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Mobilizing for refugee protection: reflections on the 60th anniversary of UNHCR and the 1951 Refugee Convention

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Introduction

At the 60th Anniversary of the UNHCR, many of us who have been involved in refugee protection are taking stock. This paper is not meant to be an exhaustive account on any particular geopolitical and functional refugee protection issue. Rather, it intends to briefly look back at the last 60 years and recall some of UNHCR's challenges and accomplishments and to identify current and future challenges, mainly drawn from selected official speeches and documents as well from leading researchers.

Records and experience shows that refugees have been (and since 11 September 2001 are) increasingly framed as security issues. Therefore, policies and approaches that attempt to meet refugee protection needs while simultaneously addressing both humanitarian and security interests give UNHCR a chance to lead, to persuade, and to deliver protection. UNHCR's experience shows that challenges to the humanitarian space and protection issues cannot be addressed merely by the assertion of principles or by working only with traditional actors and approaches. Instead, all political, intercultural, and security actors and communities have roles to play in preventing and solving refugee crises.

UNHCR and the 1951 Convention at 60

On the 14 December 2010, UNHCR turned 60. For an individual, it is not always easy to reconcile the wisdom of experience with the vitality of youth. For an organization, it can be exactly the same. "At 60, I hope we have achieved the wisdom expected of us. I can assure you we have lost none of our vitality."¹

The 60th commemorations are of particular importance because of the high expectations attached to them. In December 1950, UNHCR was created with a mandate that at the time was perhaps not fully appreciated. "In this year when, at 60, it might be thought that the organization starts to face an existential crisis borne of old age, UNHCR staff continue on standby, ready with energy, ambition, and the capability to bring about transformative change. On 28 July 2011, the 1951 Convention turned 60. The Ministerial Conference in December 2011 "offers a welcome opportunity to make commitments in order to support UNHCR and its mandate to continue being the difference between life and death, danger and risk, desperation and solutions for millions!"²

The High Commissioner warned of growing gaps in the global protection framework for the world's millions of forcibly displaced and stateless people, and appealed to the international community to respond. He said the certainties of the post-World War II and Cold War periods were no longer sufficient to ensure that everyone needing international protection in fact receives it. He emphasized that today's challenges are

¹ António Guterres, United Nations High Commissioner for Refugees, *Opening Statement to the 61st Session of the Executive Committee of the High Commissioner's Programme (ExCom)*, Geneva, 4 October 2010.

² Erika Feller, Assistant High Commissioner – Protection, UNHCR, *RULE OF LAW 60 YEARS ON*, at the Sixty-first Session of the Executive Committee of the High Commissioner's Program, 6 Oct. 2010, Agenda item 5(a), 2010 <http://www.unhcr.org/4cac7f2f9.html>, accessed on 10 March 2011.

interconnected and complex; population growth, urbanization, climate change, water scarcity, and food and energy insecurity exacerbate conflicts in many ways that oblige people to flee their countries. All these conditions demand that particular attention in the coming year and beyond is paid to:

- addressing ‘protection gaps’ in the international system for protecting displaced people,
- balancing disproportionate burden of responsibility for refugees that falls heavily on poor countries; and,
- tackling statelessness, a condition that many states fail to address, despite it being a scourge depriving millions of people around the world of nationalities and other human rights.

The High Commissioner said that these protection gaps stem from inadequate implementation of existing treaties, insufficient accessions to relevant instruments, and holes in the international protection framework. He also pointed to the need for action on an expanding list of displacement problems for which no agreed international solutions currently exist, including natural disasters, climate change, economic and other man-made calamities, gang violence, and vulnerability arising from the uncertainty of post-conflict situations.

Burden-sharing is needed; something of a ‘new deal’ should be geared towards ensuring that frontline countries of asylum are not left alone in dealing with displacement from neighboring states. Currently, developing nations host around 80 percent of the world’s refugees. Models for improved burden-sharing already existed, such as regional efforts in Latin America and Asia, including South America’s ‘solidarity cities’ initiative that promotes self-sufficiency among refugees, its ‘borders of solidarity’ initiative that is designed to ensure that mass influx situations are not damaging to the interests of the host population, and, in Asia, the Bali process that promotes a broad-based approach to complex population and refugee movements.

Mobilizing fresh impetus for refugee protection

The basics of the international protection regime should be reaffirmed, while simultaneously evolving its principles and practice to better suit the new world order. There is a high probability that patterns of displacement will be increasingly impacted by environmental factors with conflict, extreme deprivation and climate change tending to act more in combination. There is a legal vacuum when it comes to the plight of populations whose states are engulfed physically and disappear, the so-called ‘sinking islands’ phenomenon. The natural disaster victims who are displaced externally will also confront an uncertain legal situation. Such issues need to find a place on the 60th anniversary commemorations agenda. To sum up, these are the key elements highlighted on the eve of the 60th anniversary preparations:

- protection and solutions development: progress and setbacks thereof;
- the continuing relevance of the protection framework: areas for further development;

- state responsibility for protection: UNHCR’s protection delivery/guidance and advice;
- the problem of mixed flows and secondary movements; and
- new challenges ahead, including regionalization of protection and environmentally driven displacement.

The 1945 United Nations Charter stipulates that the principles of sovereignty, independence, and non-interference within the reserved domain of domestic jurisdiction are fundamental to the success of the Organization (Article 2 of the Charter of the United Nations). In December 1948, the General Assembly adopted the Universal Declaration of Human Rights, article 14, paragraph 1, which recognizes that, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” With this article, the individual as subject and beneficiary of human rights in international law started to be seen as the beneficiary. These factors are important to an understanding of both the manner in which the 1951 Convention is drafted (that is, initially and primarily as an agreement between States as to how they will treat refugees), and the essentially *reactive* nature of the international regime of refugee protection.

The Statute of UNHCR adopted by the UN General Assembly through Resolution 428 (V) on 14 December 1950 reflects the self-interest of the more powerful states such as the USA and the UK that UNHCR was to serve only specific functions with a clear but narrowly defined mandate: “to protect refugees and to find solutions to their problems.” This mandate was to be carried out with only minimal operational support from voluntary sources, which has hampered its work during these past 60 years.

The formulation and further developments of legal standards – and efforts to ensure that they are effectively implemented – are defined in a series of international instruments (e.g., conventions, resolutions, recommendations, etc.), adopted at the universal level under the United Nations, or within the framework of regional organizations such as the Council of Europe, the Organization of African Unity, and the Organization of American States. In order to ensure their more effective implementation, many of these standards have been incorporated into the national law of a growing number of countries.

Paul Weis noted regarding the *Travaux préparatoires* of the 1951 Refugee Convention, that the establishment of the principle that the refugee problem was a matter of concern and solidarity of the whole international community. The international cooperation and burden-sharing has been one of the most important humanitarian achievements of the 20th century. As is well known, before the birth of UNHCR and of the 1951 Convention, and as the raging WWII had displaced tens of millions of people, the Supreme Headquarters Allied Expeditionary Forces (SHAEF) considered their presence a serious problem in Western Europe and proceeded with the return to Eastern Europe and the Soviet Union of refugees and displaced persons. SHAEF ignored the people when they resisted as a result of the fear of persecution by the Communist authorities.

Later in 1943, the Allied Powers set up the United Nations Relief and Rehabilitation Agency (UNRRA), an intergovernmental body to take charge of this function and

play an active role in the large-scale (controversial) forcible repatriation. Seventy percent of the funds for this body came from the USA and American nationals occupied most of its senior posts. In light of dramatic suicides in camps of displaced persons, the mass repatriations were finally stopped by the end of 1946, and UNRRA was replaced – despite strong opposition from the Soviet Union – by the International Refugee Organization (IRO) with the understanding that states recognized the right of the refugees not to be repatriated against their will.

For the first time, states adopted a definition of a refugee based on individual “persecution or fear of persecution” on the grounds of race, religion, nationality, or political opinion. Western states termed ‘refugee’ in accordance with the circumstances of the individual rather than simply his/her membership in a particular group, thus accepting the individual’s right to flee from persecution. This signified a fundamental shift in refugee protection and reflected the spirit of Article 14 of the Universal Declaration of Human Rights (everyone has the right to seek and to enjoy in other countries asylum from persecution). As a result of the Holocaust in Europe during WWII and during the early Cold War, large numbers of refugees fled Communist countries seeking protection in Western Europe.

When the war ended in 1945, when despair was gradually being replaced by hope for the future, the United Nations Charter was adopted in 24 October 1945, which created the United Nations, an organization that was tasked with the objectives of maintaining international peace and security, developing friendly relations among nations based on the principle of equal rights and self-determination, and enhancing international cooperation in solving economic, social, cultural and humanitarian problems.

The IRO set up by the United Nations with a limited period of time organized the resettlement of more than 1.5 million refugees in new host countries, often overseas, but could not solve all the refugee problems of the post WWII period. Intended to resettle the ‘left-over refugees’ post WWII, the UN General Assembly set up the Office of UNHCR on December 14, 1950 to help displaced East Europeans and to officially replace the IRO.

The first High Commissioner Gerrit Jan van Heuven Goedhart (1951-1956) received a minimalist mandate as set out in the Statute annexed to resolution 428 (V), which was to provide “international protection” to refugees and, by assisting governments, to seek “permanent solutions for the problem of refugees.” The General Assembly requested “the Secretary-General to transmit that resolution, together with the annex attached thereto, also to States non-members of the United Nations, with a view to obtaining their co-operation in its implementation,” providing a legal reference for refugee protection even in states not members of the United Nations. UNHCR faced serious obstacles to fulfilling its mandate.

States were determined to limit UNHCR’s functions by providing very little funding to UNHCR in the early days. The United States did not want the Office to carry out any relief, and thus did not provide any funding to UNHCR until 1955, limiting UNHCR to the sole function of international legal protection. Instead the United States generously funded rival humanitarian agencies, such as its own refugee office, the US Escapee Program, which was linked to American foreign policy interests. However, the High Commissioner had under his mandate then some 400 000

displaced persons in Europe, which led him to appeal to the UN General Assembly early on in his term. He indicated that there was an urgent need to solve the serious situation of these displaced persons who were unwanted and ‘warehoused’ in camps throughout Europe still several years after the end of WWII.

Not willing to ‘administer misery’ and despite the opposition of the USA, UNHCR soon started to exercise its own (fundraising) autonomy — contrary to what states had intended it to do. High Commissioner Goedhart broadened the scope of the Office by obtaining the capacity to independently raise funds and by taking on material assistance responsibilities. In 1952, with a grant from the Ford Foundation, UNHCR began for the first time to provide assistance to NGOs in order to promote the integration of refugees in the Western European region.

Thus, UNHCR was able to take the lead in the refugee crisis in West Berlin in 1953, which demonstrated UNHCR’s usefulness to the major powers and raised its international profile — eventually leading to the US softening its position towards UNHCR. These difficult advances provided the foundation for the establishment of a UNHCR program for solutions and emergency assistance.

The first time UNHCR was called upon to help in a massive refugee emergency was in 1956. The invasion of Hungary by the Soviet Army produced a mass exodus of 200 000 refugees into Austria and Yugoslavia, upon which Austria requested UNHCR to appeal to governments on its behalf for assistance. UNHCR, through its representatives on the spot in these two countries, immediately mobilized for emergency protection and assistance through setting up and chairing local intergovernmental agency organizations and NGOs. This showed that UNHCR was the only agency capable of coordinating both international refugee relief and the collection of funds for emergency material support.

UNHCR’s early efforts led the UN General Assembly to designate UNHCR as the ‘lead agency’ for directing the international emergency operation for Hungarian refugees in 1956. As a result of its success in handling the Hungarian refugee emergency, UNHCR eventually won the confidence of the USA, who eventually became its principal donor country.

Relevance for years to come

UNHCR, basically by its own initiatives, grew from a strictly non-operational agency with no authority to seek funds for its operational work to an institution that raised and administrated three billion dollars at its 60th anniversary. The world is far more complicated now than when the UNHCR was created 60 years ago. Wars between nations have largely given way to civil conflicts. This change is reflected in the numbers. Sixty years ago, UNHCR had 30 staff members and a budget of \$300,000 for mainly administrative running costs. Six decades later in 2011, UNHCR has a staff of 7,000 and a budget of more than \$3 billion a year mainly from voluntary contributions, operates in 120 countries, and assists over 30 million refugees.

Today, humanitarian workers face many challenges and dangers. Deputy High Commissioner Alexander Aleinikoff says rebel groups often do not respect the neutrality and humanitarian nature of their work. He says UNHCR aid workers have

been kidnapped and even murdered in the line of duty. "So, in that way, we are becoming...more focused on the safety of our workers. But, more importantly, or as important, is our ability to have access to the people we want to help, to people of concern to UNHCR.

As humanitarian space shrinks, our ability to do our work shrinks with it," said Aleinikoff.³ The principles of protection and asylum are under increasing threat today. More and more industrialized countries are putting up barriers to asylum, often turning away people in genuine need of international protection. The UNHCR says this violates its essential creed. It was created to safeguard the rights of people fleeing from persecution and abuse. But that is becoming ever more difficult to do as new challenges appear and people flee for different reasons—and UNHCR's Mandate was finally extended by the General Assembly "...until the refugee problem is solved" (resolution 58/153 of 22 December 2003, paragraph 9).

UNHCR was more and more called upon in the 1960s, during the decolonization of Africa that produced the first of that continent's numerous refugee crises needing UNHCR intervention. Over the following decades, UNHCR responded to assist with forced displacement situations in Asia and Latin America, in the enlarging Europe with wars in the Balkans, and the disintegration of the Soviet Union. With the start of the 21st century, further major refugee emergencies in Africa, such as the Democratic Republic of the Congo and Somalia, and Asia, especially the 30-year-old Afghan refugee problem with an increasing need for assistance to persons internally displaced by conflict and stateless persons.

In 1962, the first of UNHCR's larger-scale repatriations occurred with the return of some 250,000 Algerians, who had fled to Morocco and Tunisia during the strife in their country. In 1972, some 10 million refugees returned home to their newly independent state, Bangladesh, after months in relief camps in India. In the same year, 150,000 Sudanese refugees returned home from four adjoining countries. In 1973, UNHCR was instrumental in organizing a two-way movement of large numbers of people between Bangladesh and Pakistan—one of history's largest airlift population exchanges. In 1974, territories in Africa formerly under Portuguese administration gained independence, and in 1975, the General Assembly requested the High Commissioner to assist refugees to return to their homes in Guinea-Bissau, Mozambique, and Angola.

In 1978, following an agreement between the two countries, UNHCR was asked to facilitate the repatriation and initial rehabilitation in their country of origin of 200,000 people from Burma who had taken refuge in Bangladesh. The repatriation of 150,000 Zairian refugees living in Angola also commenced in 1978. In 1979, UNHCR started to assist in the return of some 50,000 Angolans in Zaire and of about 100,000 refugees from Nicaragua who had been living in Costa Rica and Honduras. In 1979 and 1980, refugees returned to Equatorial Guinea, Kampuchea and Uganda and 650,000 refugees and internally displaced persons returned to their independent Zimbabwe.

³ Alexander Aleinikoff, UN Deputy High Commissioner for Refugees, UNHCR Celebrates 60th Anniversary, by Lisa Schlein, 13 December 2011, Geneva.
<http://www.voanews.com/english/news/UNHCR-Celebrates-60th-Anniversary-111789224.html>.

Whenever refugees cannot return freely to their own countries or stay in the country of first asylum, UNHCR has a role to play in resettling them in third countries. This action is often difficult because it, in some respects, consolidates the refugees' uprooting. In September 1973, as a result of the putsch in Chile, UNHCR was charged with an urgent resettlement operation for more than 25 000 refugees. After the Fall of Saigon in April 1975, a new drama requiring speedy solutions unfolded in South East Asia, when again the international community rose to the occasion, resettling nearly 1.5 million Indo-Chinese refugees—including hundreds of thousand 'boat people' in the years to come.

UNHCR operations in the post-Cold War era, which Sadako Ogata reflects on in her experience of a turbulent decade as High Commissioner for Refugee Refugees⁴, include the Kurdish refugees crisis, protecting refugees and IDP in the Balkan Wars, the crises in the Great lakes Region of Africa, and the Afghan refugees and humanitarian action in war and peace.

The 1990s was also the 'decade of repatriation,' starting with the UN-brokered peace settlement in Namibia, which enabled more than 42 000 Namibians to return and build their own state. Following years of famine and war, some one million refugees returned to Ethiopia and Eritrea after the governmental change in Addis Ababa in 1991. During 1992 and 1993, 340 000 Cambodians returned to their homes from refugee camps in Thailand. Between 1992 and 1996, about 1.7 million Mozambican refugees were able to return from six neighboring countries. Despite ongoing conflict in Afghanistan, more than 2.7 million Afghans returned home from Pakistan and Iran. That makes an estimated total of more than 9 million refugees repatriated between 1992 and 1996.

The pro-active policy on repatriation involved UNHCR's actions within the countries of origin, acting as it had been in the preceding decade while helping the return of Chileans during the last years of the Pinochet regime. In all these efforts, the question of 'safe' return had been eminent, as returnees could trust less and less that they would be granted safety and dignity in their home countries.⁵ Emergence of new conflicts within countries and across regions produced serious challenges to safe returns.

The decade between 2000 and 2010 has seen myriad challenges, some of which include *refoulement* incidents of high visibility in a number of regions of the world. Sexual violence and abuse is almost too commonplace. Estimates indicate that 12 million people around the world are stateless, which means, in practice, a daily struggle for legitimacy, for a legal residence, for work, and for access medical assistance and education for their children.

In some countries, asylum systems are allowed intentionally to decline. There have been appalling incidents of migrant kidnappings for the purpose of extortion, accompanied by serious human rights abuses, notably rape, torture, and murder. Urban refugees and asylum-seekers face a growing protection challenge as their

⁴ Sadako Ogata, *The Turbulent Decade, Confronting the Refugee Crises of the 1990s*, Norton & Company, 2005.

⁵ This section draws substantially from Guy Goodwin-Gill's Lecture in the UN Audio Visual Library of International Law, see: <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>, accessed on 10 March 2011.

numbers increase. Programs to secure protection, health, housing, and education are costly and not always supported, and resettlement and repatriation remain realistic solutions for very few. Many urban refugees are dependent on UNHCR for financial, psychosocial, and protection support, but the needs far outstrip the possibilities.

Many asylum systems are not ‘child-friendly;’ they often take no account of the special circumstances of child applicants, and legitimate the automatic repatriation of children, without resort to established protection, such as best interests of the child determinations. Detention of asylum-seekers continues to create great individual hardship in many countries around the world. The duration of procedures can be unduly long, the conditions unjustifiably harsh, and the possibilities for legal oversight or review very limited. It has reached the point in some countries where there are actually more due process safeguards regulating detention of criminals than of asylum-seekers.

Physical insecurity, legal insecurity, socio-economic insecurity, and environmental insecurity are all regrettably quite commonplace. This is the background for the 60th anniversary commemorations, with their focus on strengthening the existing protection framework, promoting a new protection dynamic, mobilizing support for stateless people, and reducing statelessness, as well as building solidarity with forcibly displaced and stateless persons.

Handling internally displaced persons (IDP) and CLUSTER arrangements continue to pose major challenges. Violence tends to disproportionately impact the more vulnerable, with women, girls, and boys exposed to extreme forms of rape and killings. UN Security Resolution 1325 is yet to be implemented more fully. UNHCR for its part is making a determined effort to respond with sexual and gender based violence (SGBV) standard operating procedures now in place in over 90 percent of camps and multiplying when it comes to urban locations as well.

The interests and well-beings of refugee women and girls are important, and will have a prominent place during the 60th anniversary commemorations. These issues are a particular priority for the IDP protection cluster, which UNHCR leads globally. The cluster arrangements have made it easier to identify where there are gaps, notably when it comes to the protection of women and children in the overall humanitarian response. Working in coordination has reduced the unnecessary duplication of efforts, has encouraged more harmonized standards of protection and assistance delivery, and has enabled stronger advocacy.

Despite these improvements, the Audit report on IDPs recognized that there are still shortcomings with the cluster approach. Participatory approaches to programming are integrating only slowly, and the heavy process orientation can be at the expense of concrete outcomes. Overall, it remains perhaps too internationally focused, with local actors and national capacities insufficiently developed. This does not always encourage the necessary government buy-in and ownership.

The situation of refugees from Palestine is also a difficult one in addition to serious protection and assistance gaps of millions of Internally Displaced Persons IDPs. The United Nations response to their plight in the late 1940s had a profound impact on the drafting of the UNHCR Statute and the 1951 Convention relating to the status of refugees. Provisions were included in these instruments to exclude Palestinian

refugees from their scope as long as they were receiving protection and assistance. These provisions have proved ambiguous and have been subject to varying interpretations. For the most part, this has resulted in Palestinian refugees receiving weaker protection than other refugees.

While UNHCR has a mandate for Palestinian refugees who are outside of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA's) areas of operations, it has faced a number of challenges in extending this mandate. These include ensuring a proper interpretation by States of Article 1d of the 1951 Convention, and bettering standards of treatment and protection for Palestinian refugees in Arab states.

UNHCR and UNRWA are closely cooperating to address the protection challenges faced by Palestinian refugees under their mandates. In line with UNHCR's revised note of October 2009 on the Applicability of Article 1d of the 1951 Convention to Palestinian Refugees under the care and support of UNRWA (namely, that they fall outside the Convention's frame and UNHCR's responsibilities), UNHCR continues to provide protection to the Palestinian refugees residing *outside* UNRWA areas of operation on a case-by-case basis. This applies, for example, to Palestinian refugees previously residing in Iraq.

Secondary movements and regional protection continue to be serious challenges for asylum systems of undocumented migrants in irregular secondary movements exacerbated by boat arrivals. After the case of the Vietnamese boat people in the South China Sea in the last decades of the past century, the Pacific, the Mediterranean, the Caribbean, and the Gulf of Aden have all become areas with 'boat people' being interdicted, intercepted, turned around, ignored by passing ships, shot at, or denied landing. Even when rescued, disembarkation anywhere has no guarantees attached, as incidents off the Somalia/Djibouti coasts starkly remind us.

Asylum-seekers and refugees from outside a region are often classified as abusers of national systems, particularly where smugglers have facilitated their travel. While arrivals by sea have dramatically decreased, land arrivals have basically doubled. In addition, while sea arrivals had channeled to one main reception point, land arrivals now come through multiple crossing points and have been dispersed more effectively and rapidly through the community, below any radar screen. The evidence suggests that tough sea policies have not solved, just changed and indeed complicated the dynamics, of irregular movements.

According to UNHCR and looking at new challenges, the Convention's framework is of enduring relevance in providing a basic definition of who is a refugee and prescribing what cannot happen to refugees and what treatment they should or must receive. It does, though, stop short of setting up, in unambiguous terms, a system which places affirmative obligations on States Parties to act to ensure that every refugee has a right to asylum which is enforceable somewhere, or put another way, that States cannot act in such a manner that renders this right meaningless.

The Convention regime rests on notions of international solidarity and burden and responsibility sharing, but offers no agreed indicators for either. The Convention foreshadows various types of solutions, as refugee status is by definition temporary, but does not contain special arrangements to ensure they are realizable in a timely and

durable manner. And it gives little guidance when it comes to settling whose responsibility it is to protect persons forcibly displaced outside a more classic refugee context. In short, if the Convention is the irreplaceable starting point, the cornerstone of refugee protection, it nevertheless does not hold all the answers for modern displacement situations.

In short, UNHCR's main challenges continue to be:

- widespread reports of the deteriorating quality of asylum worldwide;
- hundreds of thousands of refugees without access to timely or safe solutions;
- a level of disillusionment about aspects of the 1951 Convention; and,
- serious gaps and strains in the protection system generally.

Solutions and opportunities have been possible despite these mounting challenges. Refugee problems can be solved. The case of northern Uganda illustrates this notion perfectly, with over 90 percent of the IDP camps of past years closed and close to 1.7 million IDPs having returned home. Another example is Zambia, where UNHCR is witnessing the closure of two long-standing refugee camps, Kala and Mwange. This is quite a milestone in a country that has generously hosted thousands of refugees from the Democratic Republic of the Congo for over 10 years.

If more examples are needed, they are there to point to, including the naturalization of the some 162,000 Burundian refugees in Tanzania, or the return to Southern Sudan of more than 330,000 refugees (i.e., around 75 percent of the UNHCR-registered 428,000 refugees in the neighboring countries at the time the Comprehensive Peace Agreement was signed). Asylum in the industrialized world remains an important durable solution. In Europe, North America, and Oceania last year, around 150,000 persons received Convention status or subsidiary protection, with all the rights necessary for full social inclusion. In terms of resettlement, UNHCR reported important success stories in 2011, with 24 countries offering resettlement places. Over 84 000 persons were able to benefit from this solution in 2010. However, the reality is that for every 100 refugees in need of resettlement, only 10 are resettled each year.

At UNHCR's 60th anniversary in 2011, the most comprehensive, universally and legally binding international instrument defining standards for the treatment of refugees remains the 1951 Convention. Even though many see the Convention as a relic of the Cold War, inadequate in the face of 'new' challenges such as refugees from ethnic violence, gender-based persecution, terrorism, and organized crime, it still is recognized as the principal standard for refugee protection. It does not deal with the question of admission, and it does not oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities (e.g., by prescribing which state should deal with a claim to refugee status).

Regional focus was needed due to specific developments, such as in Africa and Latin America, which resulted in the 1969 OAU/AU Convention on the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration, respectively. In Europe, the protection doctrine under the 1950 European Convention on Human

Rights contributed to the new provisions complementary protection within the legal framework of the European Union.

Nevertheless, within the context of the international refugee regime, which brings together states, UNHCR, the UNHCR Executive Committee, and non-governmental organizations, among others, the Convention continues to play an important part in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring the security of States, in sharing responsibility, and in generally promoting human rights.

The 2001 Ministerial Meeting of States Parties on the 50th anniversary of the 1951 Convention expressly acknowledged “the continuing relevance and resilience of this international regime of rights and principles...” In many states, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention definition of refugee, and helped to consolidate the fundamental principle of *non-refoulement*.

Ten years after 9/11 and after increasing challenges to the humanitarian space and protection, multiple efforts have been underway to address these challenges. These approaches did not merely include the assertion of principles or working only with traditional actors and responses. Besides mobilizing refugee protection by working with political actors at all levels, in an environment of declining multilateralism, taking into consideration intercultural, and identity questions,

UNHCR has also engaged with security communities, such as counterterrorism organizations. As the then UNHCR Director of International Protection stated at the fifth Special Meeting of the United Nations Counter-Terrorism Committee in 2007, in the period since September 11th, the “purpose of the asylum and refugee protection regime, refugees themselves, or persons seeking to be protected under the system have become severely misunderstood, misrepresented, or even stood upside-down, both deliberately or fortuitously as measures which may be taken legitimately have in any case had adverse effects. ... When specifically suspected of terrorist intent or inclination, many refugees and asylum-seekers have been denied admission, or, if already on territory, detained, extradited, returned, or expelled with limited or no recourse to legal procedural guarantees of judicial process, including through measures of rendition and diplomatic assurances.”⁶ Areas of concern include that States potentially are able to proceed with a counter-terrorism rationale, unless care is taken in light of relevant norms in the area of human rights, refugee and international humanitarian law, include the following:

- extradition with persecutory intent;
- collective and individual expulsion of refugees;

⁶ George Okoth-Obbo, Keynote speech and Background Paper, with Selected UNHCR Documents relevant to Counter-Terrorism in its Annex, on, Preserving the Institution of Asylum and Refugee Protection in the context of Counter-Terrorism: the Problem of Terrorist Mobility’, 5th Special Meeting of the United Nations Counter-Terrorism Committee with International, Regional and Sub Regional Organizations, Kenya, 31 October 2007, p. 3.

- lack of refugee protection in the context counter-terrorism;
- exclusion on an individual basis or in mass influx situations; and,
- denial of access, automatic detention and return to the country of origin.

States who represent the refugee's country of origin addressing an extradition request to another State, the requested State is precluded under Article 33 (1) of the 1951 Convention or international customary law from extraditing the unwanted person, unless it has been established by the authorities of the requested State that the wanted person falls within one of the exception in Article 33 (2) of the 1951 Convention, which stipulates:

The benefit of Article 33 (1) [*non refoulement*] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to security of the country in which he is, or who, having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of the country.

Extradition to a country of origin directly or indirectly, where “he or she would be at risk of persecution or other irreparable harm is worrying”. Therefore, “extradition and asylum processes must be coordinated in such a way as to enable States to rely on extradition as an effective tool in preventing impunity and fighting transnational crime in a manner which is fully consistent with their international protection obligations.”⁷

Shortly after September 11th, on 28 September 2001, the UN Security Council called upon states in its Res. 1373 in Paragraph 3g to “ensure, in conformity with international law, that refugee status not be abused by perpetrators, organizers, or facilitators of terrorist acts...” This triggered UNHCR's prompt warning that states may be inclined to proceed with expulsion of groups or individuals based “on religion, ethnic or national origin or political affiliation, on the mere assumption that they may be involved in terrorism ... and that wishes to emphasize that such expulsion decision must be reached in accordance with due process of law which substantiates the security threat and allows the individual to provide any evidence which might counter the allegations.”⁸

Refugee protection in the context of counter-terrorism led to engaging with actors at the international regional and national levels. UNHCR has called for a better balance between national security and international refugee protection principles, and has suggested that asylum systems should be managed in such a way that allows states to identify early who might present a security risk.

In her conclusion, Ms. Feller confirmed “UNHCR's continued readiness to work with the Counter-Terrorism Committee and all relevant partners in assisting Member-States in the implementation of their obligations under Security Council resolutions

⁷ Guidance Note on Extradition and International Refugee Protection, UNHCR, Geneva, April 2088, page 37.

⁸ Addressing Security Concerns without Undermining Refugee Protection – UNHCR's perspective – UNHCR, Geneva, November 2001.

1373 (2001) and 1624 (2005). In doing so we believe resolutely that effective counter-terrorism measures and the protection of human rights are not conflicting, but complementary and mutually reinforcing goals, and that human rights and the rule of law are the fundamental basics of fighting against terrorism.”⁹

In September 2005, the UN Security Council recalled that the 1951 Convention shall not extend to any person considered responsible of acts contrary to the purposes and principles of the United Nations. In addition, the Security Council called upon states to enhance terrorist screening with a view to preventing those so responsible from entering their territory. This resolution prompted UNHCR to present its views on the matter recognizing that the “...combination of these provisions and the terminology used therein may indeed give rise to a risk that the Resolution 1624 may be interpreted as permitting the exclusion from international refugee protection, on the basis of Article 1F(c) of the 1951 Convention...”

At the same time, UNHCR highlighted the explicit mention “for the first time, of the right to seek and enjoy asylum” and that “exclusion from international refugee protection requires an individual assessment and a determination on the basis of reliable information, and that there are serious reasons for considering that the persons concerned incurred individual responsibility for such acts.”¹⁰ Particular risks arise in the application of the exclusion clause to mass influx situations, especially security-related issues. “These risks are likely to be reinforced where excludable persons who were in positions of power in the country of origin have recreated the former power structure in refugee camps.”¹¹ In order to provide guidance, UNHCR issued its “guidelines to clarify the procedural aspects of exclusion in the context of group determination on a *prima facie* basis,”¹² especially in situations of mass influx.

Denial of access, automatic detention, and return to the country of origin have been worrying features in refugee protection even before September 11th, but have become increasing concerns in recent years, and in light of counter-terrorism measures. Considering refugee protection through the practice of the UN Security Council, scholar Christiane Ahlborn found that, “links made between terrorists and refugee status in the context of the counter-terrorism resolutions...have been met with reaffirmations of the requirement to comply with international human rights, international humanitarian law, and refugee law, and in particular with the principle of *non-refoulement*.”

Despite undeniable negative repercussions of its political actions, the Security Council’s practice has thus predominantly had a positive influence on the normative development of international refugee protection. Considering the recent evolution of

⁹ Address by Erika Feller, Assistant High Commissioner (Protection) UNHCR, Counter-Terrorism Committee, New York, 19 May 2011

¹⁰ UNHCR Note on the Impact of Security Council Resolution 1624 (2005) on the Application of Exclusion Under Article 1F of the 1951 Convention relating to the Status of Refugees’, , UNHCR Department of International Protection, Protection Policy and Legal Advice Section, 9 December 2005.

¹¹ UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of refugees, UNHCR Protection Policy and Legal advice Section, February 2006, p. 21

¹² UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees, Field Office Memorandum No. 012/2006, p. 1. UNHCR Protection Policy and Legal Advice Section, Geneva, 7 February 2006.

its scope of action towards the security of individuals, it is likely that the Security Council will continue to strengthen international refugee protection by adapting it to the challenges of the complex security environment of the 21st century.”¹³

Conclusion

This paper was not meant to be an exhaustive account on any particular geopolitical and functional refugee protection issue. We only briefly looked back to the last 60 years of selected UNHCR’s challenges and accomplishments; with a summary of some of the main contributions of the 10 High Commissioners since 1951, we illustrated that mobilizing refugee protection has become an increasingly serious challenge, especially given the counter-terrorism–focused era following September 11th. Increasing risks from counter-terrorism measures have been diminishing the humanitarian space and the ability to deliver and enjoy basic protection. Nowadays, refugees are facing a twofold serious risk: they are unable to find safety either at home or in the countries to which they were forced to flee.

Humanitarian efforts, coupled with political leadership, have been crucial in past decades for mobilizing refugee protection. UNHCR effected policy and operational adjustments in its increasing engagement in counter-terrorism work within the United Nations. Together with other international, regional, and national players, UNHCR worked to face post-September 11 challenges and thus exploited the economies of synergy, collaboration, and solidarity. Mobilizing states to discharging their refugee obligations duly and properly in a context in which their security communities respond also to counter-terrorism imperatives requires that it be done in a way justified and adequate and in line with UNHCR’s mandate and objectives.

¹³ Christiane Ahlborn, « 4. Conclusion: Balancing an Ambivalent Practice », in *The Development of International Refugee Protection through the Practice of the UN Security Council*, The Graduate Institute | Geneva (« eCahiers », n° 6), 2010, [Online], Online since 29 avril 2011, connection on 15 juillet 2011. URL : <http://iheid.revues.org/172> ; DOI : 10.4000/iheid.172; Electronic reference.