



**UNHCR**  
United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés



## **Commemorating 60 Years of the Refugee Convention: Commitments for Protection and Solutions in the OSCE Region**

### **UNHCR Contribution to the OSCE Human Dimension Implementation Meeting Working Session 11: Humanitarian Issues and Other Commitments Warsaw, 26 September to 7 October 2011**

#### **Historical and Contemporary Dimensions**

The provision of protection to people fleeing persecution in foreign lands is one of the earliest hallmarks of civilization. The modern institution of asylum, found in the Universal Declaration of Human Rights, was reaffirmed in the 1951 Convention and its 1967 Protocol, alongside a growing number of regional refugee and human rights instruments. The granting of asylum is a humanitarian, non-political and peaceful act, as confirmed by the 1951 Convention and other international agreements. This is vital, given displacement is a global problem, requiring global solutions, based on principles of international cooperation, solidarity, and burden and responsibility-sharing.

At the heart of the 1951 Convention is the institution of international protection aiming to ensure that the range of rights and needs of people who are not protected by their own countries are met. Central obligations contained in the 1951 Convention include those of *non-refoulement*, non-discrimination, non-penalization for illegal entry or stay, and the enjoyment of basic human rights. Admission to safe territory and, where available, to effective asylum procedures, is the start of the process which should conclude with the attainment of a durable solution for those in need of protection.

Together with the 1967 Protocol, the 1951 Convention has proven to be a strong and living instrument capable of adapting to a wide range of socio-political contexts. Forms of persecution related to gender discrimination, for example, have been accepted as falling within the definition of a refugee. In the drafting of the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted in 2011, UNHCR ensured that language on gender-related persecution and gender-sensitive asylum procedures was properly reflected.

These interpretations also pave the way for the 1951 refugee definition to be applied to persons fleeing various forms of conflict and violence. Increasingly, individuals and families are taking the decision to leave societies dominated by gangs or criminal networks, where they may face threats to life, liberty and security of the person; and human rights violations, including through exposure to extortion; harassment; trafficking in drugs, arms or human beings; or sexual violence and discrimination. Several countries, also in the OSCE region, such as Canada and the United States of America, have recognized victims of gang-related persecution as refugees. Not all national asylum systems accept these interpretations of the refugee definition, however, and this sometimes leads to a fragmented system of protection.

Moreover, since 1951, the elaboration of regional instruments in Africa, Latin America and Europe proves that respect for the institution of asylum is strong. The European Union has also clarified its legal commitments to persons in need of international protection, including those who cannot be returned owing to a real risk of serious harm arising from torture or inhuman or degrading treatment, or who face indiscriminate violence in situations of armed conflict.

The 1951 Convention is recognized in regional legal instruments as the “basic and universal instrument” which repeat and reiterate its refugee definition. Despite this, there is evidence that restrictive interpretations of the definition in some jurisdictions are denying protection to refugees and either diverting them into complementary protection categories or national forms of status with fewer rights, or outside the framework of international protection altogether. Some national asylum procedures continue to be marred by various deficiencies, also in the OSCE region. These include poor quality decision making resulting in incorrect application of protection criteria; excessive use of accelerated procedures without adequate safeguards; overly demanding evidentiary requirements; failure to acknowledge the shared burden of proof between the applicant and the State; and non-suspensive appeals. Barriers to access to asylum procedures, or the effective means to pursue a claim, include systematic or routine detention of asylum seekers, lack of access to legal advice and strict application of readmission and return arrangements, including in contexts where people may directly or indirectly be sent to face persecution or human rights violations. The latter may lead to further displacement.

For sixty years, the 1951 Convention has clearly demonstrated its adaptability to changing global dynamics. It has proven to be a versatile protection blueprint to match the realities of refugee movements, and many of its guiding principles are very relevant to contemporary forms of displacement.

The changing character of post-Cold War conflict and violence has led to an enormous flow of people on the move. Since the 1960s, simmering inter-ethnic tensions have erupted into conflict and strife in many parts of the world, causing millions to take flight. Deliberate targeting of civilians and their enforced displacement have been used as methods of warfare. Such persecution is often for reasons which fall squarely within the 1951 Convention.

Many longstanding conflicts, often fought within fragile States, remain unresolved today and continue to be the source of many large-scale movements. This is so, for example, in relation to Afghan displacement. New conflicts have erupted, for example in Kyrgyzstan and Libya. Conflict has become unpredictable, with distinctions between public disorder and armed conflict often blurred. The rules of engagement are also often not clear, frequently involving torture, extrajudicial killing, and sexual and gender-based violence. Within this context, the ability of humanitarian actors to deliver protection is seriously depleted.

Various human rights abuses, poor economic and social development, as well as a lack of political participation which could enable citizens to overcome these problems, continue to lead to coercive and involuntary movements. The extent of displacement is a reflection on the state of the world’s governance systems. With refugees numbering 15.4 million at the end of 2010 (including Palestinian refugees registered with UNRWA) and internal displacement at 27.5 million, it is a regrettable state of affairs. Some 4.9 million persons of UNHCR concern are in the OSCE region. They include some 2.4 million refugees and asylum seekers, 1.5 million internally displaced persons and a million returnees, stateless and other persons of concern.

The rise in global irregular migration is also a challenge to refugee protection. Mixed migration movements can place serious strains on national asylum and reception systems, undermine public support for asylum and generate more restrictive policies and practices. Sophisticated criminal smuggling networks put lives at risk, as does failure to observe traditional and legally binding rescue-at-sea codes. These days, refugees seek sanctuary in increasingly unsafe circumstances.

Modern displacement and migration trends are increasingly interacting with other global megatrends, including climate change, population pressures and urbanization, as well as food, water and energy insecurity. Globalization has brought many benefits, including greater mobility through the implementation of many regional free movement agreements, from which refugees have benefited. Equally, however, globalization has sometimes widened the disparities between the rich and poor, and mass communication systems give many more people the impression that a better life may be within reach elsewhere. The lack of accessible migration opportunities is one important reason why asylum systems are overburdened. Refugee policies and discourse must become better attuned to these trends if meaningful and effective responses to displacement are to be found.

International and national security agendas and the rise of unpredictable terrorist attacks have also led to more restrictive measures against asylum-seekers and refugees, at times at the expense of the legitimate protection concerns of individuals. Security-sensitive refugee status determination procedures are nonetheless an essential component of modern asylum systems, and were already previewed in the 1951 Convention. Alongside economic crises, there has been a noticeable rise in xenophobia, racism and discrimination against asylum-seekers and refugees.

Climate change-related movements are predicted to be among the biggest drivers of displacement and migration over the next century. The principles underpinning the 1951 Convention and other protection instruments will be a key source for developing a global guiding framework or instrument on climate change-related, and other modern forms of displacement.

## **Specific Issues**

### **Refugee Status Determination (RSD)**

Refugee status is one of the first entry points to international protection, including the prevention of forced returns, the delivery of assistance and other services, and the implementation of durable solutions. In countries that have not ratified either the 1951 Convention or the 1967 Protocol, or where national asylum procedures are not yet fully functioning, UNHCR continued to conduct RSD under its mandate. In 2010, UNHCR conducted “mandate RSD” as sole decision-maker in one OSCE participating State. In eight participating States, UNHCR conducted “mandate RSD” either in parallel or jointly with the Government despite the fact that States are party to the 1951 Convention; UNHCR is therefore encouraging States to assume more fully their responsibility for RSD.

### ***Non-Refoulement***

Respect for the principle of *non-refoulement* is absolutely critical to achieving international protection. The humanitarian evacuations from Tunisia and Egypt in early 2011 allowed migrants to return to their countries of origin, while opening up protection space for those unable to do so.

UNHCR signed protection and border monitoring agreements with several countries in Europe and continued to cooperate with the EU external borders agency, Frontex, including on the development of a Human Rights Strategy and a Code of Conduct for personnel in Frontex operations. Meanwhile, the denial of access to territory remained a concern. Interception, push-backs and land border closures were noted in some countries without the necessary protection safeguards. The presence of protection- and human rights-trained and qualified border guards and use of protection sensitive border screening procedures is essential to enable identification of those in need of protection. Cooperation with NGOs provides additional capacity for border monitoring and encourages greater transparency on the part of government authorities.

Expulsions to countries where violence remained prevalent were observed, including families with young children and other vulnerable persons, such as those belonging to ethnic or religious minorities. In other situations, systematic border interception practices failed to distinguish between those in need of international protection and others. This resulted in asylum-seekers being wrongly returned to their countries of origin.

### **Freedom of Movement**

The right of refugees to freedom of movement is explicitly acknowledged in the 1951 Convention. While the number of restrictive measures and the frequency of detention of asylum-seekers (and migrants) was reported to be on the rise in many countries, there were also a number of positive examples. Since 2010, several States, including Ukraine and the United States of America, have removed restrictions on the entry of people living with HIV. Belgium has made a commitment to expand the capacity of its open house programme, in which families with children who arrive at the border can live within the community while their asylum applications are processed. UNHCR has continued to prioritize building support for alternatives to detention. Meanwhile, detention practices in other areas continued to be problematic, in particular concerning the conditions of detention; the detention of unaccompanied and other children; the detention of asylum-seekers in maximum security prisons, including some with psychological illnesses; and the inability of many asylum-seekers to contact lawyers and/or UNHCR.

### **Sexual and Gender-based Violence**

Sexual and gender-based violence (SGBV) continues to be one of the most serious threats to the safety and security of refugees, particularly refugee women and girls. Early marriages and pregnancies, and related deaths, have been reported widely in refugee communities around the world, pointing to the need to strengthen and expand multifaceted action to address this. Response strategies in the OSCE region included the setting up of four advice centres for victims and an SGBV network in Georgia.

### **Humanitarian Action**

The last decade rates as one of the most dangerous periods in history for the staff of humanitarian organizations. Many emergency situations in which UNHCR operates around the world are often typified by fragile Governments, active non-state armed groups, widespread corruption and exploitation, and isolated locations. In the OSCE region and the complex political and security environment in Central Asia, UNHCR successfully mobilized a timely emergency response following the displacement of 375,000 people within and outside Kyrgyzstan. Despite an end to the violence, 80,000 persons remain internally displaced.

Popular uprisings across North Africa and the Middle East have caused individual as well as mass departures, in particular from Libya into Tunisia and Egypt, and also more limited, albeit significant, movements across the Mediterranean into Italy and Malta. UNHCR has deployed additional staff to the region and has collaborated with the International Organization for Migration (IOM) and Governments in undertaking a massive humanitarian evacuation, assisting tens of thousands of migrants from many different countries to return home.

### **Counterterrorism Measures and Protection Impact**

Over the past decade, security considerations have increasingly affected UNHCR's policy responses on a wide range of issues. The organization advocates for approaches which balance security and refugee protection. While staying abreast of the latest developments through various multilateral counterterrorism entities, UNHCR is taking steps to safeguard its own processes and operations from terrorism-related threats. Specific guidance has been issued to sensitize RSD and resettlement staff to potential exclusion issues and to assist them in interviewing applicants from the countries concerned. UNHCR has also reinforced its staffing structure and exclusion expertise in certain regions, and provides technical assistance to government authorities responsible for RSD.

### **Refugee Protection in the Context of International Migration**

In the context of mixed migration movements, including irregular secondary movements, problems of access to asylum can be compounded. Migration policies and practices do not always take sufficient account of the needs of asylum-seekers and refugees moving within larger groups. Yet increasing awareness of this phenomenon can offer new opportunities for refugee protection, as well as for other vulnerable persons, such as victims of trafficking and unaccompanied/separated minors. In 2010, UNHCR continued to intensify its cooperation with Governments and other partners, including through a joint UNHCR-OSCE-IOM regional conference on refugee protection and international migration in Central Asia in Almaty in March 2011. A compilation of practical examples, *Refugee Protection and Mixed Migration: The 10-Point Plan in action* (<http://www.unhcr.org/4d52864b9.html>) was released at the beginning of 2011.

The inter-linkage between international protection and human trafficking is another dimension of this phenomenon. UNHCR advised Governments on national laws and regulations, provided training and advocated for victims of trafficking to have access to asylum procedures. Along these lines, UNHCR also strengthened its co-operation with the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

### **Boat Departures and Rescue at Sea**

Deaths of asylum-seekers and other migrants at sea have reached dramatic proportions, leading to renewed measures by UNHCR in response. Unseaworthy vessels carrying asylum-seekers have exploded, been shipwrecked, or simply disappeared; for example, UNHCR estimates that over 2,000 people died trying to cross the Mediterranean for the period of the Libya conflict. In 2010, UNHCR issued a policy paper, *Maritime Interception Operations and the Processing of International Protection Claims* (<http://www.unhcr.org/refworld/docid/4cd12d3a2.html>), outlining a number of options for asylum processing after disembarkation. UNHCR has collaborated with the International Maritime Organization, to explore ways to minimize protection disasters at sea. UNHCR is encouraged by measures taken by governments to receive and provide assistance for boats carrying people and ensure safe disembarkation, reception and other care, yet gaps in rescue-at-sea regimes have left persons abandoned to their fate by

bureaucratic line-drawing. In this context, it is also important to ensure that any individuals who may seek asylum have access to a location and a procedure in which their claims can properly be assessed.

### **Human Dignity**

All too often refugees and asylum-seekers are perceived as powerless, and as objects of charity, rather than as individuals with dignity, who have frequently weathered enormous adversity and suffered great loss, including of home, family and country. Racism and xenophobia, fuelled at times by populist politics, have led to a resurgence of intolerance, violence, hate crimes and related tensions against refugees in host communities in many countries around the world. UNHCR has made combating racism and related xenophobia a key protection priority and *inter alia* signed a Memorandum of Understanding with ODIHR on co-operative activities including on UNHCR inputs to hate crime reporting, staff training and good practice exchange.

### **Age, Gender and Diversity Dimensions**

UNHCR recognizes that its goal of safeguarding the rights and well-being of refugees will only be met when the needs, capacities, constraints and resources of *all* persons of concern are understood, and action is tailored accordingly. Of the millions of people of concern to UNHCR, almost half are children and adolescents. Childhood and adolescence in displacement are often marred by threats of violence, forced recruitment, under-age marriages, trafficking, inadequate subsistence, exploitative labour, lack of and/or interrupted education, and loss of or missing family members and friends. The protection of unaccompanied children moving across borders has remained a serious preoccupation for UNHCR and governments also in the OSCE region. In June 2010, UNHCR published a study on the challenges and motivations of unaccompanied Afghan children travelling to Europe, based on interviews with over 200 children (<http://www.unhcr.org/4c1229669.html>). Also in 2010, UNHCR produced an *Aide-Mémoire* on Special Measures applicable to the return of unaccompanied and separated children to Afghanistan (<http://www.unhcr.org/refworld/docid/4c91dbb22.html>).

### **Solutions**

While the granting of asylum to refugees is a fundamental component of international protection, it is not a long-term solution. Durable solutions remain centred around voluntary repatriation, local integration and resettlement, and are best pursued within comprehensive solutions strategies. In Europe, the High Commissioner appointed a Personal Envoy to facilitate closure of the displacement chapter generated by conflicts in the Balkans (1991-1995), together with Governments and other international organizations. For urban-based refugees, such as those in Baku, Azerbaijan, socio-economic profiling and participatory assessments are expected to lead to the enhancement of livelihood strategies for many, as well as renewed focus on voluntary repatriation and resettlement.

### **Voluntary repatriation**

In 2010, a number of major repatriation operations drew to a close resulting globally in a drop of overall repatriation figures from 2009 and 2008. In total, some 200,000 refugees repatriated during 2010, mainly to Afghanistan, Iraq and the Democratic Republic of the Congo. One example of positive return-related co-operation in the OSCE region can be found in Kosovo (Security Council Resolution 1244), where UNHCR is promoting sustainable re-integration hand in hand with the OSCE field mission. To systematize co-operation in this area, a Technical Agreement between the two Missions was signed.

### **Self-Reliance and Local Integration**

One of the main challenges for UNHCR is to strengthen self-reliance and local integration opportunities for refugees, especially refugees living in protracted exile. Sustainable integration requires long-term collaborative efforts. For example in Armenia, UNHCR is supporting efforts to mobilize resources for the integration of naturalized former refugees. Elsewhere in Europe, agreements with 20 municipalities in Serbia were concluded on housing and employment. In Belarus, the Republic of Moldova and Ukraine, UNHCR is finalizing the first phase of an EU-funded local integration project which will benefit some 3,000 refugees.

### **Resettlement**

Resettlement remained one of the three principal solutions for refugees, especially for those facing particular protection risks in countries of asylum, or as a means of ending protracted displacement. Diversifying the nationalities of refugees considered for resettlement as well as the number of resettlement countries, were key goals in 2010. While the number of countries with regular programmes expanded to 25, the need for resettlement places outstripped supply. Bulgaria, Hungary and Spain established new programmes, while Japan and Romania have started pilot programmes. Efforts were pursued to achieve greater European engagement in resettlement. A total of 21 European countries, the largest number to date, took part in the Annual Tripartite Consultations on Resettlement (<http://www.unhcr.org/pages/4a2cd39e6.html>) in July 2010.

Last year, UNHCR submitted some 108,000 refugees for resettlement. Nine per cent of all resettlement submissions were for women and girls at risk, the highest percentage achieved in the last five years. The global acceptance rate of UNHCR submissions by resettlement countries reached 92 per cent. The largest numbers of refugees were resettled, with UNHCR's assistance, to the United States of America (54,077), Canada (6,706), Australia (5,636), Sweden (1,789) and Norway (1,088). Despite these positive developments, the number of resettlement places offered - approximately 80,000 - still left a large gap in meeting the resettlement needs. In 2010, an estimated 200,000 places were needed, and for 2011, it is anticipated that some 172,300 people will need resettlement. To advocate for further places, UNHCR and Governments launched the "10 in 100" initiative at the 2010 Annual Tripartite Consultations on Resettlement. The three global Evacuation Transit Facilities (ETFs), with two of them located in the OSCE region (Romania and Slovakia), continued to play a key role in evacuating refugees in emergency situations.

### **In-Country Dimensions**

The number of IDPs forced to move by conflict continued to dwarf that of refugees, reaching 27.5 million in 2010. Tens of millions more are also displaced every year by natural disasters. Since 2005, IDPs have remained the most populous group receiving protection and assistance from UNHCR, totalling nearly 15 million persons in 2010. UNHCR is operationally engaged with IDPs in 28 countries. During the reporting period, UNHCR's engagement with IDPs was marked by very diverse situations, including *inter alia* the Haiti earthquake, the monsoon floods in Pakistan and inter-communal violence in Kyrgyzstan. In its operations, UNHCR focused on outreach to IDPs, working with local partners and operating protection help-lines to reach IDPs at risk, for example in Kyrgyzstan.

The reporting period also brought a number of notable legislative successes at the national level: the Parliament of Bosnia and Herzegovina approved a revised strategy for implementation of

Annex VII of the Dayton Peace Agreement, signalling the Government's commitment to closing the chapter of displacement. UNHCR also worked with many governments in their efforts to adopt appropriate legislative and administrative frameworks to prevent, address and resolve internal displacement.

Moreover, with view to regional organizations, UNHCR has supported the African Union's Plan of Action for the implementation of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons, through activities with governments and civil society at both the regional and national levels. By the end of April 2011, this Convention had secured 31 signatures and 6 ratifications. Also, the Organization of American States adopted an annual resolution on internal displacement to address the causes of displacement and to develop programmes for protection, assistance and solutions. Intensive work is underway with the OSCE to mainstream protection and displacement aspects into the various layers of the organization's work and strengthen strategic co-operation with UNHCR and other relevant actors.

### **Conclusion**

On the occasion of the 60<sup>th</sup> anniversary of the 1951 Refugee Convention, the principles underlying the Convention and its 1967 Protocol remain steadfast, not least following reinforcement through regional refugee instruments, and within the broader human rights framework. The principles of non-discrimination, *non-refoulement*, non-penalization and basic human rights were reflected in a number of achievements throughout the world and in the OSCE region in 2010. Yet many problems of implementation and political will persist, and the environment in which protection must be secured today is increasingly complex. These principles, therefore, must be continuously reaffirmed.

The year 2011 provides an important opportunity to build on the foundations of the past 60 years; to reflect on achievements to date; to identify protection gaps and responses; and, most importantly, to strategize on legal, political and practical solutions to the looming challenges of the 21st century. It will be vital to consolidate and expand relevant partnerships and alliances; to reach out to displaced communities in ways that help empower them; to safeguard the needs of the most marginalized and vulnerable within those communities; and to capacitate a wide range of actors to meet the realities of these new working environments. Bearing in mind the above, 2010/2011 has seen much intensified UNHCR-OSCE co-operation covering a wide range of conceptual, thematic and operational issues.

The intergovernmental event at ministerial level in December 2011 in Geneva offers an opportunity for States to reaffirm their commitment to the international protection regime; to make concrete, forward-looking pledges to improve the protection afforded to refugees and stateless persons at the domestic or regional levels; to accede, where relevant, to the international refugee and statelessness instruments or to remove any continuing reservations; and to make other measurable promises that uphold the spirit of the 1951 Convention and its original protection-oriented design. UNHCR looks forward to honouring this anniversary year, by reinforcing our co-operation with the OSCE and other stakeholders on the challenges ahead and ensuring that the very people affected remain at the centre of our attention.

UNHCR  
September 2011