sup>. In more detailed terms, it may cover such activities as

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<sup>34</sup> Partnership in Action (PARinAC), *Oslo Declaration and Plan of Action*, 9 June 1994, available at: <http://www.unhcr.org/refworld/docid/3ae68f3d8.html> [accessed 3 September 2012]

“protection, care and maintenance, repatriation, reintegration, institution building, resettlement, representation and advocacy”<sup>35</sup>. It also insists on the strengthening of local capacities, for instance by favoring the involvement and participation of local NGOs.

In 2003, the Framework Agreement for Operational Partnership (FAOP) is a follow up to the PARinAC process, as well as an integral part of it. It consists in an agreement individually signed between the UNHCR and its NGO partners, as follows:

*“The FAOP between UNHCR and [xx NGO] aims to build an active operational Partnership through a common commitment to:*

- *understanding each others roles and responsibilities;*
- *the highest standards of conduct, both professionally and personally;*
- *improved mechanisms for consultation and cooperation, including information sharing;*
- *coordinated programme planning and implementation;*
- *seeking solutions;*
- *complementarity of activities;*
- *maximising the effective use of resources;*
- *avoiding duplication of efforts and unnecessary competition;*
- *benefiting from each others competence and expertise;*
- *joint training and capacity building”*.<sup>36</sup>

By implementing such frames of cooperation, the UNHCR seems to be attempting to reassert its central role in ensuring people of concern’s protection, and in coordinating all the actors involved, which are more and more diverse and numerous. It is also aware of its dependence toward such partners, without whom it would not be able to enforce its mandate efficiently and thoroughly. To survive as a central organization, the UNHCR has to take into account that more and more non-governmental actors

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<sup>35</sup> UN High Commissioner for Refugees, *Framework Agreement for Operational Partnership (UNHCR and NGO)*, 26 July 2003, available at: <http://www.unhcr.org/refworld/docid/42b7fc674.html> [accessed 19 March 2012]

<sup>36</sup> *Ibid.*, part I – 3.

intervene, and to adapt to that new element by including such actors into its strategy and action, by organizing and leading the cooperation. As contended by Eberwein and Schemeil, when interdependence and connectedness are present among organizations, adaptation occurs<sup>37</sup>.

Observing the UNHCR and the different actors by which it is surrounded, one could wonder whether the “principal-agents theory” would be suitable. This theory was in the first hand utilized for the study of national politics, but authors such as D. Hawkins, D. Lake, D. Nielson and M. Tierney argue that it is equally relevant for international relations, and have contributed to elaborate a clear principal-agent framework. If they intend to use such framework to study international organizations’ behaviors and the phenomenon of delegation, we could wonder is this theory is also applicable for the case under scrutiny, considering the UNHCR as the principal and NGOs as the agents. First, let us recall that the authors’ definition that “to be a principal, an actor must be able to both grant authority and rescind it”<sup>38</sup>. According to that definition, it seems that when the UNHCR delegates parts of its work to NGOs, by providing them with a mandate and resources to implement it, it does behave like a principal granting authority, and rescinding it at the end of the contract with the implementing partner.

This observation could however be qualified by the fact that the UNHCR, even though it embodies both an authority and a mandate, has itself its authority granted from the United Nations, meaning by its State Members. Consequently, one could also consider it as the central agency in a system composed of multiple principals which are the 87 member-States of the Executive Committee checking up on the UNHCR’s functioning and budget, and of many contractors under the UNHCR’s authority and to whom some tasks are delegated. In such a web of actors, it is thus complex to distinguish and identify who is who: can the State parties be considered

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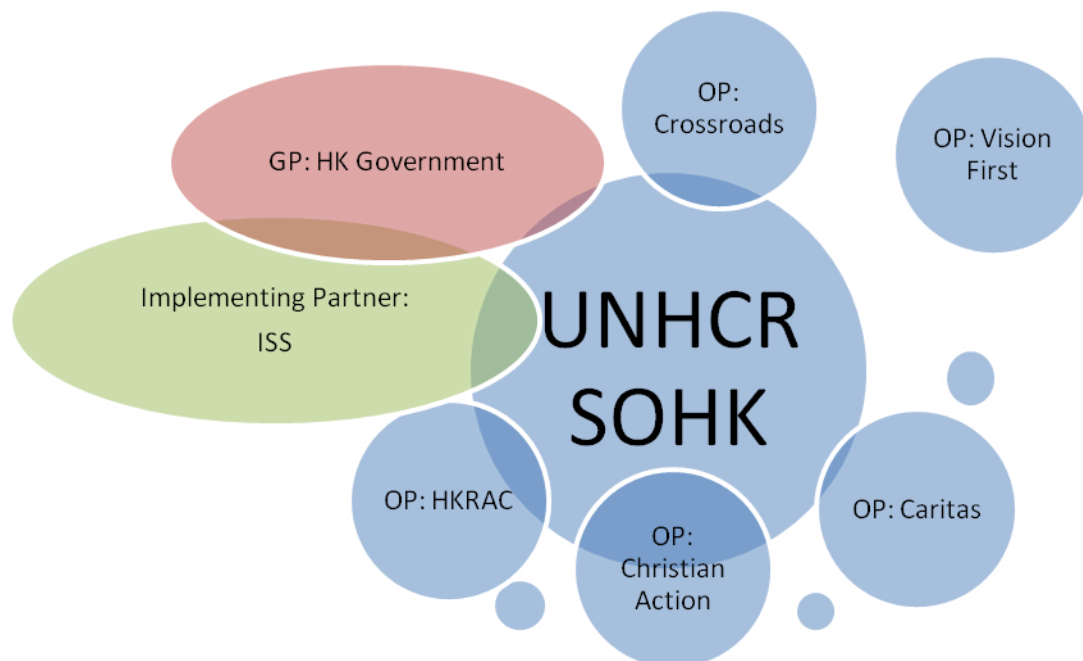
<sup>37</sup> EBERWEIN Wolf-Dieter, SCHEMEIL Yves, *Coalesce or Collapse: Mandate Enlargement and the Expansion of International Organizations*, The University of Grenoble, 2010, unpublished manuscript, p. 16.

<sup>38</sup> HAWKINS Darren, LAKE A. David, NIELSON Daniel, TIERNEY J. Michael, *Delegation and Agency in International Organizations*, Cambridge University Press, Cambridge, 2006, p.7

“principals” when they only have a say on a tiny part of the agency’s budget and programmes? The UNHCR being a very autonomous organization raising most of its funds, one can wonder if it really relies on them to be granted its authority. Conversely, we can easily notice the close but complex relationship the agency has with NGOs, at the local level.

Chapter 2: Providing humanitarian assistance – the complexity in distinguishing mandates

As mentioned earlier and illustrated below, the UNHCR is surrounded by a sphere of NGOs of different aim, size, ambition and leaders. Among this complex web of partners around the agency, as illustrated by the following figure, some have different status, such as the governmental partner and the implementing partner, a distinction that will be explained in this chapter.



### *I. A multiplicity of actors*

Especially in the field of humanitarian assistance, the UNHCR in Hong Kong is working for asylum-seekers and refugees along with many NGOs. The people of concern have their basic needs covered thanks to the assistance provided by government funding, through the authorities' implementing partner, ISS. Such assistance cover basic accommodation within a fixed amount directed given to the landlord, it covers food in-kind distributed every ten days, some toiletries in-kind as well, and transports for appointments at the UNHCR or at the immigration bureau. For refugees, the UNHCR SOHK tops up with some pocket-money every month, given by cheque to every single refugee. This total assistance is in fact very basic, and is a strict minimum to survive in Hong Kong, where accommodation is especially expensive.

Taking this treatment into account, the services provided by NGOs are of paramount importance to make the people of concern's lives easier in Hong Kong. However, they target the same group of beneficiaries as the UNHCR, and might also be in competition regarding resources. Finally, how do all those organizations interact?

In their most recent research about international organizations expansion<sup>39</sup>, Wolf-Dieter Eberwein and Yves Schemel offer an interesting classification of the different types of adaptation an organization can have depending on the context. At one end of the continuum is "competition", when organizations individually fight to defend their own mandate – which can lead either to their hegemony, or their obsolescence. If they do not compete, organizations can choose "collaboration", which is a limited relationship simply to avoid conflict. A step ahead is "coalition", when organizations have to operate jointly in order to survive a threat. According to the authors, then comes "cooperation", which is a pro-active strategy to pool resources and work together. Finally, "coordination" is defined as a hybrid relationship referring to joint activities by organizations that are initially closely linked, under the same international regime or umbrella organization. This chapter will allow us to explore which types of relationship are prevalent between the SOHK and the local NGOs.

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<sup>39</sup> Op.cit. n°35, p. 6

In Hong Kong, the UNHCR has the role of “filling the gaps”: it does so about governmental assistance toward asylum-seekers and refugees, for instance by finding solutions in emergency situations when health or shelter is at stake and when the government, through ISS, fails to find a solution within the deadline. NGOs in turn fill the gap of UNHCR’s (and thus the government’s) assistance, since, as explained, such assistance remains very limited, only enable the people of concern’s “survival” in Hong Kong. Observing how actors are intertwined, we could assert that they all are complementing each other. Such phenomenon is increased by the beneficiaries’ behaviors, who likely to approach another organization if they didn’t succeed in getting help from the first one – a behavior which can be referred to as “forum-shopping”.

An eloquent illustration of such “filling-the-gap relationship” could be the activities and programs offered by NGOs to compensate one of the government’s policy, the prohibition of work for asylum-seekers and refugees. They provide for instance vocational and skill trainings, like the Kadoorie farm program where beneficiaries can volunteer and be taught garden-related technical skills. Christian Action, as described on its website, has volunteers weekly offering “between 12-15 classes/sessions in areas such as English, Cantonese, Computer Training, Youth Development, Football and Women's Empowerment”<sup>40</sup>. Vision First offers similar activities, but also cooking, sewing, interview and life management skills, as well as opportunities to do sports. Beyond providing all those activities, it is occupation that those NGOs seek to provide, since idleness is the worst consequence of the prohibition of work. If such assistance could be considered as secondary since it does not relate to basic needs, it is nonetheless crucial and is neither covered by assistance from the government nor from the UNHCR. There is thus a real gap in that domain, for which NGOs play a significant role.

Throughout my commitment with the UNHCR SOHK, I could observe quite a close relationship between the office and NGOs such as Christian Action and the Refugee Advice Centre. Very often, it is the importance of interpersonal relationships

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<sup>40</sup> <http://www.christian-action.org.hk/index.php/en/our-programs/in-hong-kong/refugees>



which was highlighted, with lots of friendships between workers, among whom some worked in the NGO before or went to work there after the UNHCR. It creates a network of workers who all know each other well, and who fully and efficiently cooperate. They also all know the beneficiaries quite well, and thus their needs and how to fulfill them better. However, if good interpersonal relationship can be a great dynamic to enhance sincere cooperation, leaders who do not get along with each other can be the basis for competition or even conflict between organizations, as developed in the next part.

To have a comprehensive outlook on the situation, let us not omit that partnership with NGOs not only occur in the domain of humanitarian assistance, but also for resettlement issues, where there is a coordination mechanism with the International Rescue Committee in Bangkok. In Hong Kong, this partnership is related to resettlement procedures for the United States, and it is this country which has outsourced and mandated the NGO for the first step of the resettlement procedure, which is prescreening interview. But in many other cases, IRC has proved to be one of the UNHCR's key partners: "The IRC has for many years been UNHCR's largest NGO partner."<sup>41</sup> Indeed, the IRC has been selected by the UNHCR in 2001 to implement the SURGE project (Supporting UNHCR Resources on the Ground with Experts on mission)<sup>42</sup>.

The UNHCR is highly dependent on its fundraising in order to carry out its operations worldwide, and this sector of activity is particularly developed in Hong Kong, where the fundraising unit is very successful – in 2011, it rose over 3, 4 millions US dollars<sup>43</sup> from the local private sector. Such success, if it is very positive for the UNHCR's headquarters and operations worldwide, where the funds are then allocated, can be problematic locally since local NGOs also depend on the Hong

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<sup>41</sup> <http://www.unhcr.org/473055832.html>

<sup>42</sup> To learn more about the SURGE project: <http://www.unhcr.org/pages/4a16a15b6.html>

<sup>43</sup> <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e488026&submit=GO>, consulted on September 3rd, 2012

Kong community to raise their funds, and thus compete with the UNHCR on that issue.

## *II. Competing for resources*

Within this complex sphere of actors, the UNHCR generally has good relationships with its NGO partners. However, at the period of time when I was working at the UNHCR SOHK, severe tensions arose in the relationship with Vision First. Its leader wrote an open letter to the SOHK's Head of Office<sup>44</sup> on February 19<sup>th</sup>, 2012, in which it harshly addresses the UNHCR about the discrepancy between the large funds raised in Hong Kong, and the parallel decrease of the UNHCR allowance to refugees. Such letter was also published on their website, and commented many times with even more criticism. On February 23<sup>rd</sup>, after a general staff meeting and many internal and external consultations by the office, the SOHK published a "Response to Open Letter"<sup>45</sup>.

Although Vision First was right in highlighting the high amounts of funds raised on the Hong Kong territory, and the decrease in UNHCR assistance, it was apparently uninformed about the explanations behind such figures. Indeed, the funds raised in Hong Kong by the PSFR unit are not to be spent by the UNHCR in Hong Kong: the integrality of those funds is sent back to the Headquarters, where it is allocated to UNHCR operations in the world, following the most urgent and important needs – Hong Kong funds can for instance be distributed to operations in Kenya or South Sudan. None of these funds are kept by UNHCR Hong Kong, nor sent back by the Headquarters, as the Hong Kong operations are very limited in scope, especially compared to situations in Africa. Thus, it had to be made clear to Vision First and its supporters that there is no link between the funds raised by the PSFR unit and the funds spent by the operational unit in Hong Kong.

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<sup>44</sup> See Annex 1

<sup>45</sup> See Annex 2

On the second hand, the budget spending for Hong Kong refugees was, according to the Open letter, cut for no reason. In reality, as explained earlier in this text, such cut refers to the transfer of humanitarian assistance for refugees from the UNHCR to the government, a change that happened on January 1<sup>st</sup>, 2012. As assistance was now covered by the government, it is consistent that the UNHCR decreased significantly its assistance to refugees, now being taken care of by the government. The assumption that refugees have been “abandoned” by the SOHK was thus ill-founded.

Furthermore, even though the office fully transferred the assistance program to the government, it decided to continue giving 300 Hong Kong Dollars per month to every single refugee, as “pocket money” on top of governmental assistance, although it could have decided to stop completely programs for refugees. Vision First’s accusation of neglect of refugees or misuse of public funding has thus very little grounds.

However, what is worth noticing in such an event is the lack of information and communication from the UNHCR, or misinformation that might be at the origin of such Open Letter. Indeed, if no explanations are given by UNHCR about how the funds raised are spent, or how the local budget is used, it is likely that rumors and misinformation spread among the society.

Another aspect underlined by this event is the competition between the two organization, or at least felt on Vision First’s side. As this NGO is dependent on individual citizens for its resources, it is in competition with the UNHCR to get funding and support from the society. Hence, it could be seen as a strategy by Vision First to get under the spotlight, obtain visibility by targeting a well-known official organization such as the HCR. By suddenly being more visible, they might be trying to get more supporters, and thus more funding. As highlighted by my colleagues, this NGO used to be one of the SOHK’s partners, and its position toward it has evolved with the arrival of a new head. They have recently refused to come to coordination meetings with other NGOs, and after the Open Letter, they repetitively refused to come and meet the Head of Office to talk and clarify the situation. Such behavior corroborates the hypothesis of a decision to confront with the UNHCR, possibly as part of a strategy to gain support.

If we return to Eberwein and Schemel's typology of relationship between organizations<sup>46</sup>, we have here an example of competition, even though the two actors have different status and size. Nowadays, it could be part of the UNHCR's strategy to try to make the relationship evolve from competition to collaboration, and avoiding frontal conflict by limiting contacts with each other.

Since the UNHCR depends on voluntary contributions to carry out its operations, it competes with other organizations for the civil society's generosity. It is well aware of such competition, as explained on the official website:

*This [dependence, ndr] means that UNHCR must compete with other humanitarian agencies, including UN sister organizations, for a limited amount of humanitarian funding. The situation has become tougher with the onset of the global economic crisis, with prices rising and both government and corporate donors tightly controlling limited aid budgets.*

*That's why it is important to have highly professional, knowledgeable and dedicated fund-raising teams, who have helped UNHCR meet targets in the more competitive environment of recent years<sup>47</sup>.*

In Hong Kong, the Private Sector and Fund Raising Unit is carrying out an effective fundraising work, as illustrated by the results in the following table:

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<sup>46</sup> Op. cit. n°35

<sup>47</sup> <http://www.unhcr.org/pages/49c3646c119.html>



Source: <http://www.unhcr.org/pages/49e488026.html>

At a more general level, donations are sought every year for the UNHCR's Annual Programme Budget to support regular operations. They are sought through the Global Appeal, which alerts all donors of the plight of millions of refugees<sup>48</sup>. The agency also launches what is called “supplementary appeals” throughout the year, in a bid to get extra contributions for new emergencies that could not be forecast<sup>49</sup>. For instance, the supplementary appeals have recently been focusing on the forced displacement in Mali, or on the Syrian crisis.

Although the funding requirements for the UNHCR programs can grow during the year encompassed in the annual budget, the “Global Needs Assessment programme” aims at comprehensively determining the funds required to cover all needs.

<sup>48</sup> <http://www.unhcr.org/ga12/index.xml>, consulted on August 30th, 2012

<sup>49</sup> Op. cit. n°44

The Global Report, published every year in June, provides benchmarks to gauge the effectiveness of the work implemented by the UNHCR. Its objective is to offer a comprehensive view of the agency's challenges and achievements worldwide. The Global Report is a crucial means to informing donors how their money was spent<sup>50</sup>.

In Hong Kong, the Jockey Club foundation is the largest private donor of charity funds, contributing an average of over HK\$1 billion (approximately US\$130 million) annually over the past ten years. It is formally devoting its annual surplus to charity and community projects. In 1959, the Hong Kong Jockey Club was formed to administer donations. This company became the Hong Kong Jockey Club Charities Trust in 1993, and donates every year to over fifty NGOs in Hong Kong<sup>51</sup>. Such major contributions are of paramount importance for many independent NGOs, which have to reconcile material pressures with their motivations and projects. Ron and Cooley notably studied the impact of competition for resources in humanitarian work and the dysfunctional outcomes it can lead to<sup>52</sup>. Conversely, the NGOs under mandate of the government or of the UNHCR, like the selected implementing partners, are less dependent of such fundraising.

### *III. The status of Implementing partner (IP) and its specificities*

Until 2010, the NGO Caritas was the UNHCR's only implementing partner. The agency was funding Caritas to provide refugees with humanitarian assistance (shelter, food, toiletries and clothing), and Caritas was independently raising funds to offer its own additional services and programmes to refugees. In 2010, the UNHCR changed its implementing partner from Caritas to International Social Service, ISS. The reason for such a change is that ISS, although being also an NGO, had stronger links with the Social Welfare Department of the Hong Kong government. It was part

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<sup>50</sup> 2011 Global Report: <http://www.unhcr.org/gr11/index.xml>

<sup>51</sup> 2011 Jockey Club donations to NGOs <http://charities.hkjc.com/charities/lending-a-hand-and-volunteering/english/donation.aspx>

<sup>52</sup> COOLEY Alexander, RON James, "The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action", *International Security*, Volume 27, n. 1, Summer 2002, p.6.

of the UNHCR's strategy to do so, in order to make assistance programmes very similar, so as to merge them easily. Indeed, the government was already providing assistance to asylum-seekers and torture claimants through ISS. It facilitated the UNHCR's advocacy work when it tried to convince the government to take over the assistance to refugees, as it became mostly an administrative and financial transfer.

The special status of implementing partner now links very closely UNHCR with ISS, and cooperation between them is practiced on a daily basis, as the same beneficiaries are referred by both organizations. For the cooperation to be efficient, it would require very good inter-agency communication. In the case under scrutiny, the issue of weak coordination between UNHCR and ISS became more and more blatant. For example, one could observe the non-sharing of important files, such as refugees' tenancy agreements, as well as no follow-ups on files transferred to the partner organization. Many times, beneficiaries would approach the UNHCR to solve a given problem -for instance with their landlord or with Hospital authorities-, or about food distribution, and would simply be told by the Office that they have to approach ISS for that purpose – or vice-versa. Also, phone contacts between ISS caseworkers and the Community Service Officer are not allowed, since every communication has to go through the supervisors, who transmit messages and requests. The importance of information sharing seems central, to make the assistance system clearer, more transparent and thus more efficient both for officers and for refugees, who end up getting different information from different sources. Confusion between agencies and service-providers was a problem reported many times by beneficiaries as a negative consequence of delegation.

For the NGO to become the implementing partner, the fact of being linked to an organization by a contract changes its way of working. In comparison with NGOs which are operating partners, an implementing partner loses leeway in the follow-up of its own programs, as it must focus on the allocated project, for which it has the obligation to fulfill the contract. Even though it gains visibility and resources by being selected as the implementing partner, it loses autonomy, and such status also impacts its image. For some beneficiaries, it is likely that ISS be only considered as the instrument of the government and of the UNHCR, tightly knit to them by the

partnership. It thus has a less friendly or humanist image as an autonomous NGO may manage to reflect.

Finally, among this complex web of actors and to go back to Eberwein and Schemeil's typology<sup>53</sup>, we observed that relationships between the SOHK and the local NGOs cover all degrees of the classification. Indeed, Vision First and the HCR in Hong Kong are in *competition*, perhaps toward *collaboration* to avoid further confrontation. Conversely, the operational partners have a good relationship with the HCR, which could be referred to as *coalition* to be collectively more powerful. Ultimately, the UNHCR is implementing *cooperation* with its implementing partner, by interdependently working together.

Such observation and analysis applies to the humanitarian field in Hong Kong, but there is another domain in which the UNHCR works together with NGO partners: the defense and promotion of People of Concern's rights.

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<sup>53</sup> Op. cit. n°35



### Chapter 3: Human rights and the Judiciary – Advocacy in a multiple-actors context

#### *I. UNHCR's pledge to Persons of Concern's Rights: a collective advocacy*

As evoked previously, there are many NGOs surrounding the work of UNHCR in Hong Kong; many work in the social or humanitarian fields, while others work in the legal field, like the Refugee Advice Center (HKRAC) or Amnesty International, that are more focused on the Human Rights issues.

All have an advocacy role, for instance in advocating the right to work for refugees, which is one of the fundamental Human Rights, included in the International Covenant on Civil and Political Rights. It is important to keep in mind that the HKSAR is signatory of many treaties guaranteeing the respect of human rights. In fact, the government of Hong Kong has signed and ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). They all assert that the rights referred to shall be applied not only to its "citizens" or "nationals", but to every individual on a signatory's territory. However, the asylum seekers and refugees in Hong Kong are not entitled to such legal protection. They are under the special regime of the Immigration Ordinance<sup>54</sup>. They sometimes face detention or deportation even when their applications are being reviewed by the UNHCR on asylum claims or by government bodies in case of torture claims – for instance when the deportation procedure is launched before checking the individual's status with the UNHCR. Normally, the agency sends "suspension of deportation" letters to immigration bodies in order to prevent unlawful deportation. As explained by Amnesty International in Hong Kong, "the government uses the discretionary power vested in the Director of Immigration as an excuse to avoid taking up the responsibility of recognizing the rights of refugees/asylum seekers"<sup>55</sup>. However, it has to be highlighted that more and

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<sup>54</sup> Immigration Ordinance, CAP 115, 1997, available at [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP\\_115\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf)

<sup>55</sup> <http://www.amnesty.org.hk/html/node/10325>, consulted on September 1<sup>st</sup>, 2012

more collaboration seems to exist between immigration services and the UNHCR. For instance, two members of the immigration personnel are rotationally detached in the SOHK for a period of six months, to experience the work of a Refugee Status Determination Officer and have another perspective on migrations to Hong Kong.

The NGO called “HKRAC” provides free legal advice to refugees, thanks to the benevolent work of pro bono lawyers. It helps asylum-seekers to establish their claim to the UNHCR, and the lawyers attend the interview with them, to ensure that the procedure is fairly conducted. Even though the relationship between the RAC and the UNHCR appears to be fairly good, it was heard many times that the presence of the RAC lawyer during the interviews makes them longer and more complicated.

In the long run, HKRAC carries out advocacy work to promote refugees’ rights, and tries to impact on the independent judiciary system to progress toward more rights for refugees.

## *II. The right to work: Long-lasting advocacy and a glimpse of hope through the Judiciary*

The government’s reluctance in allowing anything similar to “work” for refugees is easily noticeable. Nevertheless, incremental changes may be possible, especially through the legal system<sup>56</sup>, through intermediate steps like internships or volunteering. The official policy is a case by case one: in theory, work for an asylum seeker or refugee can only be allowed if the person has been offered a job that could not be done by any Hong Kong resident. Beside the fact that it is very hard to meet such criteria, the last case who respected all government’s requirements was finally rejected by the authorities, for no official reason.

Paradoxically enough, all the issues of humanitarian assistance would be solved if the asylum-seekers and refugees would be allowed to work, a right that they are all desperately claiming. It is consistently rejected by the government for political

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<sup>56</sup> Observed through the creation of a database of all judiciary cases related to asylum-seekers and refugees.

reasons, as it is afraid that by allowing them the right to work would first risk to attract even more migrants, and secondly, it may lose support from local citizens as most Hong Kong residents are hostile to the right to work to foreigners, like in many developed countries.

As a consequence, refugees and asylum-seekers face problems of poverty and poor mental health mostly due to idleness stemming from the prohibition to work.

Such prohibition means that the ICESCR is not respected in Hong Kong. Indeed, this covenant affirms that everyone has the rights to:

- *“adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (article 11)*
- *“the enjoyment of the highest attainable standard of physical and mental health” (article 12)*
- *“right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right” (article 6)<sup>57</sup>*

In Hong Kong, the deprivation of the right to work for asylum-seekers and refugees, is a violation of the article 6, but also prevents articles 11 and 12 from being enforced, since “the continuous improvement of living conditions” and “the highest mental health” are out of reach without working.

The government considers that it has no obligation to ensure these rights for refugees and asylum seekers as the HKSAR is not bound by the 1951 Refugee Convention<sup>58</sup>. Without the right to work, refugees and asylum seekers are constrained to be economically dependent, and limited resources provided by the Social Welfare Department can hardly meet the basic needs of living in Hong Kong. As many asylum-seekers have to wait a long time for the UNHCR to make a decision on their

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<sup>57</sup> ICESCR, <http://www2.ohchr.org/english/law/cescr.htm>

<sup>58</sup> Op. cit. n°51

case, depending on their country of origin's situation and their language, and refugees wait a long time to be resettled, some decide to take up small jobs anyway, to make ends meet at the end of the month. By doing so, they risk arrest and detention by the Hong Kong police, but desperation to have a useful occupation and to earn some money makes them take the risk.

On the issue of the right to work for asylum-seekers and refugees, the UNHCR and NGOs are jointly advocating for it toward the Hong Kong government since many years, and possibly for many years to come. If they work together on the field of such advocacy and promotion of human rights, other domains of work implemented by the UNHCR and NGOs lead to more confrontational relationships. Following such observation, one could wonder how those relationships are in other contexts than the urban setting of Hong Kong.

## **PART III- The UNHCR Office in Hong Kong put in perspectives – comparisons and analysis**

Even though the UNHCR in Hong Kong has its own characteristics depending on the context it works in, it should be kept clear in mind that it is only one small office among many others in the world, as the agency carries out numerous operations worldwide. It becomes thus interesting to put our view in perspectives with how this organization works in other parts of the world, other work settings and other constrains.

### Chapter 1: comparison with camp setting, with PRC and with Macau

#### *I. Urban setting and camp setting: a different role for the UNHCR?<sup>59</sup>*

All refugee camps are supervised by the UNHCR, whose personnel is nevertheless rather scarce on the field. For instance, in Peshawar, there are up to 100 000 refugees in one camp, with 88 camps in the area. However, the agency's staff is less than 200 for this field of operation.

The day-to-day services and permanent presence in the camps are provided by NGOs, more or less numerous depending on the situation. Such delegation of everyday work to NGOs has its origins in the Statute of the UNHCR, as explained previously, and it thus has to implement its mandates through the work of NGOs. When a crisis happens and a new flow of refugees arrives, many NGOs – up to a hundred- send personnel to set up the camps and implement services. In that sense, NGOs seem to compete for what is sometimes assimilated to a “new market” by experts using the political economy approach<sup>60</sup>.

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<sup>59</sup> The data in this part is mostly from an interview with a Senior Protection Officer with extensive field experience with UNHCR in refugee camps settings; interview held on May 8<sup>th</sup>, 2012

<sup>60</sup> COOLEY Alexander, RON James, “The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action”, *International Security*, 27.1 (2002) p. 6

With time passing and the refugee situation lasting and becoming protracted, most NGOs leave the field, and only a dozen of them remains involved in the camps. They generally include the International Rescue Committee, the Norwegian and American Refugee Councils, CARE, Save the Children... It can be difficult to know how many NGOs are involved when the operation is very large, and when some of them don't communicate with the UNHCR.

In its monitoring role, the UNHCR staff visit the camps regularly and when problems come up, and holds regular meetings with NGOs in a bid to coordinate and optimize each agency's operations. However, NGOs are not compelled to attend. Cases of competing NGOs or overlapping services may sometimes occur, especially among the NGOs that do not attend the coordination meetings held by the UNHCR. When attendance for meetings about protection isn't always at its maximum, attendance for the meetings of the Programme Unit is generally higher. The UNHCR Programme Unit decides which NGOs will be UNHCR's "Implementing Partners", meaning they will receive funding from UNHCR to carry out certain services. As they are provided with budgetary resources, they thus have the duty to report their actions to UNHCR. The latter generally favors, when possible, local NGOs to be Implementing Partners. Also, the other multiple operational partners working in the camps, using their own funding, are often specialized in a certain area such as medical relief (MSF and MDM for instance), education or counseling. As mentioned earlier, many NGOs get involve as Operational Partner when an emergency comes up, thanks to the abundant private funding stemming from such emergency. After a while, private funding stagnates and decreases, and most operational partners have to cease their operations. It leaves mostly the Implementing partners involved, and the few big NGOs which have part of their operational funding allocated to such protracted situation – meaning, those which can afford to stay. In general, it is harder for UNHCR to coordinate with OPs that it is with IPs, since the former are more autonomous.

Although UNHCR tries to create and maintain good relationships with its non-governmental partners, difficulties are likely to appear in the case of a lack of willingness to cooperate and coordinate from one of the parties. Actually, such difficulties generally stem from interpersonal problems, between individuals, more than at the organizations' levels. They can also be due to misunderstandings or

misperceptions about the other organizations' mandate and work, and can be limited by communicating clearly about each agency's roles, both toward partners and clients.

To explain the UNHCR's relationship with NGOs, it is of utmost importance to analyze the location and context. Depending where the operation is taking place, NGOs seek funding in different ways. For instance, in an industrialized urban setting such as Hong Kong, civil society is well-developed, and local NGOs receive consequential local support. Consequently, they are not as dependent on the UNHCR as they could be in other third-world countries, where local support is weak or inexistent. In a nutshell, the relationship might be a subcontracting relation<sup>61</sup> in a camp setting, whereas the UNHCR and NGOs are more on an equal footing in urban setting, as the UN agency is not the only available source of funding.

In terms of the interactions between the HCR and the host governments, it has been observed that operations hosted in a country with a weak government – say Pakistan-, may allow more autonomy for the UNHCR to carry out its mandate. However, the lack of strength of such governments pulls along unpredictability in their behavior and decisions. Be it weak, a national government still keeps the right to decide where the UNHCR can intervene or not on its territory, and can suddenly deny access to certain parts of the country to display its rejection of interference in internal affairs. Such a position has been illustrated by India or China, where the UNHCR can only work in certain regions. When there is a strong government, the organization's role encompasses an advocacy aspect: it tries to give incentives for the authorities to get involved in the recognition and the assistance of refugees on their territory. It is crucial to keep in mind that the UNHCR has to set up field operations solely when the host government is unable or unwilling to address the issue. Then, the agency has to fill the gap.

The UNHCR's role also varies widely depending on the scale of the operations. In an unstable political situation with a high number of refugees and displaced persons, emergencies are likely. Therefore the role of the organization is to take urgent action by gathering all present actors, coordinating them and allocating each organization to

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<sup>61</sup> A. Cooley "Outsourcing Authority: How Project Contracts Transform Global Governance Networks" chapter 9 in Avant, Finnemore and Sell, 2011

a specific task and area of implementation. Conversely, in an urban and stable setting such as Hong Kong, such global emergencies are unlikely to appear. Individual emergencies might exist, but they do not require such collective involvement. As a consequence, the UNHCR can thus focus on advocacy toward the government and on fundraising.

## *II. HKSAR and its neighbors: local or shared regional features?*

The neighboring territory of Macau, which is also a Special Administrative Region of China, is signatory of the Refugee Convention and its government does Refugee Status Determination, with the UNHCR in Hong Kong providing technical expertise and assistance to the authorities<sup>62</sup>. The SOHK has extended its mandate to the territory of Macau SAR after its handover to Beijing in 1999.

It is interesting to notice that even though countries might have ratified the Convention, the resulting treatment of refugees is not necessarily different from a country that has not ratified the text, since some governments do not have the resources or expertise available to carry out this work. It is the case of China.

The People's Republic of China is also a signatory of the conventions, and the UNHCR has an office in Beijing, which is also the regional office for the whole Chinese Territory and Mongolia. More and more refugees are seeking asylum in China, especially Somalis<sup>63</sup>. Refugees in China used to be mostly from postcolonial Indochina, and from North Korea. This case is very specific and politically sensitive, as the PRC and North Korea have a close relationship on the international stage. Thus, North Koreans "refugees" are not recognized as such in China, which treats them as economic migrants. About that issue, the UNHCR was asked not to interfere since it is considered not to be a competent authority to deal with the North Korean "migrants"<sup>64</sup>. This situation is insightful since it underlines how refugee issues are

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<sup>62</sup> UNHCR China Fact Sheet, 2012, <http://www.unhcr.org/5000187d9.html>, consulted on September 7<sup>th</sup>, 2012

<sup>63</sup> General Staff meeting, June 20th, 2012

<sup>64</sup> Wikileaks, <http://leaks.hohesc.us/?view=09BEIJING2730>, consulted on September 1<sup>st</sup>, 2012



intricately linked with political issues, and how the UNHCR's mandate is heavily dependent on States' position to implement its work, confirming the IR school of realism for that aspect.

Another politically sensitive issue of the agency's mandate in the region is about the Chinese mainlanders trying to seek asylum to Hong Kong. If it happened from time to time during my work at SOHK, those individuals had to be explained that this is impossible. Indeed, before 1997, such case would have suited the definition of a refugee because they would have crossed an international border to flee and come to Hong Kong. However, at that time, the UNHCR in Hong Kong had the restricted mandate to deal with the flow of Vietnamese refugees. And after 1997, it was the end of the international border between Hong Kong and the PRC, which became an internal border, and it became thus impossible for mainlanders to seek asylum in Hong Kong. They have to go to a UNHCR office out of the country, like in Thailand, or Mongolia.

## Chapter 2: The UNHCR at the local and global level: toward more and more independence for the agency?

### *I. The UNHCR worldwide: mandate enlargement within specific constraints*

The UNHCR's mandate enlargement to IDPs has been studied by many scholars<sup>65</sup>, since it provides an exemplary case of organizational evolution.

When the organization assists refugees in returning to their homes, they are given seeds to help them restart their lives and cultivations. However, internally displaced people do not receive anything even though they might have gone through similar sufferings, and a feeling of injustice thus appears. According to the former High Commissioner Sadako Ogata, "the problem is sovereignty". In many contexts of massive internal displacement of people within a country –such as Myanmar or

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<sup>65</sup> For instance, AUBIN Louise, « Chapitre 6 : La sécurité humaine et l'UNHCR », in. DEVIN Guillaume, *Faire la paix, la part des institutions internationales*, Presses de Sciences Po, 2009

Angola during the conflict-, the government bars access to those regions to relief organizations.

However, taking into account that the trend of conflicts in the world tends toward less interstate conflicts and more intrastate conflicts, the displacement of people within a country is a phenomenon that is massively increasing, and the UNHCR is the only UN agency with the expertise, resources and preparedness to respond to such problem. Since 2005, the Inter-Agency Standing Committee has implemented a coordination program for IDPs in emergency situations, but it seems that the debate is still going on about whether the UNHCR should officially enlarge its mandate to IDPs or not – the opponents of this solution, even within the agency, assert that it might be overwhelmed by such enlargement, which could jeopardize the operations aimed at refugees. Some also point to a conflict of interest between protecting IDPs when also advocating for the right of asylum in other countries. Furthermore, other UN agencies are reluctant to accept such a big enlargement since it would excessively extend the UNHCR's role and thus diminish their own<sup>66</sup>. Currently, it is under the cluster approach that the UNHCR has a lead role in overseeing the protection and shelter needs of IDPs as well as the coordination and management of camps<sup>67</sup>.

The UNHCR's mandate has been progressively enlarged to encompass IDPs and emergencies, including natural catastrophes, such as the floods in Pakistan and in the Philippines. In those cases, the UNHCR could include IDPs in its operations since it was already deployed on those fields. This enlargement is due to the fact that the agency raises its own funds, unlike most of UN agencies – only UNICEF has been raising funds for a long time. Because of such particularity, the UNHCR has the capability to intervene, and also has the preparedness to send teams when there is an emergency. After the tsunami in Sri Lanka, the HCR was present on the ground and it had to coordinate hundreds of NGOs, some of which lacked competency to give an efficient response to such situation. The enlargement to environmental refugees can be seen as a good strategic move since it will be positive in terms of fundraising.

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<sup>66</sup> The State of World's Refugees, Chapter 7: Internally Displaced persons, <http://www.unhcr.org/4444afce0.pdf>, p.167

<sup>67</sup> <http://www.unhcr.org/pages/49c3646c146.html>, consulted on September 2<sup>nd</sup>, 2012

Taking the example of Somalia, it is much easier to collect funds related to the current famine than required by the current conflict<sup>68</sup>.

Another organization with whom the UNHCR has to cooperate is the International Organization for Migrations (IOM). In Hong Kong, they work together for resettlement matters mostly: where a refugee has been accepted for resettlement by a country, he or she is sent to the IOM office by the UNHCR – right next to the SOHK - to finalize the logistics of the resettlement. Throughout my time in the office, I did not have a chance to meet with any IOM staff, and if the two organizations do cooperate, it is not a very close relationship. This impression was reinforced by some colleagues joking about IOM being no more than “a travel agency” – even though it was said with humor, it sounded quite illustrative of the relationship of the two organizations at the local level.

Finally, it seems undeniable that the UNHCR is at the centre of many changes, both in the state of the world and the evolution of the rationale behind displacement. Within the UN family, it is trying to reform and adapt its structure to be able to tackle the IDP problem. On that issue, it is however likely that the role of the UNHCR ends up being extended, proving that this international agency is resourceful and adaptive.

## *II. The UNHCR locally: An example of successful organizational adaptation*

The UNHCR sub-Office in Hong Kong went through many major changes since its creation. Initially sent to Hong Kong to implement the Comprehensive Plan of Action to deal with the late flows of Indochinese refugees, it first had to adapt to the end of such a specific and delimited mandate. It successfully did so by highlighting the characteristic of the SAR as non signatory of the Convention, and thus by inducing that it had to remain on the territory for its mandate of protecting refugees and the right to asylum to be enforced.

Later on, and in parallel to that change, there were very little Vietnamese seeking asylum in Hong Kong, and the Office thus had very little work. At some point in the

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<sup>68</sup> Op. cit. n°55

1990s, the office only counted around 3 or 4 staff members. Nevertheless, it managed to maintain its role by progressively adapting to the new waves of migrations, coming more and more from Sri Lanka, for instance. That period was also that of the Handover, in 1997, and the transfer of sovereignty apparently had little impact on the work of UNHCR in Hong Kong.

Along with more and more asylum seekers from Pakistan, Afghanistan and then Somalia, many Filipinos and Indonesians women started to approach the office from the years 2000. Such case is interesting to observe, because those women, which are domestic helpers, often and almost openly abuse the asylum system in Hong Kong by applying for the UNHCR's protection. They all are domestic helpers in Hongkongese families, and it is notorious that many create bogus claims simply in order to overstay their visa or work permit and gain time. Indeed, they are under very strict regulation in Hong Kong, and for instance at the end of a contract, they only have a few weeks to find a new employer – if they don't, they are sent back home. Opening a file at the UNHCR, and becoming an asylum-seeker, is thus a rather easy way to be allowed to stay longer, while their case is considered by the office. It is well-known that although they may have problems in their country of origin (most of the time financial or domestic violence problems), their claims are very unlikely to correspond to the definition of a refugee. However, the UNHCR is here trapped in the obligation to fulfill its mandate by processing the files of every person claiming he or she cannot return to his or her country of origin. The office has to process the claims, and it may sound as a terrible waste of human and financial resources. Filipinos and Indonesians are not the only people using the agency's protection as a "strategy" to avoid deportation, but their example is striking since they are so numerous: they constitute the first two countries of origin of asylum-seekers in Hong Kong. Facing such a problem, combined to the understaffing of the office, one could wonder about how the office can take measures against such abuses that prevent the UNHCR from focusing on the "real" asylum claims. Even though its mandate has the ability to be enlarged, it seems too rigid for the agency to adapt to specific case such as this one. To implement a policy on the treatment of Filipino and Indonesian claims, the SOHK would have to refer to the Headquarters and start a lengthy procedure to ask for such change. The office decided not to do so and preferably to adapt locally, by reducing at minimum

the waiting time between the opening of a file and the refugee status determination interviews, so that the bogus claims can rapidly be closed and filed. By doing so, its staff hopes that the overstaying time gained by the applicants will be so reduced that it is not worth it anymore to use this strategy. If such response makes sense and could work in the middle run, its inconvenient is that it puts even more pressure on registration and RSD staff members, who are already overloaded with work and under tight quotas of files to be treated every months.

A very recent change the SOHK successfully adapted to was the transfer of the humanitarian assistance to the local government. Even though such change modified the Office's role toward refugees, the office has found a new leeway of action through coordination with ISS and with the government, through intensive advocacy and through filling the gaps in the new assistance. At the end of my commitment with the Office, the Community Service officer was asked to find lots of activities and programs to implement for refugees, possibly as a strategy to continue being proactive and getting as much funding.

Funding is indeed the key issue in many senses, and one of the essential adaptations the UNHCR has to deal with since a few years is the economic crisis. The part of its budget originating from the UN is decreasing every year, and cuts have visible effects at every level of work, including at the SOHK, where some positions will be suppressed at the end of the year. This situation is particularly difficult for an office such as the SOHK, because it is not located in an area of priority for UNHCR's mandate. Since the UNHCR staff in operations such as Afghanistan or Kenya cannot be decreased, then it is small operations like in East Asia that feel more the budget cuts – for instance, it has been announced that the Cambodian Office will be closed. Hence, even though the UNHCR itself is globally an expending agency, some local offices, as semi-autonomous agents, have to establish their own “survival strategy” to keep existing and carrying out programs.

Finally, when observing the situation of the UNHCR SOHK within the context, there are several spheres of actors with which it is in relation, either as a principal or as an agent. At the local level, it is surrounded by many NGOs, with

which it cooperates and sometimes competes; but most of the time, it is considered as a powerful actor in this sphere. Nonetheless, the office is, at the regional and international level, in relation with other actors such as other UNHCR offices in the field and the headquarters. Regarding budget allocation, the SOHK is in competition with other UNHCR offices in the field, which might receive more funding from the headquarters depending on their location and on the scale of the refugee issue in the area. At the third and highest level, the UNHCR as an international organization has to report to the States parties of the Executive Committee, which remain influential actors in legitimating or not the agency's operations, and which, on the field, are sovereign and have a say on whether the UNHCR can be present on their territory or not.

## Conclusion

Studying the daily functioning of the SOHK was particularly interesting because of many of this office's specificities: it was a way to observe the degree of autonomy of a UNHCR Office on the field, with some leeway for adaptation, but within the frame of a tight budget control from the headquarters.

It is also specific because refugee operations are carried out in an urban and free society, with many NGOs involved. The openness and dynamism of the Hong Kong society is positive for the beneficiaries, which receive lot of additional and indispensable support from them, and for UNHCR who is assisted in its mandate. However, it also means that it is more complicated to coordinate the action and to verify what is done in the field of refugee protection. Conversely, in refugee camps where only one or two NGOs is involved after the emergency phase, it becomes easier for the UNHCR to adopt a coordination role and to make sure that the mandate of each partner is implemented.

It was also highly interesting to be in the front line to study the daily relationships the office has with NGOs, and it is obviously a difficult task to maintain a good relationship with every actor. Being part of the staff at the moment when the conflict with Vision First happened was, with an external stance on the events, an excellent mean to understand how agencies interact and deal with such libel action from a former partner. The Head of Office changed and so did the dynamic and management within the office.

The research question in this thesis was centered on analyzing the essence of the relationship the local HCR Office has with other actors on the field, NGOs but also the government. We noticed that the SOHK and NGOs are allied in their advocacy movements toward the government, through offensive naming and shaming by the NGOs, and more indirectly by the HCR. Besides such informal alliance, the Office has an official partnership with ISS, but this relationship is in fact more similar to subcontracting<sup>69</sup>. Regarding the operational partners, the headquarters have attempted

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<sup>69</sup> Cooley, op. cit. n°61

to formalize this relationship, but on the field, their relation is actually more accurately defined by "mutual recognition" which is "a form of collaboration which is not explicit but implicit, not formalized but informal, and not symmetric but asymmetric"<sup>70</sup>. Mutual recognition is a notion relevant in this case, since it highlights how blurred and varied the relationship between the agency and the other actors can be. Indeed, scholars have studied some IGOs' relationships with NGOs, such as the case of the World Trade Organization and the International Atomic Energy Agency<sup>71</sup>. However, those are organizations which accredit very little NGOs and in that sense, the UNHCR offers a very different perspective on how an IO can work closely with NGOs, thanks to its high specialization, and because it does need their help for the effective implementation of its large mandate. It also underlines that when an IGO such as the UNHCR cooperates with NGOs, the relationships that are created remain very diverse in their essence, and highly dependent on the context and the available resources.

The implementation of the UNHCR's mandate on a territory where the refugee Convention is not enforced is very particular, and makes the relationship with the government very fragile: the UNHCR in Hong Kong constantly has to negotiate and lead advocacy movements, as well as maintain a good relationship with the authorities, so as to be operational and influent on the field. One can wonder whether the advocacy work for the government to ratify the 1951 Geneva Convention will finally succeed – it seems that there is still a long way to go, but the increasing influence of Beijing in Hong Kong politics could weigh on this evolution – the PRC being a signatory of the Convention.

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<sup>70</sup> SCHEMEIL Yves, « From Mutual denegation to Mutual Recognition : NGO / IGO Partnership in Trade and Atom », *Cosmopolis* n°3 (Sophia University, Tokyo), March 2009, p. 5

<sup>71</sup> *Ibid.*



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