

HANDOUTS ON REFUGEE PROTECTION



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UNHCR Executive Committee (EXCOM) Conclusions

EXCOM conclusions are based on consensus reached by member states of the Executive Committee and agree in practical terms how refugees will be protected. Whilst they are considered soft law, they do set standards that have been agreed to by members of the international community. Given this, they have a highly persuasive value, and governments and the UNHCR should be held accountable to the standards set in the conclusions.

A compilation of Executive Committee conclusions is available electronically from [www://unhcr.org](http://www.unhcr.org) under the search string of “Excom Conclusions”. Conclusions are an extremely important record of the decisions that EXCOM members reach each year on critical refugee protection and assistance issues. They provide an authoritative reference, or soft law, on the protection responsibilities of those who assist and protect refugees. The conclusions are on specific subjects, such as voluntary repatriation, or on members of the refugee population, such as women, children, urban refugees, etc. They also include general conclusions, such as the Note on International Protection that is issued each year and that provide a helpful reference to key protection issues that EXCOM has decided on or is about to address.

It should be noted that the conclusions that have been decided in recent years often refer back in time to previous conclusions dealing with the same subject. For example, Conclusion 101 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees refers to what are considered “baseline” conclusions on voluntary repatriation, such as Conclusions 40 and 18. Because the conclusions build on each other, you should refer to all conclusions on the subject you are seeking to get guidance on.

For the purposes of Reach Out training, the following conclusions should be referred to:

- “Protection in Voluntary Repatriation”, No. 18 (1980)
- “Basic Rights of Asylum Seekers in Cases of Mass Influx”, No. 22 (1981)
- “Identity Documents for Refugees”, No. 35 (1984)
- “Refugee Women and International Protection”, No. 39 (1985)
- “Protection in Voluntary Repatriation Operations”, No. 40 (1985)
- “Detention of Refugees”. No. 44 (1999)
- “Refugee Women and International Protection”, No. 64 (1990)
- “Refugee Protection and Sexual Violence”, No. 73 (1993)
- “Protection of the Refugee’s Family”, No. 88 (1999)
- “Registration of Refugees and Asylum Seekers”, No. 91 (2001)
- “Reception of Asylum Seekers in the Context of Individual Asylum Systems”, No. 93 (2002)
- “Conclusion on the Civilian and Humanitarian Character of Asylum”, No. 94 (2003)
- “Conclusion on Protection from Sexual Abuse and Exploitation”, No 98 (2003)
- “Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx”, No 100 (2004)
- “Conclusion on Legal Safety Issues in Context of Voluntary Repatriation of Refugees”, No 101 (2004)

You may also want to refer to the annual general **Note on International Protection**, as it is a valuable source of current issues before the Executive Committee. See the **glossary** for an explanation of the Executive Committee and its operations. All of these conclusions are readily available on the UNHCR website or on REFworld (website or CD-ROM). Check these sources for other EXCOM conclusions and to update the list. A compendium of EXCOM conclusions was made available in 2004, and it, too, is on the website.

EXCOM Conclusion N. 84 - Refugee Children and Adolescents¹

No. 84 (XLVIII) – 1997: Executive Committee 48th session. Contained in United Nations General Assembly Document No. 12A (A/52/12/Add.1).

The Executive Committee,

Recognizing that children and adolescents constitute the majority of refugees and other persons of concern to UNHCR,

Conscious of the human rights and dignity of all refugee children and adolescents, and that, due to their specific needs and vulnerability within the broader refugee population, they need to be among the first to receive protection and assistance in any refugee situation,

Gravely concerned that refugee children and adolescents continue to be exposed to family separation, physical violence and other violations of their human rights, including through sexual abuse and exploitation, and military or armed attacks,

Recalling the fundamental importance of the Convention on the Rights of the Child (CRC) to the legal framework for the protection of child and adolescent refugees and for promoting their best interests,

Recalling that the Convention on the Rights of the Child, in its preamble, states that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Welcoming the United Nations Study on the Impact of Armed Conflict on Children ("the Machel Study"), and the appointment of a Special Representative of the Secretary-General on the Impact of Armed Conflict on Children,

Taking note, with interest, of UNHCR's strategy for follow-up to the Machel Study, and commending the establishment of operational performance objectives in respect of refugee children and adolescents,

Reaffirming its Conclusions No. 47 (XXXVIII) and No. 59 (XL) concerning refugee children and adolescents, and, stressing their continued validity,

(a) Calls upon States and relevant parties to respect and observe rights and principles that are in accordance with international human rights and humanitarian law and that are of particular relevance to international refugee protection, especially to safeguarding child and adolescent refugees, including:

(i) the principle of the best interests of the child and the role of the family as the fundamental group of society concerned with the protection and well-being of children and adolescents;

(ii) the fundamental right of children and adolescents to life, liberty, security of person, and freedom from torture and cruel, inhuman or degrading treatment or punishment;

(iii) the right of children and adolescents to education, adequate food, and the highest attainable standard of health;

(iv) the right of children affected by armed conflict to special protection and treatment, taking into account the particular vulnerability of refugee children to being forcibly exposed to the risks of injury, exploitation, and death in connection with armed conflict;

(v) the right of children to protection from harmful traditional practices and from all other forms of exploitation;

(b) Urges States and concerned parties to take all possible measures to protect child and adolescent refugees, *inter alia*, by:

(i) preventing separation of children and adolescent refugees from their families and promoting care, protection, tracing and family reunification for unaccompanied minors;

¹ Date: 17 Oct 1997, Executive Committee Conclusions, Document symbol: No. 84 (XLVIII) - 1997

- (ii) safeguarding the physical security of refugee children and adolescents, securing the location of camps and settlements at a reasonable distance from the frontiers of countries of origin, and taking steps to preserve the civilian character and humanitarian nature of refugee camps and settlements;
- (iii) preventing sexual violence, exploitation, trafficking and abuse; addressing the needs and rights of child and adolescent victims through provision of appropriate legal and rehabilitative remedies; and by following up on the Plan of Action of the 1996 Stockholm World Congress on the Sexual Exploitation of Children;
- (iv) providing appropriate training to military personnel and peacekeepers on human rights and humanitarian protections to which children and adolescents are entitled, and holding all parties accountable for violations of such rights and protections in refugee situations;
- (v) ensuring access to education, and the right of the child to freedom of thought, conscience and religion;
- (vi) providing medical or other special care, including rehabilitation assistance, to assist the social reintegration of refugee children and adolescents, especially those who are unaccompanied or orphaned;
- (c) Calls upon UNHCR to continue to integrate fully the rights of the child into its policies and programmes; improve its operational methods for assessing the needs of child and adolescent refugees; train its staff and implementing partners accordingly; formulate preventive strategies; and strengthen collaboration with States, UNICEF, WFP, the Office of the High Commissioner for Human Rights, ICRC, non-governmental organizations, and other concerned actors;
- (d) Calls upon UNHCR to include on the work programme of the Standing Committee in 1998 a report on the implementation of its strategy for follow-up to the Machel Study, with special reference to the establishment of operational performance objectives in respect of refugee children and adolescents and the identification of improvements in staffing, training and budgeting to meet these objectives; and also to report on follow-up of its evaluation of UNHCR programming and protection efforts on behalf of refugee children and adolescents.
- (e) Calls upon all States to participate constructively in the negotiations on an optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts with the aim of an early agreement on the text.

EXCOM Conclusion N. 94 - Conclusion on the Civilian and Humanitarian Character of Asylum²

No. 94 (LIII) – 2002: Executive Committee 53rd session. Contained in United Nations General Assembly document A/AC.96/973 and document no. 12A (A/57/12/Add.1)

The Executive Committee,

Remaining seriously concerned by the continuing occurrence of military or armed attacks and other threats to the security of refugees, including the infiltration and presence of armed elements in refugee camps and settlements,¹

Recalling the relevant provisions of international refugee law, international human rights law and international humanitarian law,

Recalling its Conclusion No. 27 (XXXIII) and Conclusion No. 32 (XXXIV) on military attacks on refugee camps and settlements in Southern Africa and elsewhere; Conclusion 72 (XLIV) on personal security of refugees; Conclusion No. 48 (XXXVIII) on military or armed attacks on refugee camps and settlements; Conclusion No. 47 (XXXVIII) and Conclusion No. 84 (XLVII), on refugee children and adolescents, as well as Conclusion No. 64 (XLI) on refugee women and international protection,

Recalling also United Nations Security Council resolution S/RES/1208 (1998) and S/RES/1296 (2000), and the two reports of the United Nations Secretary-General on the Protection of Civilians in Armed Conflict², noting in particular the recommendations made therein with respect to enhancing the security of refugee camps and settlements,

Welcoming the discussion which took place on the civilian character of asylum in the context of the Global Consultations on International Protection,³

Noting that several international meetings have recently been held, aimed at identifying effective operational strategies for maintaining the civilian and humanitarian character of asylum,⁴

Reiterating that refugee camps and settlements should have an exclusively civilian and humanitarian character, that the grant of asylum is a peaceful and humanitarian act which should not be regarded as unfriendly by another State, as stated in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and a number of Executive Committee conclusions, and that all actors, including refugees themselves, have the obligation to cooperate in ensuring the peaceful and humanitarian character of refugee camps and settlements,

Recognizing that the presence of armed elements in refugee camps or settlements; recruitment and training by government armed forces or organized armed groups; the use of such camps, intended to accommodate refugee populations on purely humanitarian grounds, for the internment of prisoners of war; as well as other forms of exploitation of refugee situations for the purpose of promoting military objectives are likely to expose refugees, particularly women and children, to serious physical danger, inhibit the realization of durable solutions, in particular voluntary repatriation, but also local integration, jeopardize the civilian and humanitarian character of asylum and may threaten the national security of States, as well as inter-State relations,

Recognizing the special protection needs of refugee children and adolescents who, especially when living in camps where refugees are mixed with armed elements, are particularly vulnerable to recruitment by government armed forces or organized armed groups,

Reaffirming the importance of States, UNHCR and other relevant actors, integrating safety and security concerns from the outset of a refugee emergency into refugee camp management in a holistic manner,

- (a) Acknowledges that host States have the primary responsibility to ensure the civilian and humanitarian character of asylum by, inter alia, making all efforts to locate refugee camps

² Date: 8 Oct 2002, Executive Committee Conclusions, Document symbol: No. 94 (LIII) – 2002

and settlements at a reasonable distance from the border, maintaining law and order, curtailing the flow of arms into refugee camps and settlements, preventing their use for the internment of prisoners of war, as well as through the disarmament of armed elements and the identification, separation and internment of combatants;

- (b) Urges refugee-hosting States to respect the civilian and humanitarian character of refugee camps by preventing their use for purposes which are incompatible with their civilian character;
- (c) Recommends that action taken by States to ensure respect for the civilian and humanitarian character of asylum be guided, inter alia, by the following principles:
 - Respect for the right to seek asylum, and for the fundamental principle of non-refoulement, should be maintained at all times;
 - Measures for the disarmament of armed elements and the identification, separation and internment of combatants should be taken as early as possible, preferably at the point of entry or at the first reception/transit centres for new arrivals;
 - To facilitate early identification and separation of combatants, registration of new arrivals should be conducted by means of a careful screening process;
 - Refugee camps and settlements should benefit from adequate security arrangements to deter infiltration by armed elements and the strengthening of law and order;
 - Once identified, disarmed and separated from the refugee population, combatants should be interned at a safe location from the border;
 - Where the granting of refugee status is based on group determination, civilian family members of combatants should be treated as refugees and should not be interned together with them;
 - Combatants should not be considered as asylum-seekers until the authorities have established within a reasonable timeframe that they have genuinely and permanently renounced military activities, once this has been established, special procedures should be put in place for individual refugee status determination, to ensure that those seeking asylum fulfil the criteria for the recognition of refugee status, during the refugee status determination process, utmost attention should be paid to article 1F of the 1951 Convention, in order to avoid abuse of the asylum system by those who do not deserve international protection;
 - Former child soldiers should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation;
 - Where necessary, host States should develop, with assistance from UNHCR, operational guidelines in the context of group determination to exclude those individuals who are not deserving of international refugee protection;
- (d) Further to para (c)(ii) above, calls upon UNHCR to convene a meeting of experts in support of the elaboration of measures for the disarmament of armed elements and the identification, separation, and internment of combatants, including the clarification of relevant procedures and standards, in consultation with States, United Nations Secretariat entities and agencies, and interested organizations, such as the ICRC, and report back to the Executive Committee on progress achieved;
- (e) Calls upon States to ensure that measures are taken to prevent the recruitment of refugees by government armed forces or organized armed groups, in particular of children, taking into account also that unaccompanied and separated children are even more vulnerable to recruitment than other children;
- (f) Calls upon the relevant United Nations organs and regional organizations, in pursuance of their respective mandates, as well as the international community at large, to mobilize

adequate resources to support and assist host States in maintaining the civilian and humanitarian character of asylum, in line with the principles of international solidarity, co-operation, burden and responsibility sharing;

- (g) Calls upon UNHCR and the Department of Peacekeeping Operations of the United Nations Secretariat to enhance collaboration on all aspects of this complex matter, and as appropriate, to deploy, with the consent of host States, multi-disciplinary assessment teams to an emerging crisis area in order to clarify the situation on the ground, evaluate security threats for refugee populations and consider appropriate practical responses;
- (h) Calls upon UNHCR to explore how it may develop, in consultation with relevant partners, its own institutional capacity to address insecurity in refugee camps, inter alia by assisting States to ensure the physical safety and dignity of refugees, building, as appropriate, upon its protection and operational expertise.
- (i) 1 For the purpose of this Conclusion, the term "armed elements" is used as a generic term in a refugee context that refers to combatants as well as civilians carrying weapons. Similarly, for the purpose of this Conclusion, the term "combatants" covers persons taking active part in hostilities in both international and non-international armed conflict who have entered a country of asylum.

2 S/1999/957;S/2001/331.

3 EC/GC/01/8/Rev.1.

4 Workshop on the Potential of International Police in Refugee Camp Security (Ottawa, Canada, March 2001); Regional Symposium on Maintaining the Civilian and Humanitarian Character of Refugee Status, Camps and other locations (Pretoria, South Africa, February 2001); International Seminar on Exploring the Role of the Military in Refugee Camp Security (Oxford, UK, July 2001).

EXCOM Conclusion N. 98 - Conclusion on Protection from Sexual Abuse and Exploitation³

(No. 98 (LIV) - 2003)

The Executive Committee,

Reaffirming its Conclusions No. 39 (XXXVI), No. 47 (XXXVIII), No. 54 (XXXIX), No. 60 (XL), No. 64 (XLI), No. 68 (XLIII), No. 73 (XLIV), No. 74 (XLVI), No. 79 (XLVII), No. 84 (XLVIII), No. 85 (XLIX), No. 87 (L), No. 91 (LII) and No. 94 (LIII) and in particular the need to combat sexual and gender-based violence in refugee situations; and recalling also in this context the relevant goals and objectives of the Agenda for Protection;

Recalling the international community's efforts to strengthen the international legal framework for combating sexual abuse and exploitation;

Recalling also the report of the United Nations Office of the Internal Oversight Services on the investigation into sexual exploitation of refugees by aid workers in West Africa¹, and resolution A/RES/57/306;

Noting distressing reports over the last few years that refugees and asylum-seekers, in particular women and children, have been victims of sexual abuse and exploitation during flight or upon arrival in their country of asylum, and deeply concerned that this has negatively impacted their access to basic protection and assistance, including health care and education, the issuance of personal documentation or granting of refugee status;

Recognizing that sexual abuse and exploitation are a consequence of unequal power relationships; a dynamic that is often exacerbated during humanitarian crises characterized by widespread violence, mass displacement, and the breakdown in family structures, social and value systems; and noting with distress, the involvement of humanitarian workers, officials and other persons working closely with refugee populations;

Acknowledging that inadequate protection or inappropriate assistance, particularly the quantity and quality of food and other material assistance, increases the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation;

Recognizing the importance of effective mechanisms to prevent and respond to the occurrence of sexual abuse and exploitation in all phases of the refugee experience;

Recognizing that the best interest of the child shall be a primary consideration in the design and implementation of all prevention and response measures, to ensure the protection of children from all forms of abuse, neglect, exploitation and violence, including sexual abuse and exploitation;

Welcoming the June 2002 Report of the Inter-Agency Standing Committee Task-Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises and its plan of action to address the problem of sexual abuse and exploitation;

Recalling previous UNHCR policies and guidelines intended to address violence against refugees, including the 1989 Policy and 1991 Guidelines on the Protection of Refugee Women; the 1993 Policy on Refugee Children and 1994 Refugee Children: Guidelines on Protection and Care, the 1995 Sexual Violence against Refugees: Guidelines on Prevention and Response, as updated in 2003; and the High Commissioner's 2001 Five Commitments to Refugee Women;

Noting the issuance in May 2003 of UNHCR's revised Guidelines on Sexual and Gender-Based Violence in Refugee, Returnee and Displaced Situations, as well as the UNHCR Guidelines on International Protection, Gender-Related Persecution, of May 2002, and noting UNHCR's endeavours to address the problem of sexual and gender-based violence in the field and the various training initiatives undertaken to date to provide staff with the practical skills necessary to meet the protection needs of victims of sexual abuse and exploitation;

³ Date: 10 Oct 2003, Executive Committee Conclusions, Document symbol: No. 98 (LIV) – 2003

Welcoming UNHCR's efforts to address the problem through the promulgation and implementation of a Code of Conduct for UNHCR staff, in accordance with the plan of action of the Inter-Agency Standing Committee's Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises; and the amendment of its programme implementation sub-agreements to include a requirement for implementing partners to have similar Codes of Conduct and for these to be implemented fully;

(a) Calls upon States, UNHCR and its implementing and operational partners to ensure that appropriate systems to prevent and respond to sexual and gender-based violence, including sexual abuse and exploitation, are in place, ensuring the needs of women and children, as well those of vulnerable persons, are addressed at all times; and recommends that measures to combat sexual abuse and exploitation of refugees and asylum-seekers be guided by the importance of:

- Ensuring explicit reference in codes of conduct and other relevant policies to the responsibilities of relevant personnel to prevent and respond appropriately to sexual and gender-based violence, including sexual abuse and exploitation;
- Ensuring the prompt investigation of allegations of sexual abuse and exploitation;
- Ensuring that actions undertaken on behalf of refugees and asylum-seekers, including women, children and vulnerable persons, enhance their meaningful participation in decision-making processes; that they are provided with sufficient information to form their opinions, and channels for communicating their concerns to humanitarian agencies, and are provided with full information about refugee protection and available assistance;
- Ensuring that needs assessments, evaluations and reports, identify vulnerabilities to sexual exploitation and abuse and provide a basis for improved programme planning that minimizes risks and opportunities for sexual abuse and exploitation, and that protection and assistance processes, taking into account the quantity and quality of assistance and distribution methods, including supervision, are designed and implemented in a manner that reduces the risk of sexual abuse and exploitation;
- Ensuring that camp governance is conducted in an equitable manner that empowers women, children and vulnerable groups and that the physical layout of camps is designed in such a way as to make such individuals less vulnerable to sexual abuse and exploitation;
- Ensuring that easily accessible and confidential complaint and redress mechanisms are in place for victims of sexual abuse and exploitation, and that they appropriately apply sanctions to perpetrators and ensure that such mechanisms respect due process rights of the accused, and safeguard the security and rights of the victim or witnesses;
- Ensuring the existence of adequate remedial measures in order to appropriately care for victims of sexual abuse and exploitation;
- Conducting training and capacity building on the prevention and response to sexual abuse and exploitation;

(b) Calls upon UNHCR to continue to pursue its ongoing activities taken in the area of sexual abuse and exploitation with particular attention to:

- Ensuring full implementation of respective policies, codes of conduct, the guidelines on sexual and gender-based violence in refugee, returnee and internally displaced situations, as well as the UNHCR guidelines on gender-related persecution;
- Implementing the relevant recommendations from the evaluations of UNHCR's activities in the area of refugee women, refugee children and community services;
- Ensuring adequate levels of monitoring and supervision of programmes for prevention and protection from sexual abuse and exploitation, including through physical presence, and to support staff at field level to implement concrete programmes of action;

- Developing mechanisms to ensure accountability, including at senior levels, in the implementation of all protection and assistance activities to prevent sexual and gender-based violence;
- Promoting gender balance in staff at all levels, both at headquarters and in the field, as well as expert and specialist competence, while having regard to merit selection principles;

(c) Urges all States, consistent with applicable international refugee, human rights and humanitarian law:

- to protect refugees and asylum-seekers, especially children, from all forms of abuse, neglect, exploitation and violence; and
- to cooperate in eliminating all forms of discrimination, sexual exploitation and violence against female refugees and asylum-seekers, and to promote their active involvement in decisions affecting their lives and communities;

(d) Urges States to respect and ensure the right of all individuals within their territory and subject to their jurisdiction, to security of person, inter alia by enforcing relevant national laws, consistent with international law, and by adopting concrete measures, where they do not exist, to prevent and combat sexual abuse and exploitation including through:

- The development and implementation of training programmes, guidelines and other practical measures aimed at promoting respect by all government officials, as well as persons acting on behalf of the State, who have contact with refugee populations, for the right of every individual to security of person and at promoting protection from sexual abuse and exploitation;
- Appropriate follow-up action in response to allegations of sexual violence and exploitation including, where necessary, by implementation of remedies, such as facilitating the filing and investigation of complaints of sexual violence and exploitation, the prosecution of offenders, and timely and proportional disciplinary sanctions in cases of abuse of power or gross negligence resulting in sexual exploitation;
- Complaint and redress mechanisms, where appropriate, which are easily accessible, do not compromise the security of the survivors or other informants, and give due regard to confidentiality. Such complaint mechanisms should, where feasible, provide victims and witnesses with referrals to support services with appropriately trained personnel, including in particular female counsellors;

(e) Calls on States to ensure that all humanitarian agencies funded by them and working with refugees integrate and promote policies consistent with the core principles of the plan of action of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises;

(f) Calls on UNHCR to support its internal investigation capacity within the Inspector General's Office to ensure that the Office is able to react swiftly and effectively to ascertain the veracity of any allegations of sexual abuse or exploitation by UNHCR or implementing partner staff;

(g) Calls upon the international community in cooperation with UNHCR and other international organisations to mobilize the resources necessary to ensure the provision of protection and material assistance in support of host countries, based on international solidarity, cooperation, burden and responsibility-sharing, since inadequate protection, or inadequate, inappropriate or poorly distributed assistance can increase the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation;

(h) Calls upon UNHCR to continue its cooperation with other actors to ensure protection from exploitation and abuse of refugees and asylum-seekers, including through participation in the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, and other coordination mechanisms;

(i) Calls upon UNHCR to continue to report on a regular basis on progress made in the implementation of measures to combat sexual abuse and exploitation.

EXCOM Conclusion N. 100 - Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations⁴

(No. 100 (LV) - 2004)

The Executive Committee,

Considering that the achievement of international cooperation in solving international problems of a humanitarian character is a purpose of the United Nations as defined in its Charter and that the 1951 Convention relating to the Status of Refugees recognizes that a satisfactory solution to refugee situations cannot be achieved without international cooperation,

Reaffirming that respect by States for their protection responsibilities towards refugees is strengthened by international solidarity involving all members of the international community and that the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and responsibility and burden sharing among all States,

Recalling the importance of international cooperation to resolve the plight of refugees, action to address the causes of refugee movements, as well as to avert them, inter alia, through the promotion of peace, stability and dialogue, and of action to prevent refugee movements from becoming a source of tension between States,

Emphasizing States' obligations with respect to refugees as contained in the 1951 Convention and its 1967 Protocol and as reflected in international human rights law and international humanitarian law; and highlighting that States' continued commitment to upholding the values and principles embodied in these areas of law contributes to an effective international response to mass influx situations,

Reaffirming the importance of international burden and responsibility sharing in reducing the burdens of host countries, especially developing countries,

Noting that persons who arrive as part of a mass influx seeking international refugee protection should always receive it, at least on a temporary basis,

Reaffirming that access to asylum and the meeting by all States of their international protection obligations should not be dependent on burden and responsibility sharing arrangements first being in place, particularly because respect for human rights and humanitarian principles is a responsibility for all members of the international community,

Recalling that mass influx situations pose challenges for receiving States in particular, as well as for other States in the region and for the international community; and reiterating its recognition of the heavy responsibilities and burdens borne by countries receiving a mass influx, especially when the resulting presence of refugees becomes protracted, and the need for international cooperation to achieve a satisfactory durable solution to a problem which is international in scope and nature,

Reaffirming, in regard to mass influx, the guidance on reinforcing burden and responsibility sharing, including in particular that set out in Conclusion No. 22 (XXXII) of 1981 on the protection of asylum-seekers in situations of large-scale influx, Conclusions No. 15 (XXX) of 1979 on refugees without an asylum country, No. 52 (XXXIX) of 1988 on international solidarity and refugee protection, No. 80 (XLVII) of 1996 on comprehensive and regional approaches within a protection framework, No. 91 (LII) of 2001 on registration of refugees and asylum-seekers, No. 94 (LIII) of 2002 on the civilian and humanitarian character of asylum, and Conclusions No. 77 (XLVI) of 1995, No. 85 (XLIX) of 1998 and No. 89 (LI) of 2000 on international protection, as well as General Assembly Resolution 58/169 of 22 December 2003 on human rights and mass exoduses,

Expressing its appreciation for the useful discussions on mass influx situations and burden and responsibility sharing which took place in the context of the third track of the Global Consultations on International Protection,

⁴ Date: 8 Oct 2004, Executive Committee Conclusions, Document symbol: No. 100 (LV) – 2004

Recalling the Agenda for Protection, endorsed by the Executive Committee, and the goals and objectives set out in its Programme of Action, aimed at achieving, inter alia, more effective and predictable responses to mass influx situations and improving responsibility-sharing arrangements to share the burdens of first asylum countries, in responding to the needs of refugees,

(a) Notes that mass influx is a phenomenon that has not been defined, but that, for the purposes of this Conclusion, mass influx situations may, inter alia, have some or all of the following characteristics: (i) considerable numbers of people arriving over an international border; (ii) a rapid rate of arrival; (iii) inadequate absorption or response capacity in host States, particularly during the emergency; (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers;

(b) Recognizes the differing capacities of States to contribute to resolving mass influx situations; commends the significant contributions made by countries of first asylum, particularly those in the developing world and those faced with protracted refugee situations; and stresses the value of action by States, UNHCR and other actors to share the burden and responsibility of countries of first asylum and to strengthen capacities for the protection of refugees in such host countries;

(c) Encourages all States to continue their efforts to tackle the root causes of, and seek durable solutions for refugees in, mass influx situations, including through heightened international efforts in the field of conflict prevention and resolution, poverty alleviation and promotion of respect for human rights and fundamental freedoms;

(d) Emphasizes the importance of efforts to mainstream gender and age concerns into responses to every stage of a mass influx from programme development and implementation to monitoring and evaluation, so as to ensure that the particular protection needs of refugee women, refugee children and older refugees, including those with special protection concerns, are effectively addressed, inter alia, through registration in principle on an individual basis, full and equal participation in matters affecting them, protection from sexual and gender-based violence and military recruitment, and maintaining family unity wherever possible;

(e) Notes the importance of the development by potential host States and UNHCR, as well as other relevant humanitarian organizations, with support by the international community, of emergency preparedness and response strategies in anticipation of situations likely to lead to a mass influx;

(f) Acknowledges the need for consultations on the international response to a mass influx situation with a view to developing appropriate international responses, including arrangements among States, regional and international organizations and, where applicable, financial institutions, as a clear sign of international solidarity and in the interest of protecting refugees;

(g) Recommends that such consultations should seek to develop, as early on in a crisis as possible, a comprehensive plan of action, including within the Convention Plus context, that includes arrangements on a bilateral or multilateral basis to apportion burdens and responsibilities in response to specific mass influx situations;

(h) Notes further that such consultations could be convened by the High Commissioner, consistent with the Statute of the Office, through a request by a country exposed to a mass influx or on an ex officio basis, to examine options appropriate to the particular circumstances of the situation;

(i) Emphasizes that such comprehensive plans of action in a mass influx situation should assist States and UNHCR and other relevant actors in dealing with the immediate humanitarian emergency in a more effective, predictable and equitable manner, in achieving standards of treatment for those in need of international protection which fully respect international refugee, humanitarian and human rights law, including in particular the fundamental principle of non-refoulement, and in identifying and promoting durable solutions adapted to the particular characteristics of the situation;

(j) Recommends that States, UNHCR and other relevant actors, in the emergency response to a mass influx situation, including when developing a comprehensive plan of action, give

consideration to the following burden and responsibility-sharing arrangements where necessary and appropriate to the situation:

- the provision of emergency financial and technical assistance and other forms of support where necessary, including to humanitarian organizations assisting refugees;
- the implementation, in countries receiving mass influxes, of coordination mechanisms involving relevant host State authorities, Inter-Agency Standing Committee country team members and other relevant actors to help ensure an effective international response to the mass influx situation;
- the establishment, at the international level, of an effective consultation mechanism involving affected States, other interested States, relevant United Nations system actors and other international and non-governmental organizations, to begin developing strategies and approaches to address the refugee crisis, including identifying possible durable solutions, bearing in mind broader political processes that may be under way to address the mass influx, including its root causes;
- the strengthening of existing mechanisms to ensure that the necessary funds and other material and technical assistance are immediately made available;
- the provision of support to host countries, especially developing countries, to assist the early and effective registration and documentation of refugees and asylum-seekers;
- the mobilization of adequate resources to support and assist host States in maintaining the civilian and humanitarian character of asylum, including in particular through disarmament of armed elements and the identification, separation and internment of combatants;
- the provision of support by the international community – agencies acting within their mandates – to host States in order to follow-up on those persons identified as falling within the scope of subparagraph (vi), including, where appropriate, the establishment of adequate mechanisms and special procedures for individual refugee status determination, including, inter alia, any possible application of the exclusion clauses of the 1951 Convention, for assessing claims of those combatants who have genuinely and permanently renounced military activities and seek asylum;
- the setting up of standby arrangements to allow for an immediate response to urgent security needs in countries of first asylum, including through the deployment of experts to help assure the security of refugee camps where appropriate and requested by the State concerned;
- the development of criteria and modalities for humanitarian transfer or evacuation to other countries,¹ fully consistent with international guidelines on the evacuation of children,² and financial assistance and other forms of support for the countries involved;

(k) Acknowledges that the principles of international cooperation and solidarity in the context of mass influx situations and the approaches as set out in this Conclusion in particular in operative paragraph (g), are equally relevant to protracted refugee situations resulting from a mass influx and can contribute significantly to the sustainability of the international response; and highlights the importance in this respect of continued international engagement, including to resolve the causes of the mass influx in order to achieve durable solutions;

(l) Notes the ongoing problems faced by countries of asylum, particularly those in the developing world, in coping with the consequences of mass influx situations once they have stabilized and particularly if they become protracted; and recommends that the following elements could be considered as part of the international response, including any burden and responsibility sharing arrangements that have been developed:

- the evaluation, together with United Nations specialized agencies, non-governmental organizations and other relevant actors, of the impact of refugees on host country economies, society, environment and security, especially in protracted refugee situations;
- the review and updating, on a regular basis, of any comprehensive approach that may have been developed to address the mass influx situation;

- the advance pledging, where possible, of further financial or other assistance beyond the emergency phase until durable solutions are found;
- the provision of support for national protection capacities of host States as needed, inter alia, to strengthen registration and documentation systems, and establish national legal frameworks and other mechanisms required to enable protection and assistance to be assured over time;
- the provision of financial and in-kind assistance in support of refugee populations and host communities to promote refugee self-reliance, as appropriate, thus enhancing the sustainability of any future durable solution and relieving the burden on countries of first asylum;
- the provision of financial and other forms of support, as appropriate, linked to broader economic developments and other concerns countries of first asylum may have in relation to providing protection to large numbers of asylum-seekers and refugees;
- the encouragement of international financial institutions to consider to what extent the economic and social costs of hosting large numbers of refugees can be factored into the justification for their activities, including in the conditions of financial lending schemes and grant-based assistance;
- the exploration by States, inter- and non-governmental organizations, as well as other actors of ways to improve primary education for refugees, achieve gender parity in education, and secure funding, including through the private sector, to expand secondary, vocational and tertiary education opportunities for refugees, especially adolescents;

(m) Recommends further that action to address and facilitate durable solutions, with a view to burden and responsibility sharing, be directed, as appropriate, in the form of voluntary repatriation, local integration or resettlement in third countries or, where applicable, in a strategic combination, and assistance to host countries, including through:

- the provision of financial assistance and other forms of support in situations where voluntary repatriation is foreseeable or taking place, in particular bearing in mind that voluntary repatriation is the preferred solution;
- where local integration is appropriate and feasible, the provision of financial assistance and other forms of support, including development assistance, for the benefit of refugees and the communities hosting them so as to assist countries of asylum in integrating refugees locally;
- the more effective and strategic use of resettlement as a tool of burden and responsibility sharing, including through the application of a group resettlement referral methodology;
- the mobilization of support for rehabilitating refugee-impacted areas in the host country from which refugees have returned;

(n) Recommends that, where a plan of action or arrangement is adopted, an effective review mechanism be included whereby all actors are brought together to evaluate its implementation and the need for any amendments to it in light of developments;

(o) Requests UNHCR to report regularly to the Executive Committee, within existing reporting mechanisms, on developments in international burden and responsibility sharing regarding mass influx situations.

EXCOM Conclusion N. 101 - Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees⁵

(No. 101 (LV) - 2004)

The Executive Committee,

Recalling its Conclusion No. 18 (XXXI) and Conclusion No. 40 (XXXVI) on voluntary repatriation, as well as Conclusion No. 74 (XLV) paragraphs (y), (z) and (aa),

Recalling its Conclusion No. 96 and noting that the present Conclusion does not apply to persons found not to be in need of international protection,

Noting the relevance for voluntary repatriation of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women,

Expressing appreciation for the useful discussions on voluntary repatriation, which took place in the context of the third track of the Global Consultations on International Protection;¹ and agreeing with the importance of working towards improved conditions for voluntary repatriation and of strengthening cooperation to make such repatriation sustainable in line with Goal 5, Objectives 2 and 3 of the Agenda for Protection which resulted from those discussions,

Reaffirming that voluntary repatriation, local integration and resettlement are the traditional solutions for refugees, and that all remain viable and important responses to refugee situations; reiterating that voluntary repatriation, where and when feasible, remains the preferred solution in the majority of refugee situations; and noting that a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions,

Reaffirming the voluntary character of refugee repatriation, which involves the individual making a free and informed choice through, inter alia, the availability of complete, accurate and objective information on the situation in the country of origin; and stressing the need for voluntary repatriation to occur in and to conditions of safety and dignity,

Recognizing in the context of voluntary repatriation the importance of resolute efforts in the country of origin to create conditions that foster the voluntary and safe return of refugees and to ensure the restoration of national protection,

Recognizing the complexities of large-scale voluntary repatriation and the difficulties which the country of origin may face in seeking to follow the guidance provided in this Conclusion,

Noting the value of countries of origin addressing issues which are of a legal or administrative nature as a means of building confidence, facilitating decisions to return and ensuring sustainable reintegration,

Emphasizing that some legal or administrative issues may only be addressed over time; and recognizing that voluntary repatriation can and does take place without all of the legal and administrative issues addressed in this Conclusion having first been resolved,

Recognizing the usefulness of States, as countries of asylum or countries of origin, and UNHCR concluding, where appropriate, tripartite agreements to facilitate voluntary repatriation efforts, thereby setting out the core elements and modalities of voluntary repatriation, the respective roles and responsibilities of the relevant actors involved, and the obligations of States with respect to returning refugees, while also noting that, under certain circumstances, voluntary repatriation may take place without such agreements,

⁵ Date: 8 Oct 2004, Executive Committee Conclusions, Document symbol: No. 101 (LV) – 2004

Recognizing also the importance of spontaneous voluntary repatriation of refugees and that actions to promote organized voluntary repatriation should not create obstacles to the spontaneous return of refugees,

Noting the desirability of incorporating appropriate legal protections for returning refugees in peace agreements, whenever possible, as a measure to build confidence and in support of their promotion in practice,

Acknowledging the importance of promoting an age- and gender-sensitive approach in all aspects of refugee return processes; and, in this regard, encouraging UNHCR to develop appropriate standards and indicators that account for such factors in repatriation and reintegration programmes,

Underlining the need for strengthened cooperation among countries of origin, host countries, UNHCR and other international organizations and the international community, to ensure that voluntary repatriation will be sustainable,

Noting that reconciliation in post-conflict situations is a key challenge and that addressing this from the outset, where necessary through transitional justice mechanisms, and involving communities, may contribute to creating conditions conducive to voluntary repatriation and sustainable reintegration,

(a) Invites countries of origin, in cooperation with UNHCR, other States and other concerned actors, as necessary and appropriate, to address, at an early stage, issues of a legal and administrative nature which are likely to hinder voluntary repatriation in safety and dignity, by taking into consideration, inter alia, the guidance included in the operative paragraphs that follow;

(b) Reaffirms that refugees have the right to return to their own country and that States have the obligation to receive back their own nationals and should facilitate such return; urges States to issue necessary travel documents, if required, to facilitate such return; calls upon transit countries to assist in the facilitation of return; and also notes that refugees may be required to be subject to brief interviews at the relevant border entry point by the authorities of the country of origin for purposes of identification;

(c) Recognizes that refugees, in exercising their right to return to their own country, should, in principle, have the possibility to return to their place of origin, or to a place of residence of their choice, subject only to restrictions as permitted by international human rights law;² and, in this context, notes the importance of efforts that seek to mitigate the likelihood that returning refugees could become internally displaced;

(d) Emphasizing that in the context of voluntary repatriation countries of asylum have the responsibility to protect refugees from threats and harassment, including from any groups or individuals who may impede their access to information on the situation in the country of origin or may impede the exercise of their free will regarding the right to return;

(e) Reaffirms that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin in order not to impede the exercise of the refugees' right to return; and recognizes that the voluntary repatriation and reintegration process is normally guided by the conditions in the country of origin;

(f) Strongly urges countries of origin to ensure that returning refugees do not face a risk of persecution, discrimination or detention due to their departure from the country or on account of their status as refugees, or their political opinion, race, ethnic origin, religious belief or membership of a particular social group;

(g) Recognizes the utility of amnesties in encouraging voluntary repatriation and recommends that countries of origin issue amnesty declarations granting returning refugees immunity from prosecution for having left or remaining outside the country of origin; and further recognizes, however, that amnesties should not be extended to returning refugees charged with, inter alia, a serious violation of international humanitarian law, or genocide, or a crime against humanity, or a crime constituting a serious violation of human rights, or a serious common crime involving death or serious bodily harm, committed prior to or during exile;

- (h) Recognizes that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; notes, therefore, the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property; and also notes that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin;
- (i) Stresses the desirability of ensuring that any restitution and compensation framework takes account of the situation of returning refugee women, in particular, where women, especially female heads of households, are prevented from securing property rights in accordance with inheritance laws or where inheritance procedures prevent them from recovering their property within a reasonable period of time;
- (j) Encourages countries of origin to provide homeless returning refugees, as appropriate, with access to land and/or adequate housing, comparable to local standards;
- (k) Notes the importance of ensuring nationality; and urges countries of origin to ensure that there is no exclusion of returning refugees from nationality and that statelessness is thus avoided; and recalls in this context Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and the protection of stateless persons;
- (l) Notes also the importance of providing under national law for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere, taking into account the special situation of returning refugee women who may not have documentation proving their civil status or who may face difficulties securing recognition of documentation issued by the authorities of the country of asylum;
- (m) Calls on countries of origin and countries of habitual residence to accept back refugees who are non-nationals but have been habitually resident in that country, including those who were previously stateless there;
- (n) Stresses the importance of family unity during and following voluntary repatriation; and calls upon States, where necessary, to assist spouses and family members of different nationalities to remain together as families;
- (o) Notes the importance of skills of returning refugees for self-reliance and, in this context, calls upon countries of origin to ensure non-discriminatory access for returning refugees to processes, where they exist, to recognize the equivalency of academic, professional and vocational diplomas, certificates and degrees acquired by returning refugees while abroad; and encourages countries of origin to recognize the equivalency of primary and secondary education received abroad by returning refugees;
- (p) Recommends that in consultation with refugee communities consideration be given to addressing the specific needs of returning refugees – including women, children, older people and other persons with special concerns – in order to ensure that they receive adequate protection, assistance and care throughout the repatriation and initial reintegration process; and stresses in this context that particular attention needs to be given to ensure that unaccompanied or separated children are not returned prior to successful tracing of family members or without specific and adequate reception and care arrangements having been put in place in the country of origin;
- (q) Reiterates that UNHCR, in line with its mandate responsibility, be given free and unhindered access to returning refugees, as needed, in particular, so as to monitor the latter's proper treatment in accordance with international standards, including as regards the fulfilment of amnesties, guarantees or assurances on the basis of which refugees have returned;
- (r) Encourages the country of origin, host countries and UNHCR in cooperation with other relevant actors to provide refugees with complete, objective and accurate information, including on physical, material and legal safety issues, prior to their voluntary repatriation to and reintegration in the country of origin;

(s) Encourages UNHCR to collaborate with other United Nations entities, international and non-governmental organizations, in particular those with mandates and expertise in rule of law, development and peacekeeping as well as peace-building, with a view to removing legal, administrative and other barriers to return in countries of origin, and, in doing so, contributing more generally to promoting the rule of law and respect for human rights and fundamental freedoms;

(t) Encourages the international community at large to mobilize adequate and sustained support to countries of origin, particularly those emerging from conflict, to assist them to restore national protection to, including respect for the human rights of, their citizens and former habitual residents, including returning refugees.

What Is a “Rights-Based Approach” to Humanitarian Assistance/ Development? What Does the Term “Rights-Based Programming” Mean?⁶

Some conceptualisations⁷

- "A rights-based approach to development describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society's obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance when needed".⁸
- "A rights-based approach to development sets the achievement of human rights as an objective of development. It uses thinking about human rights as a scaffolding of development policy. It invokes the international apparatus of human rights accountability in support of development action. In all of these, it is concerned with not just civil and political rights (the right to a trial, not to be tortured) but also with economic, social and cultural rights (the right to food, housing, a job). [Further] the implementation of a rights-based approach implies that performance standards be set, though these are best negotiated locally".⁹
- "A rights-based approach to programming means that we must be mindful in our development work of the basic principles of human rights that have been universally recognised and which underpin both CRC and CEDAW: inter alia, the rights to self-determination, peace and security. Among human rights instruments, CRC and CEDAW are the most widely ratified and the most directly relevant instruments to the UNICEF mandate."¹⁰
- "An approach: a coherent body of principles, goals, standards, strategies, action plans, programmes and procedures which respond to a particular vision, values and interest; based on the notion of rights, and more specifically on human rights: consequently, our principles, goals, standards, must be consistent with the values and principles underlying the idea of human rights (human dignity, non-discrimination, equality before the law). In addition, our programmes and intervention should ultimately aim at the promotion, respect and protection of human rights".¹¹
- "I have no idea what we are really talking about when we talk about a 'rights-based approach'-but the term is used all the time".¹²
- A "human rights approach to development" "sees poverty as a violation of human rights and places elimination of poverty as the primary goal of development assistance".¹³
- "A rights-based approach focuses deliberately and explicitly on people realising their rights. A key difference between needs and rights is that, while needs can exist in isolation from others, rights always trigger responsibilities. A rights-based approach to relief and development helps us to (a) take responsibility for the human rights impact of our work and (b) hold others accountable for their human responsibilities."¹⁴

⁶ Source: ICVA Website (Public Access), A Background Note for the Workshop on the Development of Human Rights Training for Humanitarian Actors

⁷ These definitions were taken from materials reviewed for this workshop and exploration of over 120 websites using the terms "rights-based approach" or "rights-based programming". Many organisations use these terms in materials that are available on the Internet but do not define them.

⁸ Kofi Annan, UN Secretary General, 1998.

⁹ "What Can we do with a Rights-Based Approach to Development?", Briefing Paper, Overseas Development Institute, 1999.

¹⁰ UNICEF Guidelines for human rights programming approach

¹¹ A personal perspective offered by a workshop participant.

¹² A headquarters representative of a humanitarian organisation.

¹³ AFCOA Human Rights Policy and Strategy Paper, 2001

¹⁴ The CARE Human Rights Initiative Basic Introduction to Human Rights and Rights-Based Programming Workbook includes a session on Principles of Rights-Based Programming that identifies fundamental principles of rights-based programming.

Human Rights and International Legal Standards: What Relief Workers Need to Know¹⁵

“We all use the phrase human rights... But do we really understand the nature of human rights claims, and the basis on which they are founded?” James Darcy, writing in his personal capacity for the Relief and Rehabilitation Network, is Emergencies Coordinator for Asia for Oxfam UK/I, as well as being a UK-qualified lawyer.

The concept of human rights is increasingly being invoked in the context of humanitarian relief, often in reaction to the frustration of attempts to bring relief assistance to civilian populations caught up in armed conflict.

This paper is written in the belief that, for those engaged in humanitarian work, it is essential to be familiar with the relevant human rights standards and the legal provisions that codify them. It is argued that humanitarian action can and should be rooted in human rights principles. But no agency that professes a commitment to human rights can afford to be ignorant of the relevant standards if it is to engage in more than empty rhetoric.

Network Paper 19 seeks to do three things: to sketch the basic moral and legal framework of human rights; to look at issues of responsibility, protection, and enforcement in the light of international legal obligations; and to relate this to the work of humanitarian agencies in their attempts to provide assistance and protection to communities affected by conflict and other disasters.

A wide view is taken of human rights law, so that international humanitarian law (the Geneva Conventions, etc.) and refugee law are included under this heading. A related and subsidiary aim of the paper is to examine the role and mandate of two agencies concerned specifically with these areas of law –the ICRC and the UNHCR – followed by a discussion of the connection between protection and assistance activities.

¹⁵ By James Darcy. The full text of this paper is available from the Humanitarian Practice Network for a fee.

The Compartmentalisation of Humanitarian Action¹⁶

Many of today's conflicts are characterised as 'protection crises', yet protecting human rights is somehow seen as at odds with providing humanitarian aid. The primary mandate of relief agencies operating in humanitarian emergencies is to provide urgent assistance to people in need. This typically involves providing food, shelter, water, medical care and other essential and lifesaving services. The physical and legal protection of civilians is regarded as subordinate to these commitments. Yet suffering may frequently stem from the loss or denial of physical and legal protection, for which humanitarian aid offers no remedy. The traditional perspective of humanitarian motivation must expand beyond the conventional view of how people are dying, to embrace an enlightened appraisal of how people are living.

Human rights or humanitarian assistance?

The protection of human rights is somehow seen as at odds with the provision of humanitarian assistance. The consensus definition of protection, as given by the ICRC, is 'any activity which prevents or puts a stop to a specific pattern of abuse and/or alleviates its immediate effects'.

Relief assistance tends to focus on the second aspect of protection, and does not address directly human rights violations at their source: 'We'll die with full stomachs', as the oft-quoted Bosnian refrain has it.

There is thus a conspicuous compartmentalisation peculiar to the field of humanitarian action that distinguishes as entirely distinct guilds activities that are in fact interdependent and interrelated. These simultaneously coexisting spheres of activity sometimes perform in oblivious parallels. This contrived categorisation works against a holistic engagement to political crises; it is compassion without understanding, and means that the cumulative impact of these disparate actors is not realised.

Human rights organisations and humanitarian assistance agencies interact only accidentally or socially, despite the countless situations where both simultaneously operate. In the one unifying covenant governing humanitarian conduct, the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, none of the ten principles delineates a commitment to the protection of vulnerable civilian populations.

The practical dimensions of political advocacy, community mobilisation and public protest are conspicuously absent. This critical lacuna in an otherwise practical code demonstrates how allergic aid agencies are to dealing with the root causes of abuse. That said, relief organisations are beginning to consider the integration of human rights and protection issues. UNHCR, the UN's Inter-Agency Standing Committee (IASC) and the ICRC have all published practical field guides for NGO staff, and initiatives such as the Reach Out refugee protection training project provide a useful base of protection parameters particularly relevant to aid workers. The International Rescue Committee and a few other NGOs have established departments with a mandate to address advocacy, public policy and protection.

Considering the frequency, duration and severity of human rights abuses, it should not be a question of whether relief agencies address the issue of human rights protection, but rather to what extent and how they do so. Responses range from the strict neutrality, discretion and non-disclosure of the ICRC to the public demarches and vocal advocacy of human rights organisations.

Interventions responding to negligent or ruthless parties can be categorised into three types: persuasion in an attempt to convince and compel authorities; denunciation in order to pressure and shame authorities; and substitution to replace authorities that have failed to meet their responsibilities.

¹⁶ By Gerald Martone. Source: Humanitarian Practice Network, www.odihpn.org.

Neutrality: an obsolete principle

Relief organisations have pervasive concerns that the public denouncement of human rights abuses in a host country will result in their expulsion; put at risk the security of their staff; and incur bureaucratic penalties. In general, aid agencies deliberately avoid even institutional proximity to the public protest of human rights agencies.

This has not always been the case. Examples abound of organisations registering their outrage at government mistreatment of civilians and the restriction of humanitarian access, without punitive consequences. In some instances, as with MSF in Burundi, public protest has actually resulted in improved access to formerly inaccessible populations. In Angola, MSF held a series of press conferences and released a report in late 2000 that was very critical of government and rebel abuse of the civilian population; the move drew little official reaction. Indeed, it had unforeseen benefits, such as inviting more open expression of public opinion, and the use of the report's findings to advocate for improved conditions.

Exaggerated fears of expulsion and a tenacious adherence to the ideal of neutrality can become alibis in a conspiracy of silence. The dilemma is reduced to an oversimplified choice: public denunciation at the risk of expulsion, or silence at the risk of passive complicity. It was this very point of divergence from the rigid neutrality of the ICRC that inspired the formation of MSF during the Biafran war in 1967. Opposed to the statutory neutrality and silent diplomacy of ICRC, MSF's founders spoke out about the atrocities they had witnessed. Without a vigorous campaign of advocacy, the mobilisation of public opinion, human rights monitoring and information sharing, relief assistance is merely palliative, and indistinguishable from the response to a natural disaster.

Humanitarian neutrality – interpreted to mean not taking sides in hostilities or engaging in political, racial, religious or ideological controversies – in no way justifies a neutral stance towards suffering or the abuse of basic human rights: 'Neutrality cannot be maintained when responding to complex emergencies; it is irresponsible to pretend otherwise ... in some instances it would be morally repugnant to remain neutral.' Agencies are beginning to promote a renewed emphasis on the principle of impartiality, which refers to an agency's non-discriminatory stature, where neutrality refers to its non-political stature. Impartiality may prove a more enduring guiding principle for humanitarian action. Impartial assistance is allocated in such a way that it does not discriminate on the basis of nationality, race, ethnicity, religious beliefs, class or political opinions. It is aid given in proportion to need, not as a factor of demographics. The slow death of the word neutrality from the lexicon of beleaguered relief agencies is a welcome evolution. This shameful and dispassionate notion connotes abstention not engagement, abandonment not involvement.

Protest: taking a stand against tyranny

'Silence cannot be a precondition for operational freedom'. So-called 'rebellious humanitarianism' demands that agencies have a responsibility – and a capacity – to influence the political, military and economic context in which they operate. Neutrality can no longer be a silent deal, whereby assistance agencies agree not to interfere with the conflict in exchange for the combatants' agreement not to interfere with the aid effort.

The cloak of neutral positioning masks the reluctance and tentative resolve of assistance agencies to stand up for populations *in extremis*. The hollow rhetoric of neutrality has become an alibi for the timid to shrink from protest. In this regard, it has been conveniently interpreted as a duty to abstain from any action that furthers or disadvantages the position of one side of a conflict over the other. Hence, humanitarian neutrality becomes passive.

To withhold public outcry is heartless. Only an extraordinarily aloof perspective could justify the decision to turn one's back on human misery. This fickle and calculating gesture is an unforgivable act of feigned moral purity. As one aid worker sarcastically puts it, 'the modern relief agency has replaced the principle of neutrality with arrogance'.

When a humanitarian agency is outraged at a particular situation, a rationalised silence is a particularly cruel and uncreative way to react. What is needed instead is a relentless and tenacious engagement by aid agencies that exerts pressure on negligent governments. In the face of

atrocious and unforgiving situations, we must force local authorities to contend with our irritating presence.

Unaccompanied by action, the silence of international agencies in an abusive context conveys the wrong message, that violations will be tolerated or condoned. A passive, resigned presence not only fails to deter violations of civilians, but also inoculates perpetrators against the presence of international witnesses. Protests must be conspicuous, forceful and courageous.

A new amalgam

The challenge is to address the needs of war-affected people in a principled manner, that is to manage programme activities in a way that upholds humanitarian values, while simultaneously standing up for human rights. The 'protection gap' must be closed. Assistance agencies that conspire in this peculiar segregation of duties – relief versus protection – are failing to meet their moral burden to address the very conditions that demand their services. It is no longer acceptable for the protection of human rights to be either an unwonted or an unwanted aspect of the work of assistance agencies.

As long as the provision of aid is construed as a humanitarian imperative, all other concerns are consigned an inferior status. This imperative becomes the non-negotiable moral absolute, and all other inalienable rights are regarded as secondary. There are practical, proven and effective approaches that aid organisations can successfully include in their field programmes to protect the rights of populations they serve. These include establishing information centres and legal aid services, liaison and 'protective accompaniment' and capacity-building for national NGOs, justice workers and district authorities.

Aid agencies can also pool resources to support technical advisers for protection, human rights focal points and refugee ombudsmen. We must also seek to involve the people we intend to protect. By sensitising affected communities, publishing information bulletins in local dialects and raising awareness, war-affected people can participate in their own protection. A mobilised community is a potent deterrent to human rights violators.

Relief agencies work in settings where the scope and scale of human rights violations demand a deliberate response. Their workers are in direct contact with the effects of human rights abuses. The monitoring of human rights violations, alerting the public and media, training public officials in human rights principles and educating war-affected people about their rights must become a central element of relief assistance interventions.

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Making Protection a Priority: Integrating Protection into Humanitarian Assistance¹⁷

The changing nature of conflict and humanitarian emergencies has created an increasing need to articulate and prioritize the case for protecting civilians. Civilians, mostly women and children, now comprise 90 percent of all casualties in contemporary armed conflict. Protection is first and foremost the responsibility of states, which, under international law, are obligated to protect those within their territorial boundaries. When a state is unable or unwilling to protect, the international community has a responsibility to step in until such time as the state can re-assume its obligation.

Protection has traditionally been seen as the role of specialized agencies within the international community having a specific protection mandate, namely the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). Given the growing awareness of the magnitude of protection gaps in conflict situations, however, humanitarian non-governmental organizations (NGOs) can play a complementary role in ensuring the dignity and rights of individuals by incorporating a “protection lens” in the provision of humanitarian assistance.

This paper presents the concept of protection as a collective responsibility, while recognizing the mandates of the ICRC and UNHCR. As such, it highlights the ways in which different agencies can bring their diverse mandates, areas of geographic coverage, sources of influence, and tools to bear on protection issues through specific, practical examples of how this may be achieved in complex emergencies.

Building upon the ICRC definition of protection as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law,” this paper provides a holistic framework for responsive action, remedial action, and actions to create an environment that promotes respect for the rights of individuals.

In conflict situations, protection entails more than physical protection from attack since extensive harm often occurs when civilian populations lack access to adequate means of meeting basic needs. By helping to meet basic needs such as those for food, shelter, or basic health services, humanitarian intervention may be a first step in mitigating and preventing further harm. Integrating protection into relief activities does not mean, however, that protection and humanitarian assistance are one and the same. An integrated approach requires extensive attention to policy, threats, risks, community assets, practice, capacity building, and effective monitoring and reporting, among other considerations. Protection cannot be treated as an afterthought and must be included at the start of designing or implementing any assistance.

Humanitarian assistance programs, when designed well and appropriately implemented, can serve to amplify protection. Further, the integration of protection elements can enable humanitarian agencies to achieve their own organizational goals more effectively.

Six specific areas in which protection may be put into practice are identified.

Multi-sectoral Integration: Protection concerns should be considered and inform the design of humanitarian services in sectors such as food, shelter, health, education, and water and sanitation. The way in which humanitarian assistance is provided is critical to increasing protection. For example, water/sanitation teams can consult with women to identify appropriate locations and lighting for latrines; safe access by women to water or cooking fuel can reduce the risk of sexual exploitation; and teachers can provide valuable information on ways to prevent underage military recruitment.

¹⁷ A paper from InterAction’s Protection Working Group, April 2004, Executive Summary, www.interaction.org/protection. This paper was produced by members of InterAction’s Protection Working Group, whose aim is to enhance the capacity of humanitarian actors in the protection of refugees, internally displaced persons, and civilians affected by conflict. InterAction is the largest alliance of US-based international development and humanitarian nongovernmental organisations. With 160 members operating in every developing country, InterAction works to overcome poverty, exclusion, and suffering by advancing social justice and basic dignity for all.

Data Collection: Accurate statistics and monitoring of reports according to age and gender are critical to understanding trends, specific risks, and potential solutions. All humanitarian agencies can contribute to enhanced protection by collecting and disaggregating data by age and gender as part of any assessment and by sharing data with those agencies focusing on protection activities.

Capacity Building: Humanitarian staff must be trained in the skills and tools needed to design programs that integrate protection and humanitarian services, prevent exploitation and abuse, identify risks and threats, and take appropriate steps to report violations. Building the capacity of governments and local authorities is also highly important, as they maintain the primary responsibility to protect people within their territory. Donors, too, can build capacity within the international community by identifying and bringing forward best practices, creating venues for the exchange of learning, and ensuring that their grantees pay specific attention to the protection implications of their planned activities as well as include such concerns in their documentation.

Coordination: Protection is often enhanced simply through the presence of international staff. Sectoral and inter-agency coordination should ensure that regular monitoring visits are scheduled to all locations where protection is a priority concern. Agencies should designate protection focal points within their organizations, collect and present protection issues and concerns across sectors, participate in local protection meetings, and provide inputs to the lead protection agencies.

Advocacy: Dialogue and discussion, as well as public statements, may be effective tools to bring about change and enhance protection in any given context. Such choices depend upon the mandate of the agency and the profile of activities within the local environment. Agencies can serve as local voices for encouraging partners to deliver aid in a manner that assists the most vulnerable people. Through these and related activities, agencies may contribute to integrated approaches that help to fulfill a collective responsibility regarding protection and create systems of comprehensive protection that will make human rights a reality.

Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the Context of Armed Conflict¹⁸

Introduction

The following is part of a document prepared by the IASC Reference Group on Humanitarian Action and Human Rights as a complement to "Growing the Sheltering Tree", a collection of field practices in promoting and protecting rights by humanitarian actors issued by the Reference Group in September 2002.

The text seeks to respond to questions commonly asked by humanitarian workers on the legal framework that serves as a basis for assistance and protection activities in situations of armed conflict. It sets out the relevant international instruments and offers examples of their provisions and application. This FAQ is an attempt to respond to frequently asked questions on the applicable international law; it does not purport to be a comprehensive statement of the law.

Question 1: What are the sources of international law?

Treaties and rules of customary international law are two of the most important sources of international law.

Treaties are the main source of international law. They are written, legally binding instruments, setting out the rights and obligations of two (bilateral) or more states (multilateral) on a specific issue. Treaties are also commonly designated as: "conventions", "covenants" or "protocols".

Examples of multilateral treaties: The UN Charter, the 1949 Geneva Conventions and their 1977 Additional Protocols, the 1966 International Covenants on Civil and Political and on Economic, Social and Cultural Rights, the 1989 Convention on the Rights of the Child, the 1951 Convention Relating to the Status of Refugees.

Customary international law is also an important source of international law. It consists of unwritten rules, created by practice that is adhered to by states out of a sense of legal obligation (*opinio juris*). Customary rules are binding on all states, regardless of whether the state has explicitly consented to be bound by the rule involved or whether the rule may also be found in treaty form.

Examples of customary norms: prohibition of slavery, prohibition of torture, prohibition of genocide, prohibition of indiscriminate attacks against the civilian population, prohibition of "refoulement", etc.

'Soft' international law is an important body of non-treaty standards usually adopted within the framework of the United Nations system (declarations, bodies of principles, standard minimum rules, etc.). Although not legally binding, soft law serves to interpret and elaborate treaty provisions and to develop new standards in emerging areas of international law.

Question 2: What is international human rights law?

Human rights are founded on respect for the dignity and worth of each person. International human rights law is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. Human rights law therefore places an obligation on states to act in a particular way and prohibits states from engaging in specific activities. An important function of human rights law is to enable individuals and groups to take positive action to redress violations against their internationally recognized rights. Human rights treaties have been developed both internationally, usually under the auspices of the United Nations, or regionally (Organization of American States (OAS), Organization of African Unity (OAU, now the African Union), and the Council of Europe). There is also a vast body of international human rights soft law.

¹⁸ Source: Inter-Agency Standing Committee Reference Group on Humanitarian Action and Human Rights 2002, www.icva.ch, section Protection rights through humanitarian action, Resources.

Question 3: What is the Universal Declaration of Human Rights?

It is the first human rights instrument developed by the United Nations, adopted in 1948 by the UN General Assembly. Most of its provisions today constitute customary international law.

The Universal Declaration consists of a Preamble and 30 articles, setting out the main civil, cultural, economic, political and social rights to which all persons are entitled, without discrimination of any kind. The rights protected include the right to life, liberty and security of person, freedom from torture or cruel, inhuman or degrading treatment or punishment, the right to a fair trial, the right to seek and enjoy asylum, the right to an adequate standard of living, to education, to work, etc.

Question 4: What are the major international human rights instruments?

The 1948 Universal Declaration of Human Rights is a non-treaty text that has over time been complemented by a series of legally binding international treaties. Among them are:

- The Convention on the Prevention and Punishment of the Crime of Genocide of 1948
- The Convention on the Elimination of All Forms of Racial Discrimination of 1965
- The International Covenant on Civil and Political Rights of 1966
- The International Covenant on Economic, Social and Cultural Rights of 1966
- The Convention on the Elimination of All Forms of Discrimination against Women of 1979
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984
- The Convention on the Rights of the Child of 1989

Question 5: Is human rights law also applicable in armed conflicts?

International human rights law is applicable in all circumstances and at all times, including situations of armed conflict. However, in emergency situations states parties to certain international treaties may exceptionally derogate (temporarily suspend their obligations) from certain civil and political rights under strictly defined circumstances. There are nevertheless certain rights that can never be suspended - not even in war.

The International Covenant on Civil and Political Rights provides that the following rights may never be derogated from:

- the right to life
- the prohibition of torture or cruel, inhuman or degrading treatment or punishment
- the prohibition of slavery and servitude
- the prohibition of retroactive application of criminal law
- the right to freedom of thought, conscience and religion

Most human rights treaties, among them the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child, do not provide for the possibility of derogation at all.

Question 6: What is international refugee law?

International refugee law has been developed to protect and assist individuals who have crossed an international border and are at risk or victims of persecution in their country of origin. International refugee law prohibits the forcible return of a refugee to his or her country of origin (the

principle of non-refoulement) and provides basic human rights guarantees during their stay in the country of asylum.

The non-refoulement principle of international refugee law has received such wide recognition and application that it has reached the status of customary law and is, therefore, binding even on states not party to the 1951 Convention on the Status Relating to Refugees.

Question 7: Who is a "refugee"?

Not everyone crossing an international border qualifies for refugee status. According to Article 1 of the 1951 Convention relating to the Status of Refugees:

A refugee is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a social group or political opinion, is outside the country of his origin and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Complementary legal regimes exist at the regional level. In Africa, according to the 1969 OAU Convention, persons crossing a border for reasons related to the indiscriminate effects of armed conflict or events seriously disturbing public order are also considered refugees. A similar definition is also found in the Cartagena Declaration of 1984, which applies in Latin America.

Refugee protection does not extend to persons who have committed a crime against peace, a war crime or a crime against humanity; a serious non-political crime outside the country of refuge; or acts contrary to the purposes and principles of the United Nations. While, in such situations, refugee law might not be applicable, the protection provided by human rights and humanitarian law remains in place.

Question 8: How is refugee status determined when thousands of civilians are fleeing an armed conflict?

In situations of armed conflict, there are usually massive movements of civilians across international borders, hampering the ability to conduct case-by-case interviews and individual status determination. In those cases, the fleeing civilians might be given protection on a prima facie basis, which means that they are assumed to have fled a situation where civilians are targeted and persecuted en masse.

Question 9: Do non-state actors have obligations under international humanitarian, human rights and refugee law?

The rules of international humanitarian law are binding on both states that have ratified the relevant treaties and on non-state actors (rebel and other armed groups) in a non-international armed conflict. It is obvious that international humanitarian law would be rendered meaningless unless it was applicable to all the parties to an internal armed conflict. Individuals belonging to armed groups - as well as government officials - can be held internationally criminally responsible for war crimes committed in non-international armed conflict.

Human rights law is, primarily, designed to protect individuals from state abuse and is generally not considered to bind non-state actors. There is, however, a growing body of opinion according to which non-state actors - particularly if they exercise government-like functions in a given territory - may also be expected to respect human rights. Under international refugee law and individual may be recognized as a refugee on the ground that s/he has a well-founded fear of persecution by a non-state actor. Members of non-state armed groups- along with government officials - may also be held individually criminally responsible in situations where violations committed constitute crimes under international law (genocide, crimes against humanity). Practice in a number of countries is also increasingly showing that non-state actors, such as rebel groups, can be successfully persuaded to comply with human rights treaties such as the Convention on the Rights of the Child (e.g. on issues such as child soldiers).

Convention Plus at a Glance¹⁹

What is Convention Plus?

Convention Plus is an international effort initiated and coordinated by the Office of the United Nations High Commissioner for Refugees (UNHCR). Its aim is to improve refugee protection worldwide and to facilitate the resolution of refugee problems through special multilateral agreements. This will be achieved through a process of discussion and negotiation with states and other partners of the UNHCR to mobilise support and bring about firmer commitments.

Why new tools for refugee protection and durable solutions?

The 1951 Convention and its 1967 Protocol define the responsibilities of states towards refugees. These instruments remain the cornerstone of the international regime for refugee protection.

Despite their continued relevance, the Convention and the Protocol cannot address all the pressing issues pertaining to refugee protection in today's changing world. These include how durable solutions for refugees can be pursued more effectively and how the responsibility for admitting and protecting refugees can best be shared.

For this reason, the UNHCR launched the Convention Plus process. The "Plus" will be "a number of special agreements aimed at managing the refugee challenges of today and tomorrow in a spirit of international cooperation."

What are the tools being developed through Convention Plus?

In the past, the UNHCR has frequently been a party to special agreements with states. Such agreements have generally focused on operational arrangements with governments, often in relation to a particular group of refugees or a specific situation. Most of these agreements have concerned voluntary repatriation operations. Using this experience, the Convention Plus process will broaden the application of special agreements and increase the level of state and other stakeholder involvement.

What areas will these agreements focus on?

The UNHCR will pursue **generic** multilateral agreements to tackle three priority challenges:

- The strategic use of **resettlement** as a tool of protection, a durable solution, and a tangible form of burden-sharing;
- More effective **targeting of development assistance** to support durable solutions for refugees, whether in countries of asylum or upon return home; and
- Clarification of the responsibilities of states in the event of **irregular secondary movements** of refugees and asylum-seekers, that is, when refugees and asylum-seekers move, in an irregular manner, from an initial country of refuge to another country.

These generic agreements will set out shared understandings and commitments that can be relied upon and incorporated into **situation-specific** multilateral agreements designed to resolve a particular refugee situation. The Convention Plus effort will also promote and support the development of these agreements.

How will special multilateral agreements be developed?

The Convention Plus process is chaired by the High Commissioner and co-chaired by the Director of the UNHCR's Department of International Protection. They guide the work of the Convention Plus Unit, which is based at the UNHCR's Headquarters in Geneva. The Unit is responsible for working with states to develop the generic agreements. It will also provide advice and assistance

¹⁹ Source: www.unhcr.org/cgi-bin/texis/vtx/home?page=search.

within the UNHCR for the formulation of situation-specific special agreements. The work on generic agreements is currently led by five facilitating states: Canada on resettlement, Denmark and Japan on the targeting of development assistance, and South Africa and Switzerland on irregular secondary movements. Their role, in collaboration with the UNHCR, is to lead the process of crafting special agreements. Each facilitating state coordinates discussions and deliberations with a group of other interested states and ensures that non-governmental organisations have ample opportunity to provide their views. The development of situation-specific special agreements is led by the UNHCR's regional bureaux, with support from the Convention Plus Unit.

Who else will be involved?

Twice a year, the High Commissioner will convene a forum that will be open to member states of the UNHCR's Executive Committee (EXCOM) and observers of its Standing Committee. The High Commissioner may also invite others who can make a positive contribution to the forum. The meetings of the forum will focus on the progress made in the different Convention Plus strands. EXCOM will receive regular updates on the progress of the Convention Plus process and the work of the forum.

What is the role of the UNHCR's country offices?

Convention Plus is an organisation-wide effort. While many of the discussions will, by necessity, take place in Geneva, input and support from UNHCR staff in field locations is essential to encourage active state participation. It is at the field level that the majority of advocacy and liaison work will need to be pursued.

Need more information?

For further information on Convention Plus, including updates on the latest developments, see the Convention Plus website, which can be found under "Protecting Refugees" on the UNHCR's public website (www.unhcr.org/convention-plus). Additional information can be provided by contacting the Convention Plus Unit directly either by e-mailing durieux@unhcr.org or fellahi@unhcr.org, or by calling (41) 22.739.8577 or 8790.

Where do we stand as of 1 March 2005?

Resettlement

The Core Group on the Strategic Use of Resettlement reached agreement on the "Multilateral Framework of Understandings on Resettlement" (MFU) in June 2004. It was subsequently given broader support by the forum when it met on 1 October 2004. In its General Conclusion on International Protection, adopted on 8 October 2004, the UNHCR's Executive Committee welcomed the MFU and encouraged interested states, the UNHCR, and other relevant partners to make full use of it. The consultations in the Core Group that led to the final version of the Multilateral Framework were characterised by a frank and constructive atmosphere. NGOs made a number of important contributions to the text. The purpose of the Multilateral Framework is to guide parties to situation-specific multilateral agreements in designing comprehensive arrangements, involving multilateral resettlement operations, to address the protection and durable solutions needs of refugees. The text of the Multilateral Framework is contained in document FORUM/2004/6 and can be found on the Convention Plus website (www.unhcr.org/convention-plus). The next step is to put the Multilateral Framework into practice, and planning to this effect is in progress.

Irregular secondary movements

The Core Group for this strand is continuing its work along two mutually supportive tracks. It analyses the reasons for onward movements and how to best address them in a future multilateral framework of understandings, predicated on principles of burden- and responsibility-sharing. In

tandem, the Core Group commissioned a survey on movements of Somali refugees and asylum-seekers in selected countries to inform its deliberations.

After the first open meeting of interested states and stakeholders on 16 December 2003, a Core Group was constituted, and two meetings were subsequently held. During these meetings, two UNHCR background documents, entitled “Issues Paper on Addressing Irregular Secondary Movements” and “Basic Propositions on Irregular Secondary Movements”, including the comments received from the Core Group, were discussed. During the meeting of 20 September 2004, a number of shared understandings on possible building blocks of a multilateral framework began to emerge. In the deliberations of the Core Group, the notions of burden- and responsibility-sharing were identified as key principles that should guide the work of the Group. A follow-up meeting took place on 24 November 2004 to further discuss these notions, including the underlying human rights principles, how to operationalise²⁰ these notions, as well as regional experiences in this respect.²¹ Two subsequent meetings took place on 31 January and 23 February 2005, during which the Core Group discussed key elements related to irregular secondary movements, i.e., registration, fair and efficient asylum procedure, safe avenues to access protection, the causes of onward movements, and capacity-building initiatives in the area of protection. The next meeting is scheduled for 23 March, during which the Group will start its first reading of a draft Framework of Understandings on addressing irregular secondary movements of refugees and asylum-seekers.

Work on the survey of the scope and causes of movements of Somali refugees and asylum-seekers, as well as state responses thereto, is moving forward thanks to funding commitments from a number of states.²² The preliminary findings of surveys in Egypt, Ethiopia, Kenya, the Netherlands, South Africa, Switzerland, and Yemen were presented by the Swiss Forum for Migration and Population Studies (SFM) on 23 February 2005. The survey in Djibouti is planned to start in March 2005. The overall comparative analysis is expected to be available in the third quarter of 2005.

Targeting development assistance

In April and June 2004, Denmark and Japan convened meetings of key development aid donors in Geneva, with a view to involving gradually in a Core Group a number of development aid recipients that are also major refugee-hosting countries or countries of origin. At the June meeting, it was agreed that initial efforts would focus on two specific refugee situations, i.e., a cross-border project for Somali refugees/returnees in Ethiopia and Somalia, and the Sudanese refugees in northern Uganda. In early October 2004, a focus group meeting was held on the targeting of development aid for the latter group. Donors, UN agencies, and NGOs participated in the meeting, in which the government of Uganda presented its Self-Reliance/Development Assistance for Refugee Hosting Areas strategy. Following the presentation of the DAR programme at the 2004 UNHCR Executive Committee meetings, the programme was officially launched in Kampala in November 2004 by the government and the UNHCR, with key stakeholders present.

In February 2005, another focus group meeting was held to provide updates on developments in Ethiopia/Somalia and Uganda with the participation of representatives from the Ethiopian and Ugandan governments.

Beyond these discussions on targeting development assistance in specific situations, the UNHCR prepared a draft “Issues Paper on Targeting of Development Assistance”, identifying issues relating to the targeting of development assistance in a Convention Plus context. Since the successful targeting of development assistance also requires the involvement and commitment of a range of actors, the Issues Paper was, as a first step, presented at a meeting with United Nations agencies, the World Bank, the OECD Development Assistance Committee (DAC), major aid donors, and NGOs, hosted by Denmark in Geneva on 22 September 2004. In February 2005, the Issues Paper was discussed with the African Group in Geneva.

²⁰ Both documents are available on the UNHCR’s website (www.unhcr.org/convention-plus).

²¹ This discussion took place on the basis of a paper presented by Amnesty International on “Human Rights Principles Applicable to Responsibility and Burden-Sharing Arrangements”.

²² Switzerland, the Netherlands, Sweden, Denmark, and Norway.

In October 2004, the UNHCR finalised a study on "Poverty Reduction Strategy Papers (PRSPs) – A Displacement Perspective", assessing the priority given to displacement issues in PRSPs. The study has been shared with all stakeholders, including the World Bank, and will inform the "Statement of Good Practice" that is foreseen to be presented and discussed at an open meeting in April 2005.

High Commissioner's Forum

The third meeting of the High Commissioner's Forum took place on 5 October 2004 in Geneva, just prior to the 55th session of EXCOM. In addition to a progress report on Convention Plus and the "Multilateral Framework of Understandings on Resettlement", the UNHCR's Africa Bureau presented an information note on preparatory activities for the comprehensive plan of action for Somali refugees. The Convention Plus Unit also submitted a paper entitled "Making comprehensive approaches to resolving refugee problems more systematic", which outlines a new procedure to analyse, assess, and develop comprehensive plans of action to resolve refugee situations, particularly those that are protracted.

During the course of the meeting, delegations voiced their appreciation for the ongoing work on Convention Plus and the goal to define further multilateral frameworks on the two outstanding strands. Further, the fundamental relationship between each of the strands, which will become evident through the development of comprehensive approaches, was reaffirmed.

All documents submitted to the third meeting of the High Commissioner's Forum, as well as the annotated order of business, the High Commissioner's and other personalities' statements, and the Chairman's Summary of the meeting, are available on the Convention Plus page of the UNHCR's public website (www.unhcr.org/convention-plus).

Other initiatives

Convention Plus is also involved in a number of projects in specific countries that engage host states, donor countries, and other international and national partners in implementing strategies to expand opportunities for durable solutions. Afghanistan Plus, the Preparatory Project for the Somali CPA, and multilateral strengthening protection capacity initiatives are tangible manifestations of the Agenda for Protection in action and the value of a Convention Plus approach.

With regard to strengthening protection capacities, the Strengthening Protection Capacity project, funded by the EC and three co-funding states, is well underway. This project seeks to strengthen the capacity to receive and protect refugees of four African countries: Benin, Burkina Faso, Kenya, and Tanzania. The SPC project is designed to look at protection problems broadly, from the moment of admission until durable solutions are found. It is built around a wide range of possible interventions to strengthen capacity. The selection of the most appropriate approach will be determined through a consultative process involving key stakeholders, including donor governments, host governments, other UN and international partners, NGOs, and refugees themselves.

Excerpt from the inter-agency stocktaking meeting on humanitarian protection²³

Introduction

The changing nature of contemporary conflict and experiences such as Rwanda, Kosovo and most recently, Darfur, have given rise to a heightened awareness by the international community around protection needs in humanitarian crises, which has resulted in a number of important protection-related initiatives being undertaken by humanitarian agencies over the past decade. The following overview, while not exhaustive, represents an inventory of activities and resources that have been taken forward both through collaborative or interagency efforts and by individual organisations.

This exercise is not an evaluation or analysis of the effectiveness of the initiatives, but a review of what has gone before and what is currently in place. The paper is divided into four sections: I) an overview of initiatives of international organisations, interagency bodies, donor agencies, and non-governmental organisations; II) a listing of protection tools and resources; III) a brief description of existing training programmes and opportunities and IV) a sampling of the literature on protection. This review is meant to promote reflection and discussion around the various approaches to protection and to help identify existing gaps in meeting the needs of refugees, internally displaced persons and civilians affected by armed conflict.

Defining Protection

'Protection' is a concept that has many different faces and has not been conclusively defined. It also involves a diversity of actors and approaches. Appropriate protection measures depend on the circumstances and stages of a particular conflict ... Relevant activities may include the delivery of humanitarian assistance; the monitoring and recording of violations of international humanitarian and human rights law, and reporting these violations to those responsible and other decision-makers; institution-building, governance and development programmes; and, ultimately, the deployment of peacekeeping troops. The scope of protection has grown in the last decade in an effort to meet the challenges of contemporary war. --Mark Bowden, UN OCHA

This quote taken from a 2002 interview on the protection of civilians in armed conflict illustrates the dynamic and expansive nature of protection in today's world. **As there has been extensive discussion regarding the definition of protection, it may be useful to include here a note on the ways in which members of the international community are currently choosing to understand and describe protection. Terms such as 'legal protection,' 'effective protection,' 'humanitarian protection,' and 'human security' are all now part of the vernacular and are indicative of the breadth and multi-faceted applications of protection approaches.**

Even for those agencies with mandated protection functions, namely the United Nations High Commissioner for Refugees (UNHCR), the Office of the High Commissioner for Human Rights (OHCHR) and the International Confederation of the Red Cross (ICRC), the definition originally derived from relevant international instruments may have broadened over the years as the nature of war and displacement has changed. According to UNHCR's 2003 Global Appeal for example: **"UNHCR's international protection function, as derived from its Statutes and the 1951 Convention relating to the Status of Refugees, has evolved steadily over the past five decades. It began almost as a surrogate for consular and diplomatic protection and has now expanded to include ensuring the basic rights of refugees and their physical safety and security."**

²³ *Taking stock, An inventory of protection initiatives and activities*, The inter-agency stocktaking meeting on humanitarian protection, October 29 2004. The full report is available from ICVA web site:

<http://www.icva.ch/cgi-bin/browse.pl?doc=doc00001272>

Comprehensive discussions around the definition of protection have taken place in a number of fora including a series of ICRC-led workshops on protection (1996-2000) as well as UNHCR's Global Consultations on International Protection (1999-2001). The definition adopted at the 1999 ICRC Workshop--"The concept of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e., human rights law, international law, refugee law)."- is widely accepted today. The Inter-agency Standing Committee (IASC), which refers to this definition in many of its protection-related documents and policies, has described it as: "... comprehensive in scope, both in terms of the legal framework for protection - "full respect" - and in terms of the strategies and methods by which protection may be achieved - "all activities." Other initiatives, such as the ALNAP Guidebook on Humanitarian Protection, also **recognise** this definition and apply the ICRC "egg model" of the three key elements of protection-responsive action, remedial action, and environment-building-in their approaches.

Individual organisations and programmes have adopted their own understanding of protection to frame their activities. Human rights organisations that have traditionally focused on civil and political rights are giving attention to economic, social and cultural rights as well in their protection efforts. The Norwegian Refugee Council in its training around the Guiding Principles on Internal Displacement offers this description: "Protection needs are those relating to ensuring that basic human rights are respected, in other words, protecting the physical, material and mental security of all individuals, including internally displaced persons." The Reach Out Training Project on refugee protection puts forward the idea that protection "... relates to activities which safeguard the physical and legal security of a refugee based on international refugee and human rights law."

The United Nations Children's Fund (UNICEF) defines the concept of protection as "ensuring respect for the rights expressed the Convention on the Rights of the Child and uses the term 'child protection' to refer to protection from violence, exploitation, abuse and neglect. The InterAction Protection Working group, comprising a number of non-governmental humanitarian organisations, has come to agreement that: "Protection consists of insuring the fulfilment of basic human rights and enabling human well-being particularly for vulnerable people, such as women, children and displaced people. Protection includes reducing physical, emotional and social risks; supporting emotional and social well-being; providing equal access to basic services and promoting the rights and dignity of individuals, families groups and communities."

The task for this stocktaking workshop is not to re-define protection or to reach a consensus around a particular definition. Rather, it is to examine how the approaches and initiatives currently in place are meeting the challenges alluded to in these definitions.

Section I: An Overview of Initiatives around Protection

Recent years have witnessed a dramatic increase in the number of collaborative and organisational initiatives around protection, in part, perhaps, as a result of the increasing recognition that the scope of existing protection needs and concerns exceed the capacity of any one organisation. A broad range of actors, including both mandated and non-mandated agencies, are currently engaged in protection activities in an attempt to address issues around the protection of conflict-affected populations. While a wide-range of programmes and initiatives is included here, the following list should not be seen as exhaustive. Rather, it is meant to suggest the scope, breadth, and diversity of both recent and ongoing protection initiatives.

1. The International Committee of the Red Cross

Custodian and promoter of International Humanitarian Law (IHL), the International Committee of the Red Cross (ICRC) has also an exclusive mission "to protect the lives and dignity of victims of war and internal violence and provide them with assistance." The ICRC has been the center of numerous initiatives around protection for civilians and other persons who have not taken part or are no longer taking part in hostilities or violence. Protection is deeply rooted in ICRC history and traditional activities. The ICRC constantly emphasises that protection and assistance are closely interlinked. It pays particular care that all its activities keep a protection concern or in other words

are protection-driven. The ICRC's protection work aims at ensuring respect for individuals' rights, notably relating to the well-being and dignity of civilians and other persons affected by armed conflicts and internal violence. It covers a wide range of activities within the ICRC, including:

- Training/promoting awareness and education with regard to IHL and basic humanitarian standards. This includes technical cooperation and programmes particularly targeting armed forces, police and other arms carriers, students, National Red Cross/Red Crescent Societies and the civil society at large; implementing mine action and mine awareness programmes.
- Negotiating and having access to civilians, the sick/injured and vulnerable groups-elderly, women, unaccompanied children, IDPs, etc.-in armed conflicts and other situations of internal violence, monitoring their situation and welfare, making confidential representations to the relevant authorities to ensure their proper treatment according to IHL and other relevant bodies of law. These efforts are complemented, in particular when the authorities do not fulfil their obligations under IHL to ensure that the basic needs of those affected by conflict or violence are met, by assistance activities (direct medical activities, surgery, support to existing medical structures, rehabilitation of amputees, food and seed distributions and other economic security endeavours, water provision and related activities, provisions of shelters, etc.) which are carried out on the basis of the needs directly assessed.
- Monitoring the living conditions and treatment of persons deprived of their liberty and striving for the full respect of IHL and other relevant bodies of law through visits to the places of detention, imprisonment and internment and confidential representations to the concerned authorities. These activities aim at preventing or putting an end to disappearances, torture and other forms of cruel, inhuman and degrading treatment, and ensuring adequate conditions of living. The ICRC focuses on persons held for security reasons and/or are protected by the Geneva Conventions. Additionally, as prisons infrastructure has deteriorated in different contexts worldwide, the ICRC has sometimes become involved with the conditions and treatment of those held under common law.
- Ensuring the possibility for separated families due to conflict, internal violence and other hardships to re-establish and maintain family links and communicate between themselves. This also includes tracing relatives unaccounted for or missing, and recognizing and ensuring the right of families to know about the fate of their missing relatives. Concretely, the work also includes the registration and individual follow up of vulnerable persons and other persons in need of this service, such as separated, unaccompanied, demobilised children, IDPs, etc., the organizing of exchange of family news through various means (in particular Red Cross/Red Crescent family messages, but also mobile phones or internet), the active work of tracing relatives and organizing family reunions.
- Taking various initiatives as a specifically neutral and independent organisation and intermediary, including promoting or facilitating humanitarian agreements, to address humanitarian problems and if needed to take away affected persons from the hazards of armed conflict.

Primarily, ICRC assumes its endeavours around protection through persuasion and the active, yet discreet, encouragement of authorities to fulfil their responsibilities under IHL and other relevant bodies of law. When needed, it uses also mobilization, multilateral diplomacy and denunciation or public relations. In addition to these ongoing efforts to ensure the protection of civilians and other persons who have not or no longer take part in hostilities or violence caught in settings of armed conflict, the ICRC has undertaken a number of capacity building programmes (i.e. workshops for prison staff, etc.) to enhance authorities' capacity to implement their responsibilities in the protection field.

In 1996, the ICRC initiated a series of Protection Workshops to discuss ways to better meet the protection needs of civilians in contexts of armed conflict through humanitarian activities and operations. Over the course of four years, representatives from around 50 humanitarian and human rights organisations met to discuss such topics as the meaning of the term "protection,"

principles upon which humanitarian work is based, consequences of operational choices, and how to enhance complementarity between the work of different organisations.

In 2001, the ICRC published *Strengthening Protection in War: A Search for Professional Standards*, a summary of the deliberations of the protection workshops. With contributions from nearly 50 different organisations, the volume aims to promote shared principles and practices and raise the levels of professionalism and effectiveness within organisations engaged in protection activities.

Based on the discussions at the series of protection workshops, the ICRC also developed a series of practice-oriented seminars for experienced humanitarian professionals on protection of civilians in armed conflict. The Ecogia Protection Seminars aim to enhance the understanding of humanitarian practitioners of the protection dimension of humanitarian work and improve the protection of civilians in conflict. The ICRC is currently developing plans to organize decentralized protection seminars, which would adapt the content of the Ecogia Protection Seminars to regions and contexts and would target primarily national NGOs and local representatives of international NGOs and UN agencies.

The ICRC has also undertaken specific initiatives around the protection of particular vulnerable groups affected by armed conflict, including the internally displaced, refugees, and women. In 2000, the ICRC drafted the document "Internally Displaced Persons: The Mandate and Role of the International Committee of the Red Cross," outlining the institution's role and responsibilities in providing protection and assistance to the internally displaced and identifying current challenges for the agency in doing so.

The following year, ICRC issued a paper entitled, "The ICRC's Policy on Refugees and Internally Displaced Civilians." This document outlines the evolution of the ICRC's role in providing protection and assistance to refugees and IDPs, while also describing the current role of the agency in responding to refugee and IDP crises vis-à-vis other mandated agencies.

Over the last three years, the ICRC has developed a number of guidelines and handbooks on protection related issues. In October 2001, the ICRC published *Women Facing War*, a study of the impact of armed conflict on women. The extensive study aims to identify the principle needs of women in situations of armed conflict and analyse the ICRC's response to those needs where appropriate to the institution's mandate, with the goal to raise awareness of the problems women face in armed conflict and ensure the realization of their protection. The study outlines the experiences of women in war and conflict, the inadequacy of their protection and assistance, and their roles in protecting themselves and other vulnerable groups.

The ICRC published *Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document* in 2004 to build on *Women Facing War*. This guidance document provides policymakers and practitioners with recommendations for practical steps to ensure appropriate protection and assistance for women affected by war and conflict, based on good practices and lessons learned in the field.

Additional ICRC guidelines and handbooks include: *ICRC Report: The Missing and their Families* (2003), *Guidance on addressing the Needs of Women Affected by Armed Conflicts* (2004), *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* (2004) (edited jointly with the International Rescue Committee, Save the Children-UK, UNICEF, UNHCR and World Vision International).

Defining Refugee Protection

The following definitions from the ICRC and ALNAP apply to the protection of all individuals, while the definition from the UNHCR specifically targets refugee protection.

According to the ICRC

Protection is defined according to its purpose and its activities.

The purpose of protection is defined as:

"The concept of protection encompasses all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law).

*"Human rights and humanitarian actors shall conduct these activities impartially and not on the basis of race, national or ethnic origin, language, gender etc."*²⁴

According to ALNAP

ALNAP endorses this definition, which was agreed by a number of humanitarian and human rights organisations. They further explain that:

*"This understanding of protection means that humanitarian work is as much about ensuring respect for international humanitarian and human rights norms as it is about giving aid... This is why we have dug wells and lobbied governments at the same time, provided food aid and educated soldiers on humanitarian law, vaccinated children and reported abuses they have suffered."*²⁵

Protection activity is defined as:

Any activity – consistent with the above-mentioned purpose – aimed at creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution, or rehabilitation.

Protection is thus composed of three types of activity:

- Responsive action: prevention, stopping, and alleviating effects;
- Remedial action: restoring people's dignity;
- Environment-building action: creating and/or consolidating an environment conducive to full respect for the rights of the individual.

According to the UNHCR

Its concept of the refugee protection function **at the institutional level** is that:

"UNHCR's international protection function, as derived from its Statutes and the 1951 Convention relating to the Status of Refugees, has evolved steadily over the past five decades. It began almost as a surrogate for consular and diplomatic protection and has now expanded to include ensuring the basic rights of refugees and their physical safety and security."

²⁴ Sylvie Giossi Caverzasio, *Strengthening protection in war: a search for professional standards*, International Committee of the Red Cross, Geneva 2001.

²⁵ Hugo Slim and Luis Enrique Eguren, *Humanitarian Protection: A Guidance Booklet*, Active Learning Network for Accountability and Performance in Humanitarian Action, 2004, p. 21.

The UNHCR also says in terms of a definition that:

“The phrase ‘international protection’ covers the gamut of activities through which refugees’ rights are secured”.

These rights are defined in a number of international instruments, including the 1951 UN Refugee Convention, the UDHR, the International Convention on the Elimination of All Forms of Racial Discrimination, the ICCPR, the IESCR, the UN Convention on the Elimination of All Forms of Discrimination against Women, the CAT, and the CRC.

Refugee protection includes ensuring that the rights of refugees, as articulated in these international instruments and as further defined in conclusions, guidelines, policies, etc., are met.

At present, the UNHCR working definition of protection is:

“Protection encompasses all activities aimed at ensuring the enjoyment, on equal terms of the rights of women, men, girls and boys of concern to UNHCR in accordance with the letter and spirit of the relevant bodies of law (international humanitarian, human rights and refugee law). It includes interventions by States or UNHCR on behalf of asylum-seekers and refugees to ensure that their rights, security, and welfare are recognized and safeguarded in accordance with international standards. Such interventions will, amongst others, be deemed to: ensuring respect for the principle of non-refoulement; promoting admission to safety and access to fair procedures for the determination of refugee status; upholding humane standards of treatment; realizing the right to assistance and services; promoting non-discrimination, and the implementation of durable solutions.”²⁶

Understanding who has responsibility for protecting refugees is key to understanding refugee protection at its most practical level:

- The primary responsibility for protecting refugees rests with states.
- States should work together to resolve the cause of refugee flows and to share responsibility for protecting refugees.
- UN agencies, with the UNHCR as the lead, engage in a range of protection activities. This work is also done to varying degrees by other UN actors, including the WFP, UNICEF, the WHO, the UNDP, and the UNHCHR.
- Other important actors include the IOM, the ICRC, the IFRC, and NGOs.

Whilst not all of these actors are specifically mandated to provide protection to refugees, they are often committed to providing protection. This means that they are engaged in activities that are based on respect for human rights.

Some humanitarian NGOs are concerned that, by participating in protection activities, they risk their neutrality and that this will jeopardise their effectiveness, their security, and their ability to do their work. Whilst this may be a valid concern in some situations, **it is important to remember that humanitarian actions are based on respect for human rights and should also serve to defend those rights.** It is clear that protecting refugees is a shared responsibility and that all of the above actors will be engaged in different, and hopefully complementary, refugee protection activities.

²⁶ *Designing Protection Strategies and Measuring Progress: Checklist for UNHCR Staff*, Department of International Protection, Office of the United Nations High Commissioner for Refugees, 2002.

Glossary of Refugee Protection Terms²⁷

This **glossary** of straightforward explanations of commonly used refugee protection terms and concepts is intended to be given as a handout to workshop participants. It draws heavily on the Amnesty International Glossary that is used in training on refugee protection. It is not exhaustive and should be supplemented by reference to the web sites that are provided as a separate handout. In the glossary, the symbols ▲ and ▼ refer the reader to explanations that can be found elsewhere in the glossary.

Agenda for Protection

The Agenda for Protection is the product of the Global Consultation process that culminated in 2001. The Agenda reflects a wide cross section of concerns and recommendations of states, intergovernmental organisations, non-governmental organisations (NGOs), as well as refugees themselves, in refugee protection. The Agenda focuses on suggested activities that would strengthen international protection of asylum-seekers and refugees and improve implementation of the 1951 Convention and its 1967 Protocol. For more information about the Agenda for Protection, see UNGA document A/AC.96/965/Add.1, 26 June 2002, and check the UNHCR web site.

Asylum

This is normally used to mean the admission of refugees to a country where they are given protection against *refoulement* and allowed to reside for as long as necessary for their own safety.

The **UDHR** explicitly provides for the right to **seek and enjoy** asylum; but international refugee law makes no explicit provision for the right **to be granted** asylum, as this is not a right that states have been willing to recognise. States have, however, recognised in numerous international instruments and in **international customary law** ▼ the principle of **non-refoulement** ▼.

Asylum procedure (also called refugee status determination procedure)

The procedures under which the authorities examine a particular person's asylum request. Such procedures vary greatly from one country to another, but there are a number of principles, based on international standards, that are considered essential for all states' asylum procedures to comply with to ensure that they are fair.

Asylum-seeker

Normally, the term *asylum-seeker* is used to denote those who have not yet been formally recognised as **refugees** ▼ but who are seeking asylum. A person does not need to have formally lodged an application for asylum in order to be considered an asylum-seeker. The term can be applied to anyone who fears return to the country they have fled because they would be at risk of human rights violations and are in need of protection.

If no determination of refugee status has been made in a particular case, it must be assumed that any asylum-seeker may be a refugee and so must be protected from **refoulement** ▼. In other words, the *non-refoulement* principle applies to all asylum-seekers unless their asylum request has been thoroughly examined in a fair and satisfactory **asylum procedure** ▲, which has established they are not a refugee.

²⁷ The Reach Out project would like to thank and credit the International Secretariat of Amnesty International for most of the materials used in this glossary. Amnesty International's Refugee Program can be contacted through their general website at www.amnesty.org.

UNHCR Handbook, para 28

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. **Recognition of his refugee status does not therefore make him a refugee but declares him to be one.** He does not become a refugee because of recognition, but is recognised because he is a refugee.

Every refugee is, initially, also an asylum-seeker. Therefore, to protect refugees, asylum-seekers must be treated on the assumption that they may be refugees until their status has been determined.

- **UNHCR: Fair and expeditious asylum procedures** (November 1994)

Depending on the context, this term may also be used in a looser sense, to include asylum-seekers and recognised refugees, or the terms “asylum-seeker” and “refugee” may be used more or less interchangeably.

Convention Plus process

Convention Plus is an international effort initiated and coordinated by the Office of the United Nations High Commissioner for Refugees (UNHCR). Its aim is to improve refugee protection worldwide and to facilitate the resolution of refugee problems through special multilateral agreements. This is to be achieved through a process of discussion and negotiation with states and other UNHCR partners to mobilise support and bring about firmer commitments.

The United Nations High Commissioner for Refugees launched the Convention Plus process to address the pressing issues pertaining to refugee protection in today's changing world. Under the Convention Plus process, the UNHCR will pursue **generic** multilateral agreements to tackle three priority challenges:

- The strategic use of **resettlement** as a tool of protection, a durable solution, and a tangible form of burden-sharing;
- More effective **targeting of development assistance** to support durable solutions for refugees, whether in countries of asylum or upon return home; and
- Clarification of the responsibilities of states in the event of **irregular secondary movements** of refugees and asylum-seekers, that is, when refugees and asylum-seekers move, in an irregular manner, from an initial country of refuge to another country.

Refer to the UNHCR web site for regular updates on the progress of the Convention Plus process.

Convention refugee

A person who has been found to meet the criteria of the 1951 Refugee Convention.

Country of origin

The country from which a particular asylum-seeker has fled and/or to which they fear to return because of the risk of human rights violations. In this sense, the term need not necessarily refer to the asylum-seeker's actual country of birth: it could be their country of former habitual residence or any country to which they might be compelled to return.

Customary international law

A principle of customary international law is characterised by two essential features: (a) customary practice by states; and (b) a perception by states that they are obliged to comply with the custom. The principle of **non refoulement** ▼ is generally considered to be a norm of customary international law.

Detention

International standards provide that, as a general rule, asylum-seekers and refugees should not be detained. In some instances, detention of asylum-seekers and refugees might also amount to **arbitrary detention** ▼.

Detention, arbitrary

Detention may be arbitrary under international human rights law even if it conforms with national law, e.g., if a person is detained for exercising a right protected by international law (such as freedom of expression).

For detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law but also with Article 31 of the Convention and international law.

- **UNHCR Guidelines on Detention**, para 5

Durable solutions

There are three durable solutions to the problem of international refugee protection. These solutions are based on the premise that the international community as a whole has a shared responsibility for protecting refugees. The three solutions are **voluntary repatriation** ▼ to the country of origin, **resettlement** ▼ in another country, and **local integration** ▼ in the country of first asylum.

Effective and durable protection

Protection against **refoulement** ▼ needs to be effective in practice and to persist for as long as the risk to the individual in their country of origin lasts. Therefore, in calling for states to comply with their obligations under the principle of **non-refoulement** ▼, states are asked to confer effective and durable protection on those who would risk serious human rights abuses if they were to return to their country of origin.

EXCOM

See UNHCR EXCOM ▼

Exclusion

The 1951 Refugee Convention, in Article 1, Sections D, E, and F, contains provisions whereby persons otherwise having the characteristics of refugees are excluded from international protection as refugees. These provisions are commonly known as the “exclusion clauses”. Those who are excludable under these provisions fall into three groups: those already receiving UN protection or assistance (Article 1D); those not considered to be in need of international protection (Article 1E); and those not considered to be deserving of international protection (Article 1F).

First country of asylum

This term is used to describe the first country where an asylum-seeker arrives and seeks asylum after fleeing their country of origin (see, in this connection, local integration ▼).

Global consultations

At an unprecedented international conference in Geneva in December 2001, the international community reaffirmed its commitment to the 1951 Refugee Convention. The talks were part of the UNHCR's Global Consultations process involving governments, non-governmental organisations, other groups, and experts that continued into 2002. One of the key outcomes of the Global Consultation is the Agenda for Protection, which includes a series of activities that will serve as a guide in strengthening refugee protection in years to come. The Global Consultations produced a number of important documents that survey many current refugee protection issues. These can be found on the UNHCR website under a general keyword search for "Global Consultations".

Group protection/*prima facie* recognition

In situations of **mass arrival/influx** ▼, when people are fleeing as a result of civil wars and other forms of general violence, and where a presumption can be made that all those fleeing are doing so for similar reasons and are in similar need of protection, the authorities in host countries may make a determination that all members of the group are in need of immediate assistance and protection against *refoulement*, without having to make individual determinations of claims of asylum (see also **temporary protection** ▼).

Host country (or host state)

A term used to describe the country where an asylum-seeker has been granted, or is seeking, protection.

Internally displaced

Internally displaced persons are defined by the UN as follows:

[P]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border

- **UN Guiding Principles on Internal Displacement**

The key human rights of internally displaced people that need protection are: the right to freedom of movement within a state, including the right to flee (including to other countries if necessary) from areas where their lives, security, or freedom are threatened; the right not to be forcibly returned to such areas; the right to return to their homes should they wish to do so; and prohibitions on acts causing forcible displacement. These and other rights of the internally displaced are set out in the **UN Guiding Principles on Internal Displacement** (E/CN.4/1998/53/Add.2; 11 February 1998).

International solidarity (also called international responsibility-sharing)

In the preamble of the **1951 Refugee Convention**, it is recognised that the "grant of asylum might place unduly heavy burdens on certain countries, and ... a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation." This aspect of international cooperation and solidarity is repeated in numerous EXCOM conclusions relating to international protection. The concept of international solidarity is based on the logic that governments normally protect their citizens, assuring them their right to life, freedom, and physical security. When governments are unable or unwilling to do so, and individual human rights are violated, people are forced to flee to another country. Since, by definition, refugees are not protected by their governments, the international community steps in to ensure the individual's rights and physical safety.

Local integration

One of the three **durable solutions** ▲, the long-term or permanent settlement of refugees in the asylum country where they presently are.

Mandate refugee

Normally used to describe a refugee recognised under the mandate of the **UNHCR** ▼.

Mass arrival/influx

Normally, people who apply for asylum need to establish their need for international protection by undergoing an individual **refugee status determination procedure** ▲. However, in cases of sudden, mass flight, the need to provide assistance and protection is often extremely urgent and, for purely practical reasons, it may not be possible to carry out individual status determinations. Particularly when it appears that all members of a group are fleeing for similar reasons, it may be appropriate to declare “group determination” of refugee status, whereby each member of the group is regarded as a refugee in the absence of any evidence to the contrary (see also **temporary protection** ▼, **group protection** ▲).

Non-refoulement

Whilst states have not recognised a right to asylum, states have recognised in numerous international instruments and in **customary international law** ▲ the principle of *non-refoulement* towards individuals who fulfil the definition of “**refugee**” ▼ in the **1951 Refugee Convention** or who would be at risk of serious human rights violations if sent to a particular country or countries. This obligation is owed by states not only towards the individual concerned but towards the international community, which has recognised its own collective responsibility for the protection of refugees (see also **refoulement** ▼).

It must be assumed that any asylum-seeker may be a refugee, and so must be protected from return to a country where she or he may be at risk. In other words, the *non-refoulement* principle applies to all asylum-seekers unless their asylum request has been thoroughly examined in a fair and satisfactory refugee determination procedure which has established that the person concerned is not in fact a refugee.

Peremptory norm

This term frequently arises in refugee law to refer to the principle of **non-refoulement** ▲. It is used to describe a norm of international law that may not be breached even if some other law appears to permit this. This is also sometimes called *jus cogens*.

Refoulement

This term is not found in most dictionaries, although it has, by continual usage, become an accepted legal term relating to refugees and asylum-seekers. In treaty law, it appears in the English version of Article 33 of the **1951 Refugee Convention** (“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever ...”). (**Note:** in addition to the concept of compulsion (against a person’s will), the term also contains the concept of return to a country where the person concerned will be at risk.)

Refugee

In its strict sense, the term may be used to refer to people who have been recognised or given some form of refugee status by the UNHCR or by the state concerned (see also **Convention refugee** ▲). In a more general sense, it may be used to refer to people who, even though not formally recognised as such, are so obviously at risk of persecution that there is little doubt they would be so recognised if they were to undergo a refugee determination procedure.

It may alternatively be used in a generic sense also to include asylum-seekers since it must be assumed that any asylum-seeker with a *prima facie* claim may in fact be a refugee. That is, recognition of a person's refugee status is simply a recognition of their existing situation – they do not become a refugee when they are formally recognised as such. Thus, the recognition of refugee status is often said to be “declaratory”, not “constitutive” (see also **asylum-seeker** ▲).

Refugee Convention: the 1951 Refugee Convention and 1967 Protocol (1951 Convention relating to the Status of Refugees) (1967 Protocol relating to the Status of Refugees)

The 1951 Refugee Convention was drawn up in the period following the Second World War, in the immediate political context of the large numbers of people displaced in the war and/or fleeing from the states of Eastern Europe to Western Europe. The refugee definition in Article 1A(2) included a specific dateline insofar as it stated that the persecution envisaged in the definition should be “as a result of events occurring before 1 January 1951”. Article 1B(1) of the Convention also permitted states to limit their own obligations under Article 1A(2) to events occurring in Europe before that date. By the 1960s, this provision had become an anachronism, and the **1967 Protocol** to the Convention was adopted, which eliminated these limitations to the refugee definition.

Refugee status determination procedure

See **asylum procedure** ▲

Refugee status

States that are party to the **1951 Refugee Convention** usually have some kind of procedure for giving formal recognition (status) to people whom they recognise as falling within the refugee definition set out in the Convention. The consequences of this vary from one country to another, although in most countries refugee status is a legal status conferring all the rights in the **1951 Refugee Convention**. Once granted, refugee status cannot easily be withdrawn and therefore serves in most instances as effective protection against *refoulement*.

In many countries, provision is made for asylum-seekers regarded as falling outside the strict refugee definition of the 1951 Refugee Convention but who might otherwise be at risk of serious human rights violations as a result of war or serious civil disturbance if returned to be granted some other status that provides protection against *refoulement*, even though it may not provide all the rights accorded to those granted full refugee status.

Resettlement

Is one of the **durable solutions** ▲. Refugees are resettled from a **country of first asylum** ▲ in the interests of **international responsibility-sharing** ▲ in order to provide longer-term stability for those who have been forced to flee. When a refugee is resettled, they are accorded legal status in accordance with the immigration law of the country of resettlement.

Temporary protection: (see also mass arrival/influx ▲, group protection ▲)

Temporary protection has been proposed to meet emergency refugee influxes in many host countries, when people are fleeing as a result of civil wars and other forms of general violence, and where a presumption can be made that all those fleeing are doing so for similar reasons and are in similar need of protection. This enables the authorities in host countries to make a determination that all members of the group are in need of immediate assistance and protection against *refoulement*, without having to make individual determinations of claims of asylum. However, those granted temporary protection are sometimes not granted all the legal and social rights of refugees (such as welfare payments, education, or the right to work), even though many of them would in fact qualify for refugee status if individual determinations were to be made. Accordingly, such temporary forms of protection should not be prolonged, and once the immediate crisis is past, steps must be taken to ensure a **durable solution** ▲.

UDHR (Universal Declaration of Human Rights) The UDHR articulates the right to seek asylum in Article 14:

Article 14(1): Everyone has the right to seek and to enjoy in other countries asylum from persecution.

More generally, like other general human rights instruments, the UDHR is relevant in defining the concept of “persecution” in international refugee law.

UNHCR

The UN High Commissioner for Refugees (UNHCR) was established in 1950 as a humanitarian and non-political organisation that deals with, and attempts to find solutions for, the problems of refugees. The UNHCR's Statute details two facets of its work: providing international protection for refugees and seeking permanent solutions for their problems. The **UNHCR's Statute** defines a refugee in almost exactly the same terms as the **1951 Refugee Convention**. Over the years, however, it has been asked by the international community to take responsibility for groups of refugees who fall outside that original definition. In practice, therefore, the definition applied by the UNHCR when recognising refugees under its mandate is wider than the definition as written in the Statute. The UNHCR also has, in recent years, begun to assist people who are **internally displaced** ▲.

UNHCR EXCOM

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR EXCOM) is an intergovernmental body comprising representatives of over 50 states from all regions of the world. It meets in full session once a year, with a standing committee that meets in Geneva from time to time in between its annual meetings. At its annual meetings, it adopts **UNHCR EXCOM conclusions** on various specific aspects of refugee protection that are intended to guide the UNHCR and state actions on behalf of refugees. Several of these conclusions are specifically addressed to states, indicating clearly that the EXCOM's role has moved beyond its original role of simply advising the High Commissioner.

While EXCOM conclusions do not create binding obligations on states in the same way as formal treaties, they are intended to guide state practice and, having been agreed to by states, in most cases by consensus, through a formal negotiation process, they amount to authoritative international standards. According to the UNHCR, these conclusions “lay down and further develop basic standards for refugee protection”. (**Note:** Article 35 of the 1951 Convention obliges states parties “to cooperate with [the UNHCR] in ... supervising the application of the provisions of [the] Convention”. Such cooperation should, at a minimum, include observing the provisions set out in conclusions of the UNHCR Executive Committee.)

UNHCR Handbook (Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees):

The UNHCR Handbook was issued in 1979 in response to a request made to UNHCR in 1977 by Conclusion No. 8 of the UNHCR Excom. The Handbook is intended to guide government officials and officials concerned with assessing asylum-seekers' claims for refugee status and is an invaluable guide to the interpretation of the refugee definition in the 1951 Refugee Convention.

Although not legally binding on governments in the same sense as treaty law, most governments would consider themselves bound to follow the guidance in the UNHCR Handbook. Indeed, in the case of states parties to the **1951 Refugee Convention**, it can be argued that adherence to the guidance in the UNHCR Handbook is an essential component of "[cooperation] with UNHCR in the exercise of its functions" required under Article 35.

Voluntary repatriation

This is one of the three **durable solutions** ▲ to the situation of refugees. It was traditionally thought of as the final stage in the process of return to normal conditions in a country, and it often occurred after peace and stability had been restored. In the present day, however, large-scale returns are more likely to occur in the course of this stabilisation process, and it is generally recognised that returning refugees play an important part in rebuilding the societies from which they have been forced to flee. Because the process of repatriation often takes place before the situation in the country of origin/return is fully stabilised, it is important to ensure that the process of repatriation is truly voluntary. This means that there should be no "push" or "pull" factors established to encourage return. It also means that all individuals should have an opportunity, before making a decision whether to return, to obtain information about the conditions in the country concerned, and they should have an opportunity to assert their right not to return. Measures should be taken to ensure that all refugees who return under a voluntary repatriation programme can do in safety and dignity.

Reaching Out on the Internet

As the internet has become an invaluable tool for information-sharing, communication, and research, we have gathered below a non-exhaustive list of web sites providing key texts and resources that can help to shed light on broader refugee-related issues. You are invited to visit the Reach Out web site at: www.reachout.ch/.

Refugees and other forcibly displaced persons

www.unhcr.org

Created by the UN in 1950, the UNHCR is dedicated to protecting and providing assistance to the world's refugees.

The site contains information about the UNHCR; map- and text-based access to country-specific information regarding refugee situations; UNHCR news; articles on various refugee issues; and publications, including back issues of *Refugees* magazine, as well as other general publications. The site offers access to REFWORLD, a database containing official documents of the UNHCR and other UN agencies, country and legal information, and basic reference materials.

www.iom.int

The International Organisation for Migration (IOM) assists states and individuals in their attempt to resolve migration problems through humanitarian, migration for development, and technical cooperation programmes.

The site offers extensive information about the organisation, as well as migration-related publications, reports, and news releases, etc.

www.jesref.org/

The Jesuit Refugee Service (JRS) is an international Catholic organisation, at work in over 40 countries, with a mission to accompany, serve, and defend the rights of refugees and forcibly displaced people.

The site contains information about the JRS, publications, reports, field studies, and special features on displaced women and Sri Lanka.

www.nrc.no/engindex.htm

The Norwegian Refugee Council (NRC) is an NGO engaged in refugee protection and assistance. It works closely with the UNHCR and the Norwegian Ministry of Foreign Affairs.

The site provides a global IDP database that is constantly updated, training materials, publications, and reports. www.idpproject.org

www.refugees.org

The US Committee for Refugees (USCR) is a non-profit organisation dedicated to defending the rights of refugees, asylum-seekers, and displaced persons worldwide.

The site gives information on the USCR's most recent publications, including the *World Refugee Survey*, an annual publication on worldwide refugee affairs that reports on conditions for refugees and displaced persons.

II. Humanitarian assistance

www.alnap.org

The Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) is an international, interagency forum working to improve learning, accountability and performance across the humanitarian sector. ALNAP provides information on training, theory and practice, and humanitarian law, and it is a useful site for current information on humanitarian protection and assistance.

www.care.org

Care is one of the world's largest international development and relief organisations that is involved in emergency relief, water and sanitation, AIDS prevention, primary health and food security. The site contains general information on Care's activities: education, emergency relief, food security, and public health, etc. It also offers access to country profiles, publications, and statistics.

www.catholicrelief.org

Catholic Relief Services (CRS) was founded by the Catholic Bishops of the United States to assist the poor and disadvantaged outside the country; gives assistance based on need, regardless of creed, race, or nationality to people in more than 80 countries around the world (emergency response, agriculture, community health, peace-building, AIDS, etc.). The site contains information on the CRS's activities and a newsroom on various humanitarian issues around the world.

www.hapinternational.org

The Humanitarian Accountability Project (HAP-I) is a partnership of member agencies that share a commitment to making humanitarian action accountable to its intended beneficiaries. HAP-I members seek to comply with HAP-I's seven principles of accountability through self-regulation and accreditation. They also share a vision of a humanitarian system at large that upholds these ideals. HAP-I is an information and analysis provider for the humanitarian sector. Its objective is to improve operational practice.

www.odihpn.org

The Humanitarian Practice Network (HPN, formerly the Relief & Rehabilitation Network) is an information and analysis provider for the humanitarian sector. Its objective is to improve operational practice. The site provides useful information on various humanitarian issues, as well publications, humanitarian guidelines, and book reviews.

www.interaction.org

InterAction (IA) is a coalition of more than 165 non-profit US-based organisations working to promote human dignity and development. The site provides information on humanitarian conditions in a given country, refugee facts, publications, and links to other refugee-related sites.

www.icrc.org

The International Committee of the Red Cross (ICRC) aims to protect and assist the victims of armed conflict and internal violence. The site contains extensive information on the ICRC's mission, history, and mandate. Weekly ICRC news and press releases may be viewed by date, country, or subject. A photo gallery can be consulted.

www.ifrc.org

The International Federation of the Red Cross and Red Crescent Societies (IFRC) is a large humanitarian network engaged in disaster preparedness, community development, capacity-building of national societies, refugee camp management, and the promotion of humanitarian values in general. The site contains news releases; weekly news reports; information bulletins focusing on recent disasters; publications, including the *World Disaster Report*, which focuses on humanitarian response and disaster relief; analytical essays; tables; and statistics.

www.theirc.org

The International Rescue Committee (IRC) is the leading voluntary organisation providing relief, protection, and resettlement services for refugees and victims of oppression or violent conflict. The site offers an online annual report, fact sheets, and information on the IRC's emergency response programmes, categorised by region.

www.msf.org

Médecins Sans Frontières (MSF) is a private, non-profit, international humanitarian organisation, whose objective is to deliver medical assistance to populations in crisis. The site provides general information about the organisation's history, mandate, and contact information. In addition, a photo gallery, a short list of publications, and special reports are available.

www.oxfam.org

Oxfam is a development and relief agency dedicated to the alleviation of poverty worldwide. The site contains information about its history, its operations, detailed information on its ongoing projects and activities, and policy papers on current issues of concern.

www.reliefweb.int

ReliefWeb is a UN project designed to strengthen the response of the humanitarian relief community through dissemination, preparedness, and disaster response. The site contains links to background country information; the "Emergency: section includes extensive information on ongoing emergencies and crises around the world.

www.savethechildren.org

Save the Children (SCF) is committed to fighting poverty, discrimination, protecting children from war and famine, and defending the rights of children at the global level. The site provides an overview of the functions of the organisation and its specific achievements in different countries. See especially the materials on the Action for the Rights of Children, which is an extremely useful training package.

www.sphereproject.org

Sphere is based on two core beliefs: first, that all possible steps should be taken to alleviate human suffering arising out of calamity and conflict; and second, that those affected by disaster have a right to life with dignity and therefore a right to assistance. Sphere is three things: a handbook, a broad process of collaboration, and an expression of commitment to quality and accountability. The project has developed several tools, the key one being the handbook. It also includes a number of current items on field practice and training and is a key source of materials on protection.

www.wcc-coe.org

The World Council of Churches (WCC) is an international fellowship of Christian churches built upon the foundation of encounters, dialogue, and collaboration.

III. Human rights

www.amnesty.org

Amnesty International (AI), the world's largest human rights organisation, is concerned with the international protection of human rights. It seeks to release prisoners of conscience, works for fair and prompt trials for all political prisoners, and opposes death penalty and other cruel and inhuman treatment. The site contains extensive information on HR violations, campaign reports, country reports listed by year and continent, and news releases.

www.crin.org

The Child Rights Information Network (CRIN) is a global network of children's rights organisations seeking to support the exchange of information about children and their rights. The network supports and promotes the implementation of the UN Convention on the Rights of the Child and assists organisations in gathering, handling, and disseminating child rights information. The site provides information on CRIN, its mandate and initiatives, as well as the Child right Information Database.

www.yale.edu/lawweb/avalon/diana/index.html

The DIANA Human Rights Database is an electronic human rights library established in memory of the late Yale law librarian, Diana Vincent-Daviss. The site provides a comprehensive global source of human rights materials: international human rights treaties and conventions; charters, documents, and procedures of regional human rights regimes; jurisprudence of human rights decision-making bodies, etc.

www.fidh.org

The International Federation of Human Rights (FIDH) was the first international organisation established to defend human rights. It conducts missions to investigate human rights violations, to observe judicial processes, and for training purposes. The site contains background information on the FIDH's projects and publications. In addition, it offers links to the most important human rights conventions and other human rights resources on the web.

www.hrw.org

Human Rights Watch (HRW) aims to protect the human rights of people around the world. It investigates human rights violations and challenges governments to end abusive practices and respect humanitarian laws. The site provides extensive information on its activities, research projects, and campaigns.

www.lchr.org

The Lawyers Committee for Human Rights (LCHR) works to protect and promote fundamental human rights. Its focus is on building the legal institutions and structures necessary for appropriate human rights practices. The site contains press releases and country information, book-length reports, position papers, and responses on a wide variety of human rights topics.

www.unicef.org

The United Nations Children's Fund (UNICEF) was established in 1946 by the General Assembly to advocate and work for the protection of children's rights. It is the only UN agency committed exclusively to the well-being of children, and it is guided by the Convention on the Rights of the Child in carrying out its mission. The site offers descriptions of its mission and programmes and publications related to the rights of the child.

www.unhchr.ch

The mission of the United Nations High Commissioner for Human Rights (UNHCHR) mission is to ensure the universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the UN. The site provides background information about the UNHCHR, its organisational structure, programme budget, and selected statements. The publication section includes fact sheets, reference materials, and human rights study series.

www.womenscommission.org

The Women's Commission for Refugee Women & Children is an expert resource and advocacy organisation that monitors the care and protection of refugee women and children. It speaks out on issues of concern to refugee and displaced women, children and adolescents, who have a critical perspective in bringing about change but who often do not have access to governments and policy-makers. The site contains various information on the organisation, reports, and advocacy actions taken in favour of women and children.

IV. International relations & area studies

www.brook.edu

The Brookings Institution is a private, independent, non-profit organisation that seeks to increase the nation's understanding of contemporary issues of governance and policy. The site contains background information on the Institution's history, objectives, and activities, as well as publications.

www.un.org

The United Nations' web site provides general information about the UN, including briefing papers, employment opportunities, and UN/NGO relations, as well as information on conferences and events.

www.icva.ch

The International Council of Voluntary Agencies (ICVA) functions as an advocacy network, adding value to the work of the non-governmental organisations that form its membership. It ensures that NGO networks are involved and informed and facilitates a real policy for implementation partnership between NGOs and international agencies. The site provides information about the ICVA and its members access to its newsletter, *Talk Back*; and a calendar of events. In addition, publications and issues are made available online.

Bibliography

The following list of documents and readings does not purport to be either comprehensive or authoritative. It is a provisional list of publications relating to protection issues in situations of forcible displacement. There is an abundance of material available on the web; for links to the key web sites, please refer to the Handout “Reaching Out on the Web”.

This bibliography is arranged by key organisations that provide practical information on refugee protection.

The United Nations

The UN Charter

San Francisco: Governments of the United Nations 1945

The document that established and governs the conduct of the United Nations and that also established and still governs the:

- General Assembly
- Security Council
- Economic and Social Council (ECOSOC)
- A Trusteeship Council
- The International Court of Justice
- The Secretariat of the UN

The Universal Declaration of Human Rights

New York: UN 1948

The first international statement to use the term human rights. It is short and worth reading in its entirety – a summary would be about as long as the document itself. Should be on the desk of, and used by, every humanitarian practitioner as a checklist.

A Summary of United Nations Agreements on Human Rights

New York: UN 1997 (www.hrweb.org/legal/undocs.html)

A brief summary of the principal international human rights legislation.

Contents:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention against Torture
- Convention against Genocide
- The Geneva Conventions
- Convention on the Rights of the Child
- Convention on the Elimination of Discrimination against Women
- Charter of the United Nations

UNHCR - United Nations High Commissioner for Refugees

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol

Geneva: United Nations 1951 & 1967

The Convention containing the definition of refugees and their rights, as well as mandating the High Commissioner.

Handbook for Emergencies - second edition

Geneva: UNHCR 2000

This revised and updated handbook provides useful guidance in coping with displacement. It stresses the importance of pre-emergency planning, as well as planning throughout every stage of the crisis. It focuses on setting coordination priorities, as well as contingency and operational planning. It contains a wealth of detail to enable these processes to be accomplished successfully.

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees

Geneva: UNHCR 1992

This Handbook is meant for the guidance of government officials concerned with the determination of refugee status in the various contracting states. It is hoped that it will also be of interest and use to all those concerned with refugee problems.

Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations

Geneva: UNHCR January 2004

This Guide builds on the set of core indicators for refugee emergencies developed in the UNHCR's Emergency Handbook. The Guide lists a core set of 52 standards and indicators, covering both emergency and protracted displacement situations. This Guide was developed to serve as a practical manual and reference tool for UNHCR staff and managers in the field, as well as for implementing and operational partners involved in programme management.

Refugee Children: Guidelines on Protection and Care

Geneva: UNHCR 1994

These guidelines define the goals and objectives, the principles and practical measures for the protection and assistance of refugee children. This is not a practical manual. By contrast, these guidelines will help you solve problems by pointing out things to keep in mind.

Protecting Refugees: A Field Guide for NGOs

Geneva: UNHCR 1999

This Field Guide is intended to be used by NGO (and Red Cross/Red Crescent) field staff who work with refugees and displaced persons. It offers both basic legal information about international protection for refugees and practical guidance for including protection measures in all field operations.

UNHCR web and Refworld

Geneva: 2004 as a CD-ROM and at www.unhcr.org

The UNHCR's Refworld 2004 collection on CD-ROM allows easy access to reliable and up-to-date information related to refugees and human rights. It has been referred to as a "refugee encyclopaedia", as it contains documents ranging from background country reports to legal position papers, guidelines, and statistics. The information has been collected not only from the UNHCR's global network of field offices but also from governments, non-governmental organisations, academic institutions, and judicial bodies in order to facilitate the work of decision-makers, analysts, human rights activists, and academics.

You can get access to the following documents either from Refworld or on the website. Additional notes have not been provided as the content is self-evident:

- Agenda for Protection, Geneva, 2003.
- Implementation of the 1951 Convention and 1967 Protocol.
- Code of Conduct, Office of the United Nations High Commissioner for Refugees, 2002, www.unhcr.md/article/co_con.htm.
- *Guidelines for Educational Assistance to Refugees*, Office of the United Nations High Commissioner for Refugees, Geneva 1995.
- *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, Office of the United Nations High Commissioner for Refugees, Geneva 1997.
- *Guidelines on Protection of Refugee Women*, Office of the United Nations High Commissioner for Refugees, Geneva 1991.
- *Handbook for Emergencies*, second edition, Office of the United Nations High Commissioner for Refugees, Geneva 2000.
- *Handbook for Registration: Procedures and Standards for Registration, Population Data Management and Documentation*, Office of the United Nations High Commissioner for Refugees, Geneva 2003 (provisional release).
- *Health, Food and Nutrition Toolkit*, Office of the United Nations High Commissioner for Refugees, Geneva 2001
- *Project Planning in UNHCR: A Practical Guide on the Use of Objectives, Outputs and Indicators for UNHCR Staff and Implementing Partners*, (known as the “Blue Guide”), second edition, Office of the United Nations High Commissioner for Refugees, Geneva 2002.
- *Refugee Children: Guidelines on Protection and Care*, Office of the United Nations High Commissioner for Refugees, Geneva 1994.
- *Refugee Emergencies: A Community-Based Approach, Community Service Guidelines*, Office of the United Nations High Commissioner for Refugees, Geneva 1996.
- *Registration: A Practical Guide for Field Staff*, Office of the United Nations High Commissioner for Refugees, Geneva 2003.
- *Reproductive Health in Refugee Situations, an Inter-Agency Field Manual*, Office of the United Nations High Commissioner for Refugees, Geneva 1999.
- *Resettlement Handbook*, revised edition, Office of the United Nations High Commissioner for Refugees, Geneva 2002.
- *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, Office of the United Nations High Commissioner for Refugees, Geneva 2003.
- Situation Analysis in UNHCR and the accompanying Situation Analysis Template, Geneva, forthcoming 2004.
- *Guidelines for HIV Interventions in Emergency Settings*, UNHCR, WHO, and UNAIDS, Geneva 1996.
- *Working with Unaccompanied Children: A Community-Based Approach: Community Service guidelines*, Office of the United Nations High Commissioner for Refugees, Geneva 1996.

ALNAP

Humanitarian Protection, A Guidance Book

Oxford: ALNAP, 2004

This book takes a helpful approach in marrying humanitarian protection and assistance with human rights-based concepts of protection. It is particularly useful to humanitarian workers grappling with their protection responsibilities in difficult assistance contexts.

Inter-Agency Stocktaking Meeting on Humanitarian Protection

Oxford: ALNAP, 2004

This paper is the report of a meeting organised by ALNAP, the ICVA, and InterAction that was attended by many of the leading humanitarian assistance agencies. It is a helpful reflection on the challenges in refugee protection as seen through the experiences of humanitarian agencies leaders.

Inter-Agency Standing Committee

Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action

Geneva: IASC, 2002 (published by UNICEF on behalf of IASC)

This is a collection of field practices on humanitarian assistance and protection from around the world. It sees assistance and protection as two sides of the same coin and provides the reader with abundant examples of how the humanitarian worker can promote and protect rights through their work.

International Federation of Red Cross and Red Crescent Societies

Handbook for Delegates

Geneva: International Federation 1997

Includes a brief but succinct introduction as to how the Federation addresses population movement issues (see pages 790/804)

Working with Refugees and Asylum Seekers

Geneva: League of Red Cross and Red Crescent Societies 1991

A handbook produced in response to an expressed need of national societies in the developed world as a training tool for both staff and volunteers who are concerned – in many cases for the first time – with work with and for refugees and asylum-seekers.

Guide for Planning Operations for Refugees, Displaced Persons and Returnees From Emergency Response to Solutions

Geneva: International Federation 1993

This guide is destined for Red Cross and Red Crescent societies' senior management, as well as for programme staff directly involved in planning and implementing operations that benefit refugees, displaced persons, and returnees. It is also designed for heads of delegations and relief/development delegates serving as a reference and training document.

Final report of the Regional Seminar on Population Movements & Migration addressing health, social welfare and other humanitarian issues

Kuala Lumpur: International Federation Delegation for SE Asia 2000

Report on a seminar organised to sensitise senior social welfare/health officers of national societies in the region to the humanitarian aspects of migration and population movement within and between countries and the needs of vulnerable groups amongst migrants.

HANDOUTS ON REFUGEE PROTECTION

Code of Conduct for the International Red Cross and Red Crescent Movement and Non Governmental Organisations (NGOs) in Disaster Relief

Geneva: International Federation

Seeks to guard standards of behaviour and to maintain high standards of independence and effectiveness to which disaster response NGOs and the International Red Cross and Red Crescent movement aspire.

International Committee of the Red Cross/International Federation of Red Cross and Red Crescent Societies

Handbook of the International Red Cross and Red Crescent Movement

Geneva: ICRC/International Federation 1994

A compilation of the principles and rules directing the activities of the movement and a practical guide to all those interested in the life of the Red Cross/Red Crescent, including international humanitarian law, conventions and international agreements, statutes and regulations.

Agreement on the Organisation of the International Activities of the Components of the International Red Cross and Red Cross Movement - Seville Agreement

Seville: ICRC/International Federation 1997

This agreement is more than an instrument of operational management or a statement of understanding. It sets in motion a profound change in attitude between members of the same movement: the adoption of a collaborative spirit.

International Committee of the Red Cross

Workshop on Protection for Human Rights and Humanitarian Organizations: Doing Something About It and Doing it Well (Report of the Workshop)

Geneva: ICRC, 1999.

Restoring FAMILY Links

A guide for National Red Cross and Red Crescent societies

Geneva: ICRC Central Tracing Agency and Protection Division 2000

A guide written for national societies and, more specifically, for heads of tracing services. It describes and seeks to promote across the entire International Red Cross and Red Crescent movement a common approach to responding effectively to the loss of family contact as a result of conflict, natural disaster, or other situations with a humanitarian impact.

OCHA - Office for the Coordination of Humanitarian Affairs

The Guiding Principles on Internal Displacement

Geneva: OCHA 1998

Addresses the specific needs of internally displaced persons worldwide, identifying rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement, as well as during return or resettlement or integration.

Handbook for applying the Guiding Principles on Internal Displacement

Geneva: OCHA/Brookings Institution 1999

Prepared to provide practical guidance to field staff on how to implement the Guiding Principles. It explains the Guiding Principles beginning with general principles and then identifying which principles apply to which specific needs that arise in the field.

Manual on Field Practice in Internal Displacement

Geneva: OCHA /IASC Working Group

Examples from UN and other organisations (including Red Cross/Red Crescent) of field-based initiatives supporting internally displaced persons.

OXFAM

The Oxfam Handbook of Development and Relief

Oxford: Oxfam 1995 (reprinted in 1998)

This Handbook is the expression of Oxfam's fundamental principles: that all people have the right to an equitable share in the world's resources and the right to make decisions about their own development. The denial of such rights is at the heart of poverty and suffering. A comprehensive work of reference for development practitioners and planners, for policy-makers and social analysts, and for teachers and students of development. The Handbook analyses policy, procedure, and practice in fields as diverse as health, human rights, emergency relief, capacity-building, and agricultural production. Published in three volumes.

Norwegian Refugee Council/Earthscan

Internally Displaced People

A Global Survey

London: Earthscan 1998

A compilation of papers dealing with (Part I) Issues and Perspectives and (Part II) Regional Profiles – excellent background to the issue of internal displacement

RedR

Engineering in Emergencies

A practical guide for relief workers (revised edition)

London: IT Publications on behalf of RedR 2001

The purpose of this book is to increase the effectiveness with which engineers and other relief workers can provide humanitarian assistance during an emergency. The book provides practical information relevant to the practitioner in the field with a minimum of supporting theoretical background.

Sphere

Humanitarian Charter and Minimum Standards in Disaster Response

Geneva: The Sphere Project 1998 and updated in 2004.

Meeting essential human needs and restoring life with dignity are core principles that should inform humanitarian action. Through the Humanitarian Charter and Minimum Standards in Disaster Response, defined levels of service in water supply, sanitation, nutrition, food aid, shelter, sight planning, and health care are linked explicitly to fundamental human rights and humanitarian principles.

Additional reading & resources²⁸

Anderson, M.B., *Do No Harm: How Aid Can Support Peace - or War*, (Boulder: Lynne Rienner, 1999)

An examination of the impact that international humanitarian and development assistance programmes have had on war-torn societies, in particular the ways that assistance can inadvertently reinforce divisions within communities and further contribute to conflict. Calling for a redesign of international aid programmes in conflict-affected societies, Anderson cites examples of creative approaches to the provision of international assistance that support the processes through which communities are able to disengage from war. *Do No Harm* is published by Lynne Rienner Publishers and can be ordered at the following website:

www.rienner.com/viewbook.cfm?BOOKID=88&search=do%20no%20harm

Darcy, J., “Human Rights and International Legal Standards: What do Relief Workers Need to Know?” Relief and Rehabilitation Network Paper 19, Overseas Development Institute, London, 1997

This paper presents humanitarian action in the context of the international human rights framework and calls for the recognition of humanitarian protection and assistance as “humanitarian rights”. It concludes with a set of recommendations, including a call for the inclusion of an assessment of protection needs in all humanitarian needs assessments. “Human Rights and International Legal Standards” is available online at:

www.odl.org.uk/pppg/activities/concepts_analysis/rightsinaction/Publications/networkpaperNo19.pdf

ICRC, *Strengthening Protection in War: A Search for Professional Standards*, (Geneva: International Committee of the Red Cross, 2001), ed. Sylvie Giossi Caverzasio

Presenting the results of a series of ICRC workshops around the protection of civilians in armed conflict and situations of internal violence, this book aims to promote the sharing of principles and practices around protection and to raise the professionalism and efficacy of agencies engaged in activities around protection. *Strengthening Protection in War* is published by the ICRC and can be ordered at the following website:

www.icrc.org/Web/eng/siteeng0.nsf/iwplList125/C751BDF4EDB54F30C1256C5A0052C899

Inter-Agency Standing Committee, *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action*, (Geneva: Inter-Agency Standing Committee, 2002

Arguing that the protection of human rights is fundamental to the general effectiveness of humanitarian assistance, this publication provides a collection of field practices that incorporate a rights-based approach to humanitarian assistance programmes. Following a general discussion of protection, it presents a series of sample practices collected from a variety of national and international non-governmental organisations and government agencies from field studies in Afghanistan, Kosovo, Sierra Leone, and Sudan. *Growing the Sheltering Tree* is available online at: www.unicef.org/publications/index_4397.html

Inter-Agency Standing Committee, “Report of the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises,” 2002

This report identifies factors in humanitarian crises that contribute to the occurrence of sexual exploitation and abuse and gaps within the existing international humanitarian system in the area of protection against sexual exploitation and abuse. It provides a plan of action that identifies the “essential actions” for the international humanitarian community to take to more effectively prevent and respond to sexual exploitation and abuse in humanitarian crises. The “Report of the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises” is available online at: www.unicef.org/emerg/IASCTFReport.pdf

²⁸ A paper from InterAction’s Protection Working Group, April 2004, www.interaction.org/protection.

Paul, D., “Protection in Practice: Field Level Strategies for Protecting Civilians from Deliberate Harm,” Relief and Rehabilitation Network Paper 30, Overseas Development Institute, London, 1999

This paper maintains that international organisations can enhance protection in areas where violations occur. The paper discusses the concept of protection and offers extensive examples of field-level strategies and tactics that have been used to prevent or mitigate abuses. It suggests appointing a “focal point” agency in each emergency that will seek to coordinate the protection effort. “Protection in Practice” is available online at: www.odihpn.org/report.asp?ID=2118

Slim, Hugo and Louis Enrique Eguren, “Humanitarian Protection: A Guidance Booklet,” ALNAP, 2004

This booklet serves as a general guide for individuals managing any form of humanitarian response that includes protection. It describes the ideas behind humanitarian protection, identifies the fundamentals of basic protection-focused programming and offers guidance on how to monitor and evaluate humanitarian action and its results in protection terms. “Humanitarian Protection” is available online at: www.alnap.org/pubs/pdfs/protectionbooklet3.pdf

UNHCR, Protecting Refugees: A Field Guide for NGOs, (Geneva: UNHCR, 1999)

Intended for use by NGO field staff working with refugees and displaced persons, this guide offers practical steps as well as basic legal information regarding protection in all field operations. The guide describes how NGOs can assist the displaced through various phases of their lives as refugees and pays specific attention to the unique needs of women, children, IDPs, older refugees, and stateless persons. The checklists included in the guide provide recommendations for action and response. *Protecting Refugees: A Field Guide for NGOs* is available online at: www.unhcr.org/

UNHCR, Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response, (Geneva: UNHCR, 2003)

This guide is intended for use by staff of the UNHCR, UN agencies, inter-governmental organisations, and host government agencies. It outlines the various types, causes, and consequences of sexual and gender-based violence (SGBV) and introduces a framework for the prevention of, and response to, SGBV. The framework is based on a multi-sectoral and collaborative approach and requires full engagement and involvement of the refugee community. *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response* is available online at: www.unhcr.org

UNHCR, Refugee Children: Guidelines on Protection and Care, (Geneva: UNHCR, 1994)

Created for UNHCR staff and operational partners, the guidelines suggest various protection measures in such areas as health and nutrition, psychosocial well-being, and the prevention and treatment of disabilities, and they outline specific actions for the protection of refugee children from abuse, exploitation, and military recruitment. The operational framework integrates assistance to children into regular protection and assistance activities for the wider population and outlines specific standards, policies, and operational guidelines to ensure the protection and well-being of refugee children. *Refugee Children: Guidelines on Protection and Care* is available online at: www.unhcr.org

UNHCR, Guidelines on the Protection of Refugee Women, (Geneva: UNHCR, 1991)

This document outlines specific protection issues, problems, and risks facing refugee women and suggests specific examples for the improvement of protection activities and for the prevention of violations against women refugees. *Guidelines on the Protection of Refugee Women* is available online at: www.unhcr.org