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Opening lecture

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**"Coping with contemporary conflicts: 'Conflict refugees' and the 1951
Convention protection regime"**

It is very nice to be here again, which has become part of the tradition of my position as chief of law and policy at UNHCR to give the keynote presentation to this course. My previous presentations to this course can be found online.¹ I look forward to our discussion following my presentation. My presentation focuses on "coping with contemporary conflicts" and is in two parts: the first describes the challenges of modern conflict through the lens of the Syria crisis, although noting that Syria is used only as an example; the second part looks at the international protection regime – centring on the 1951 Refugee Convention – and how it applies to conflict victims. I will also explore the regional refugee instruments, and other "tools" in the "toolbox" of international protection – such as prima facie recognition of refugee status and temporary protection.

With the crisis in Syria escalating, and fracturing, and the spill over into neighbouring countries now of enormous proportions, with over 1 million refugees, I thought it opportune to reflect on the state of the international refugee protection regime to respond to the many dimensions of contemporary conflicts. Syria is not, of course, the only crisis to which UNHCR and the broader international community must respond, but it does serve as a reference point for the many issues confronting the international protection regime in the second decade of the new millennium and which you will be studying over the course of this week. In fact, UNHCR is being pulled in multiple directions. Old and new conflicts test the capacity of the international community on a daily basis, many of them protracted or cyclical.

¹ UN High Commissioner for Refugees, *International Protection: The Arab Spring, Modern Movements and the Decades Ahead*, 19 March 2012, available at: <http://www.refworld.org/docid/4f68626717.html>; UN High Commissioner for Refugees, *The International Protection Regime and the Right to Asylum: Development and Challenges*, 21 March 2011, available at: <http://www.refworld.org/docid/4d95a7442.html>.

The High Commissioner for Refugees last week told the UN Security Council that the crisis in Syria was reaching “terrifying proportions”, noting that almost half of Syria's 20.8 million people could be in need of humanitarian help by the end of this year.² He had earlier warned that the refugee influx into neighbouring countries could overwhelm them, as well as the humanitarian response – saying that Syria was now at a “tipping point”.³ He described the situation:

In early December [2012], some 20 months after the crisis began, refugee figures stood at 500,000. It has only taken three months for that number to double. As violence in Syria spirals out of control, more than 7,000 people arrive in Jordan, Lebanon, Turkey and Iraq every single day. Others make their way to Egypt and Europe. Three quarters of the refugees are women and children.⁴

Two factors make this crisis dramatic. One is the complete absence so far of a political solution. The other is the staggering pace at which the refugee crisis has escalated in recent months. While Syria is the newest of the global conflicts, it is not atypical. Farrell and Schmitt of the War Studies Department at King's College London noted, in a paper commissioned by UNHCR on the causes, character and effects of armed conflict, that 96 per cent of post-Cold War conflicts have been internal or civil wars, and in most cases involving regional actors and transborder activities, and driven by a mix of factors. On the causes of these conflicts, they refer, on the one hand, to “grievance politics” – that is, conflicts instigated because of ethnic and religious identity, division and/or nationalism – and on the other hand, the political economy of conflict – showing how conflicts are fuelled by, or prolonged because of, economic interests and exploitation, whether of resources, land, people, or trade routes. In the latter case, they mention the key role of warlords, gangs, and organized criminal enterprises.⁵

As in Syria, the lack of political solution is the primary reason for the continuation of many modern conflicts, whether in Mali, Sudan/South Sudan, or the Democratic Republic of the Congo.

In summary, two main trends can be observed in respect of contemporary armed conflicts:

First is a rise in non-international armed conflicts involving a diversity of armed actors along with different modes of violence thus blurring the traditional boundaries between peace and war and between combatants and civilians.

[The second observation] is that while there has been a general decline in the lethality of armed conflicts, there has been an increasing targeting or terrorizing of civilians, and other forms of “coercive violence” aimed at controlling the population. The use and availability of low technological weaponry has also aided the spread of conflict into civilian areas, including in urban settings. Further, the indirect effects of conflict - poverty, inflation,

² UNHCR Chief warns Security Council of “terrifying” situation in Syria, 18 April 2013, available at: <http://www.unhcr.org/517015e26.html>.

³ António Guterres, “One Million Syrian Refugees”, OpEd, *New York Times*, 5 March 2013.

⁴ Ibid.

⁵ Theo Farrell and Olivier Schmitt, *The Causes, Character and Conduct of Armed Conflict, and the Effects on Civilian Populations, 1990-2010*, Legal And Protection Policy Research Series, April 2012, PPLA/2012/03, available at: <http://www.unhcr.org/refworld/docid/4f8c3fcc2.html>.

violence, disease, food insecurity and malnourishment, displacement – have increased.⁶

As far as internal and external forms of displacement are concerned, there are many factors that compel persons to leave their homes or countries, but certainly displacement is an indicator of the intensity of the conflict, and its impacts on civilians. Depending on the situation, however, persons may be unable to leave their areas of habitual residence as they become trapped – sometimes periodically and sometimes cyclically – in the zone of conflict, especially in urban warfare.

But of the factors that cause persons to leave, it is clear that direct threats to one's physical safety or life is but one factor. It is also evident that the indirect effects of armed conflict – such as food insecurity or health – also compel people to gather their belongings and to risk the journey to another part of the country, or to cross an international border. It has been estimated that there is a 4:1 ratio of indirect to direct civilian deaths in contemporary conflicts.⁷ People in conflict make judgments every day between the risk of staying put versus the risk of flight, and the international protection regime needs to respond in turn.

Sexual and gender based violence is another risk that compels people to move. Syria is only the latest in a long string of conflicts where sexual violence has been prevalent, and deployed as a weapon of war. The conflicts in the former Yugoslavia and in Rwanda in the 1990s are examples in point, but they were just the "flashpoint", or the point at which the international community was awakened to the harsh realities of conflict and the different experiences of its victims based on gender. As the Assistant High Commissioner for Protection, Ms. Erika Feller, recounted to this year's Human Rights Council, on Syria:

[The conflict] is for many marked by gender based crimes, deliberate victimization of women and children and a frightening array of assaults on human dignity.⁸

She notes, as others have, that such violence is aimed at destroying identity, dignity and social fabrics and communities,⁹ which in turn make it much harder to rebuild in the post-conflict period. The wide literature on transitional justice shows that in the aftermath of conflict women and girls in particular are often the forgotten victims.¹⁰

For many women victims of rape, the crimes perpetrated against them continue into their displacement experience, as well as into the post-conflict context – women raise children born from rape, women endure the documented rise in domestic violence in the post-conflict context when men return from war or when they are idle

⁶ UN High Commissioner for Refugees, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, para. 3, available at: <http://www.refworld.org/docid/50d32e5e2.html>.

⁷ *Supra note 5*, p. 30, pointing at the NGO Geneva Declaration on Armed Violence and Development and its Global Burden of Armed Violence 2008 Report.

⁸ UNHCR, *Statement by Ms. Erika Feller, Assistant High Commissioner (Protection) High Level Segment of the 22nd session of the Human Rights Council*, 26 February 2013, available at: <http://www.refworld.org/docid/512f4c8c0.html>.

⁹ *Ibid.*

¹⁰ See, e.g., S. Harris Rimmer, *Gender and Transitional Justice: The Women of East Timor* (Routledge, 2010).

and without meaningful activities in exile (including in refugee camps), they experience social and community exclusion and ostracism, and they must bear the psychological toll of their experiences. It is trite to say, but for many women, the war does not end with a peace agreement. Likewise, sanctuary in another country does not stop the violence.¹¹ The many examples of the latter have preoccupied UNHCR for two decades, producing many guidelines, yet we still do not have all the answers.¹²

Children are also victims of armed conflict in special ways, whether simply because of their young age and immaturity that they are more vulnerable to the psychological costs of war, or because of the disruption to their daily lives – disruption to normal health services including pre- and post-natal services, and immunisation, to their education or even to their right to play and to feel safe. They are also at risk of forced recruitment as child soldiers, with all its manifestations, including brutal initiation rituals, fighting on the front lines, killing, and being shot at, and other abuses, including being subjected to early or forced marriage, or sexual slavery.¹³

Forced displacement is also inextricably linked to human rights and the rule of law. The deterioration in the human rights situation, political instability and poor governance systems in many countries – also outside the context of an armed conflict – also compel people to flee. Unrest in Myanmar, the Central African Republic, Afghanistan and Iraq are cases in point. Likewise the violence in central America, for example in Mexico, is of a scale and intensity of many armed conflicts.¹⁴

So you might ask why I spent so much time outlining the particular context of contemporary armed conflicts?

There are a number of important reasons. I'll highlight five here today, but you may also identify other good reasons.

First, it is important to acknowledge that the majority of the world's refugees in 2013 are in fact in flight from conflict or other situations of violence, rather than from so-called "peacetime persecution".

Second, only by understanding contemporary armed conflicts and the causes of refugee movements are we able to properly apply the 1951 Refugee Convention. The pervasive perception in many individualised asylum procedures, especially in Europe and elsewhere, that the 1951 Refugee Convention was designed not for conflict victims, but for victims of "peacetime persecution", has led to a failure to apply the 1951 Convention to conflict victims.

Third, the majority of today's refugees are recognised on a group or prima facie basis, rather than through individualized asylum procedures, pointing to an imbalance in the focus on the latter by many governments.

¹¹ Valerie Oosterveld, *Women and Girls Fleeing Conflict and Generalized Violence: Gender and the Interpretation and Application of the 1951 Refugee Convention*, September 2012, Legal and Protection Policy Research Series, PPLA/2012/06, available at: <http://www.unhcr.org/refworld/docid/504dcb172.html>.

¹² See, UN High Commissioner for Refugees, *UNHCR Handbook for the Protection of Women and Girls*, January 2008, available at: <http://www.refworld.org/docid/47cfc2962.html>.

¹³ See, V. Oosterveld, "Forced Marriage and the Special Court of Sierra Leone: Legal Advances and Conceptual Difficulties" (2011) 2(1) *Journal of International Humanitarian Legal Studies* 127.

¹⁴ *Supra* note 5, pp. 21 - 24.

Fourth, conflict victims pose questions for the relationship between the 1951 Convention and the regional refugee instruments, as well as the development of national and regional complementary or subsidiary protection categories. At times, these regional or complementary protection categories have impacted (negatively) on the interpretation of the 1951 Convention. In particular we have seen a trend in some countries of restrictive interpretations of the 1951 Convention in order to accommodate these new categories. A 2012 study conducted by UNHCR, *Safe at Last?* shows the variable recognition rates of applicants from Afghanistan, Iraq and Somalia in different European Union countries, between refugee status and subsidiary protection. Getting the status right is particularly important in the EU because of the different standards of treatment accorded to the two categories.¹⁵ Research on the US asylum system has also seen it referred to as “refugee roulette”.¹⁶

Fifth, temporary protection has been called for and applied in many different conflict situations, not least during an emergency phase to the mass movements of asylum-seekers. As a practical device, it has been particularly useful in non-states parties to the 1951 Convention, yet its full scope is not settled.

The 1951 Refugee Convention and “conflict refugees”

Turning now to the 1951 Convention, I will briefly outline its origins and basic principles, and explain how it applies to “conflict refugees”.

Out of the horrors of the Second World War, in which millions of Jews and others were persecuted because of their ethnicity, religion and other protected characteristics, the 1951 Convention was penned and adopted by the international community. The 1951 Convention is thus a post-war instrument. The purpose of the Convention was, and I quote the preamble, “to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of the protection accorded by such instruments by means of a new agreement.”¹⁷

The 1951 Convention’s five central tenets include:

(1) The prohibition on *refoulement*, or return to threats to life or freedom in any manner whatsoever, which has been recognised as a customary international law norm (Article 33).

(2) The *guarantee of non-penalization* for illegal entry or stay for those who show “good cause” for having done so (Article 31). Penalties in this sense include both criminal and administrative penalties such as fines or detention. Noting that persons in flight are rarely able to satisfy immigration entry requirements, the Conference of Plenipotentiaries to the Convention noted that “good cause” would include those fleeing persecution, but also that there could be other good causes for why a refugee would need to enter a country without official authorization, such as for reasons of family unity. The urgency

¹⁵ UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e2ee002.html>.

¹⁶ J. Ramji-Nogales, A.I. Schoenholtz and P.G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (New York University Press, 2009).

¹⁷ Preamble to the 1951 Convention.

of one's flight because of conflict and violence would also clearly be another example.

(3) The fundamental principle is that refugees are "to enjoy" the *widest possible exercise of their fundamental rights*.¹⁸ Articles 3 to 34 of the Convention contain a number of rights entitlements for refugees. Article 2 of the Convention notes that refugees are subject to the laws and regulations of the host country and have a duty to respect them.

(4) Non-discrimination in the enjoyment of rights in the Convention (Article 3).

(5) The refugee definition (Article 1) – that someone has a well-founded fear of being persecuted for a Convention reason – persecution in this sense means threat to life or freedom, including serious human rights violations or other serious forms. I'll deal with this in more detail further below.

In addition to the five fundamental tenets of the Refugee Convention, a further key principle of refugee law is that of *finding solutions for refugees*. UNHCR is mandated both to provide international protection to refugees and to find, together with governments, durable solutions to the problem of refugees.¹⁹ However, as in the case of many longstanding conflicts, humanitarian solutions for refugees largely rely on political solutions. For a small fraction of the world's 15 million refugees resettlement and local integration are other solutions.

Despite being borne out of armed conflict, Vanessa Holzer, a researcher, identifies two main problems observed in national adjudication systems, in the interpretation of the refugee definition: first, while persons in flight from conflict can qualify for refugee status under the 1951 Convention, it is generally accepted that they do not qualify as conflict victims *per se*;²⁰ and second, the existence of an armed conflict in an applicant's country of origin has prompted some adjudicators to adopt practices not grounded in the 1951 Convention, such as by applying additional analytical layers to distinguish "mere" conflict victims from those entitled to 1951 Convention protection.²¹ As Matthew Gibney of Oxford University has explained, there is a sense of a shortage of entrance places which leads to restrictive practices. It is not though always a real shortage, as opposed to a political shortage.²²

The summary conclusions of an expert roundtable organized by UNHCR in Cape Town, South Africa, in 2012 looked at these exact legal questions, and came up with a number of clarifications:

- classifying a particular situation as an armed conflict can be relevant to the background to the refugee claim, but it should not distort the assessment of

¹⁸ Ibid.

¹⁹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), Art. 8, available at: <http://www.refworld.org/docid/3ae6b3628.html>.

²⁰ See, too, UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, para. 165, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

²¹ Vanessa Holzer, *The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence*, Legal and Protection Policy Research Series, September 2012, PPLA/2012/05, available at: <http://www.unhcr.org/refworld/docid/50474f062.html>.

²² M. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response of Refugees* (2004), p. 5.

the basis for the claim, which remains “does the applicant have a well-founded fear of being persecuted for reason of race, religion, nationality, political opinion or social group?”

- in every claim for refugee protection, it remains necessary to understand and analyze the factual situation in the country of origin in its proper context, including the causes, character and impact of the conflict or violence on the applicant and others similarly situated.
- Where conflicts are rooted in ethnic, religious or political differences, or where the impact of the conflict or violence is experienced along ethnic, religious, political, social, or gender lines, persons fleeing such conflicts or violence may qualify as 1951 Convention refugees.
- Even when the cause, character or impact of the conflict or violence does not present an immediate link to a 1951 Convention ground, individuals may also qualify as refugees, depending on the individual and contextual circumstances of their claim.
- In armed conflict and other situations of violence, whole communities may suffer or be at risk of persecution. The fact that many or all members of particular communities may be equally at risk does not undermine the validity of any particular claim. The test is whether an individual’s fear of being persecuted is well-founded. In fact, at times, the impact of the conflict on an entire community strengthens, rather than weakens, the risk to any particular individual.
- There is no basis in the 1951 Convention for holding that in armed conflict or other situations of violence an applicant needs to establish a risk of harm over and above that of others caught up in such situations (sometimes called a “differentiated risk”).
- As far as sexual and gender-based violence, it was agreed that they are forms of persecution – committed not for reasons of personal gratification (as wrongly assumed in some decisions) or as criminal and therefore not persecution – but as an exercise of political power or control. “Women” are also a “social group” for the purposes of the grounds in the refugee definition, while also noting that the other grounds –real or perceived political opinion, race, nationality and/or religion – may equally apply, especially in conflicts that target women and girls as part of military strategies.²³

UNHCR will be issuing guidelines on the interpretation and application of the 1951 Convention to conflict victims later this year.

Relationship between the 1951 Convention and regional refugee instruments

The clarifications above do, however, beg questions about the scope of the regional refugee instruments and the relationship between them and the 1951 Convention. Despite the purported universality of the 1951 Convention, especially after the adoption of the 1967 Protocol, which removed the original temporal and geographic limits of the 1951 Convention, Africa in 1969 and Latin America in 1984 adopted their own instruments, which expanded the persecution-based definition of a refugee to other causes. These instruments include persons having left their country of origin for reasons of, inter alia, foreign aggression, occupation, conflict, generalized violence, massive human rights violations, or serious disturbances to public order.

²³ Supra note 6.

Both regions were suffering from massive human displacement at the relevant time and sought a broader and more objective approach to refugee status.

It should be noted that the 1951 Convention was endorsed in both regional instruments as the “basic and universal instrument”²⁴ on which they were to build. Neither instrument suggests that there would be no overlap between the two refugee definitions. Both regional instruments are humanitarian and non-political in orientation, intended to be responsive to the realities on the ground. As to the rights and status granted to refugees in the 1969 OAU Convention, they are equivalent to those enjoyed by 1951 Convention refugees with some positive additions – no exception to non-refoulement in the 1969 OAU Convention; the right to asylum is covered; and the principle of voluntary repatriation.²⁵ In Latin America, the Cartagena Declaration has been incorporated into 15 national laws, granting the same status as 1951 Convention refugees and the same set of rights.

African countries in particular have developed a procedural and/or evidentiary accommodation technique to be able to rapidly recognise refugees in the context of conflict or serious threats to public order where persons move en masse. Recognition of refugee status on a *prima facie* basis – based on an objective assessment of the situation in the country of origin – has allowed refugees to be recognised rapidly in mass influx situations, and to respond to the realities on the ground where individual procedures are neither practical nor appropriate.

Although *prima facie* recognition is usually applied in mass influx situations, it can also be applied within individual refugee status determination procedures, such as the practice in Tanzania where refugee-producing countries in conflict are put on a “white list”, allowing easier status determination. Instead of each applicant producing evidence of public disorder justifying flight, the “white list” establishes a presumption of eligibility. The applicant thus only needs to prove basic elements, such as nationality, or country of origin or date of departure. *Prima facie* recognition can also apply to the 1951 Convention. In other words, *prima facie* recognition is not a technique limited to the OAU Convention, nor only in mass influx situations, and its utility in other contexts could be explored further.

There remain still some areas where particular issues need to be worked out in respect of *prima facie* recognition, including how to maintain the civilian and humanitarian character of asylum if persons are recognised on a group basis; as well as how to conduct exclusion assessments (per Art. 1F 1951 Convention) so that those having committed war crimes or crimes against humanity do not use the asylum regime as a safe haven from justice. I am happy to discuss this further in the Q&A.

²⁴ OAU Refugee Convention, preamble; The Cartagena Declaration took the 1951 Convention as the founding instrument, concluding to “promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol (...)”, “ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol (...)”, “ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible”, further “the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol (...)”, and “To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol (...)”, see part III, conclusions 1, 2, 8.

²⁵ OAU Refugee Convention Arts. 2(3), 2, 5.

1951 Convention and EU subsidiary protection

Apart from Africa and Latin America, the European Union has also expanded its legislative commitments to persons in need of international protection, through the Qualification Directive, including those who cannot be returned owing to a real risk of serious harm arising from torture or inhuman or degrading treatment or who face indiscriminate violence in situations of international or internal armed conflict. The EU Qualification Directive²⁶ acknowledges the primacy of the 1951 Convention and requires – as a procedural matter – that adjudicators first determine who qualifies as a refugee in accordance with the 1951 Convention definition before assessing subsidiary protection. Thus as far as status is concerned, it is a sequential relationship. However, in terms of rights, there is a hierarchy, as refugees receive a higher level of rights than subsidiary protection holders, which is different from the relationship between the 1969 OAU Convention/Cartagena and the 1951 Convention, which as I mentioned the rights are the same.

However, in practice, especially in the context of persons fleeing armed conflict and other situations of violence, sequential assessments are not always undertaken adequately. Frequently, it appears that the assessment of international protection needs on the basis of the 1951 Convention is rather superficial, resulting in an over-reliance on the application of Article 15(c) of the EU Qualification Directive (the indiscriminate violence provision). Current statistics for Syrian applicants in Europe show inconsistency across the EU, as well as a preference for granting subsidiary protection, despite the clear roots of the Syrian conflict in political protest and disenfranchisement, and the sectarian dimensions evident as the conflict unfolds.

Temporary protection

Meanwhile most countries in Asia and the Middle East, host to very large populations of refugees, have yet to accede to the 1951 Convention regime. Instead, they apply a mixture of regional hospitality, sometimes called temporary protection, and tolerated stay. Existing doctrine on temporary protection accepts it as an emergency response to the mass movements of asylum-seekers, and in particular highlights its value in ensuring protection from *refoulement* and basic minimum treatment in accordance with human rights.²⁷

Current responses by neighbouring countries to the Syrian crisis are good examples of this traditional doctrine in practice, so too the response of countries to the Libya crisis in 2011. It is worth mentioning that Turkey has declared an official temporary protection regime operating there based on Executive Committee Conclusion No. 22, a conclusion drafted in response to the Indo-Chinese crisis of the 1970s and outlines a set of rights for asylum-seekers in mass influx situations.²⁸

²⁶ European Union: Council of the European Union, *DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, L337/9, available at: <http://www.unhcr.org/refworld/docid/4f197df02.html>.

²⁷ UN High Commissioner for Refugees, *Roundtable on Temporary Protection : 19-20 July 2012. International Institute of Humanitarian Law, San Remo, Italy : Summary Conclusions on Temporary Protection*, 20 July 2012, available at: <http://www.refworld.org/docid/506d908a2.html>.

²⁸ See Executive Committee Conclusion No. 22 (XXXII), 1981, Protection of Asylum-Seekers in Situations of Large-Scale Influx, in UN High Commissioner for Refugees, *A Thematic Compilation of Executive Committee Conclusions*, 6th edn, June 2011, available at: <http://www.unhcr.org/3d4ab3ff2.html>.

More recently, at a roundtable organized by UNHCR here at the Institute last summer, temporary protection was flagged as an appropriate response to the range of humanitarian crises and complex and mixed population movements in circumstances where existing international instruments are inapplicable, inappropriate or impracticable.²⁹ Participants encouraged UNHCR to update the doctrine on temporary protection to these modern challenges so as to make such responses more predictable and harmonized while also being flexible; UNHCR was also requested to draft a temporary protection framework that can be adapted to various settings. A second roundtable will be organized at the Institute this summer for that purpose.

In conclusion, the operational and political realities on the ground in many modern displacement settings test the resolve and capacity of the international community to respond. At the same time, the legal framework, centred on the post-World War Two 1951 Convention, remains as relevant as ever. Other tools, including regional instruments, *prima facie* recognition and temporary protection, are also useful in particular contexts, although more work on how they all fit together is needed.

Three areas remain problematic:

- **The first**, very much related to my presentation today, is the failure to apply the 1951 Convention to conflict victims in many jurisdictions, and the resulting inconsistent state practice.
- **The second**, is to ensure the safety, rights and dignity of refugees in exile. Too many refugees live in substandard conditions, without meaningful participation in local life.
- **The third**, is finding political solutions to the multiple crises, which is the fundamental source of solutions for refugees.

Linked of course to the second and third of these issues is the need for international cooperation and burden- and responsibility-sharing. As noted in the preamble to the 1951 Convention, and I paraphrase, "the grant of asylum may place unduly heavy burdens on certain countries," but the problem is "international in scope and nature and cannot therefore be achieved without international co-operation."

I would be more than happy to respond to questions directly relating to my presentation, or on broader protection and/or solutions issues.

Thank you.

²⁹ Individual status determination is not always *practicable* (e.g. in mass influx situations it can overburden determination systems) or *applicable* (e.g. owing to the character of the refugee movements, in the context of non-States parties to the 1951 Convention or other refugee instruments, or where persons would generally not be considered to fall within the Convention, such as persons fleeing natural disasters). On the latter, see UNHCR, Expert Meeting on Climate Change and Displacement, Summary of Deliberations on Climate Change and Displacement, 22-25 February 2011, Bellagio, Italy available at: <http://www.unhcr.org/4da2b5e19.html>. As the label "refugee" implies the fracturing of ties with one's home country, it will not be appropriate in all situations. Some persons in need of international protection, for example, do not seek refugee status, nor desire to be referred to as "refugees".