

**Speech of High Commissioner for Refugees António Guterres  
2010 Dialogue on Protection Gaps and Responses**

**Palais des Nations, Geneva  
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Excellencies, Ladies and Gentlemen,

The world has changed. The clarity of the displacement situation at the end of World War II and the certainties characterizing the conferral of refugee status during the Cold War are gone.

Today's challenges are interconnected and complex. Population growth, urbanization, climate change, water scarcity and food and energy insecurity are exacerbating conflict and combining in other ways that oblige people to flee their countries.

Distinctions between refugees and migrants and voluntary and involuntary movements are becoming blurred. And decisions based on them are at times difficult to make.

The 1951 *Convention relating to the Status of Refugees*, which turns 60 next year, has served us well. It is sound in its fundamental provisions and has proved flexible enough to accommodate new forms of persecution, notably for members of a particular social group.

But the ever more complex factors affecting cross-border displacement are exposing gaps in the international protection regime.

Identifying ways to respond to these gaps is the purpose of this Dialogue. Our discussions over the next day and a half are organized around three main themes: protection gaps, burden-sharing and reducing statelessness.

Ladies and gentlemen,

Gaps in international protection occur primarily in three ways: through inadequate implementation of existing treaties, through insufficient accessions to relevant instruments, and through holes in the international protection framework.

Allow me to touch on each.

First, there are gaps in the implementation of instruments by countries which have ratified them. And of respect for existing, universally endorsed principles, such as *non-refoulement*.

Preserving protection space – even in sophisticated legal environments – is becoming more difficult. Some asylum systems remain ineffective despite substantial investments in capacity-building.

The quality of asylum decision-making and narrow interpretations of the refugee definition are major concerns.

The broader definitions of refugee used in Africa and Latin America, and by UNHCR, include people compelled to flee as a result of events seriously disturbing public order or the indiscriminate effects of generalized violence.

But in other regions, the lack of an individualized risk of persecution and connection to a 1951 Convention ground prevent such individuals from being recognized as refugees.

At best, they can hope for complementary forms of protection, such as is made available in Europe.

The approaches to people fleeing generalized violence reveal a number of shortcomings. The protection conferred may be discretionary, or based on political considerations. Or it may be confined to persons already in the country of asylum before the conflict began.

In the worst cases, no protection at all is available. And people are involuntarily returned to situations of ongoing conflict. Or to countries they travelled through, which sometimes lack functioning asylum systems.

Other protection concerns include ineffective or non-existent safeguards at the border, inadequate reception arrangements, and an absence of alternatives to detention.

In many countries, procedures do not ensure that the best interests of children are taken into account in decisions affecting them.

In others, there can be significant gaps between law and practice. National laws may not be in place or may be only partially enacted. Or formal reservations entered on key provisions of the 1951 Convention may hinder its effective operation.

In some situations, political or security concerns take precedence over humanitarian needs.

And gaps may also come about as a result of resource or capacity shortages. Refugee determination systems can be deprived of the resources they need to do their job. And as a result, UNHCR is often left to assume responsibilities of the state. We still conduct RSD [Refugee Status Determination] under our mandate in over 50 countries, many of which are signatories to the 1951 Convention.

In many protracted refugee situations, especially in camp environments, there is a lack of support for the economic and social rights of refugees. In consequence, many refugees who could become self-sufficient remain dependent on assistance.

At the root of some of the restrictive provisions and interpretations of laws, policies and practices giving rise to protection gaps, is a resurgent racism and xenophobia. Despite the efforts of some governments and much of civil society, promoting tolerant and diverse societies remains an enormous challenge.

In my view, multi-ethnic, multi-cultural and multi-religious societies are not just good but inevitable. We need politicians everywhere to unapologetically recognize and extol this. The exploitation of fear and hatred should never be allowed to win media audiences or votes.

States need to reaffirm and recommit to the fundamental principles of refugee protection and the obligations they undertook as signatories of the core instruments. And I hope this will be one of the concrete outcomes of the commemorations activities planned for next year, which culminate in a Ministerial-level meeting in December.

Ladies and gentlemen,

The second way in which protection gaps arise is because too few countries have ratified the relevant instruments. Even so, we have also to recognize the fact that in some countries where conventions *have not* been ratified there is a better practical approach to refugee protection than in others that *have* ratified the convention.

Although 147 states have signed one or both of the 1951 Convention and its 1967 Protocol, this impressive total obscures the fact of significant regional variation.

Those instruments are central to the international protection regime. They have been in existence for a long period of time. And they have proven their non-political nature. Nevertheless, the 1951 and 1967 texts remain unratified by the majority of states in some regions.

The statelessness conventions fare even worse.

The 1954 *Convention relating to the Status of Stateless Persons*, the first global treaty to address the needs of this group, has just 65 signatories.

The 1961 *Convention on the Reduction of Statelessness*, whose anniversary we will be commemorating next year, and which is the primary international legal instrument concerning ways of avoiding statelessness, has just 37.

These conventions are important. They set global standards. They underscore states' commitment to human rights. And they contribute to the better regulation of international displacement.

More than any other measures, states' acceding to them will be called upon to resolve international protection gaps in statelessness.

Ladies and gentlemen,

A third and more difficult set of protection gaps arises in situations of cross-border displacement falling outside the scope of existing instruments. And these are the gaps most emblematic of our age, reflecting the new and more complex forms of forced displacement in the world.

There is no exhaustive list of the categories of people subject to such displacement. Much depends on the conceptual framework and definitions used. That being said, let me touch on some of the most important.

Natural disasters – floods, earthquakes, hurricanes, mudslides, volcanic eruptions – are increasing in frequency and intensity. While most of the displacement caused by these events is internal, they can also cause people to cross borders. None of the existing international and regional refugee law instruments, however, specifically addresses the plight of such people.

The displacement caused by the slow-onset effects of climate change is also largely internal. But through its acceleration of drought, desertification, the salinisation of ground water and soil, and rising sea levels – climate change too can contribute to the displacement of people across international frontiers. And the relevant instruments are silent on these groups of people.

Certain forms of violence can cause cross-border flight for particular groups. Victims of gang violence, for instance, or the casualties of drug wars in states unable to offer them protection.

A gap exists as well for people choosing to leave the uncertain future and difficult to gauge risks of countries emerging from conflict. The uncertainties of the evolving environment will pose risks for some, even if most people leaving the situation would no longer be found to be refugees.

Other human-made calamities, such as severe socio-economic deprivation, can cause individuals and families to flee across borders. While some may be fleeing persecution, most leave because they lack any meaningful option to remain. The absence of food, water, education, health care and livelihood would not ordinarily – and by themselves – sustain a refugee claim under the 1951 Convention. The people lacking them, however, may need a form of protection.

Ladies and gentlemen,

The internationally endorsed regime for protection has gaps. Clearly, there are refugee rights. But when it comes to the need for a temporary form of protection to guarantee the security and dignity of persons who are not entitled to be recognized as refugees, there is not yet a consensus on how to proceed.

The first step, I believe, is the development of a set of common understandings on the key questions:

How much protection?

For whom?

For how long?

And through what means?

What are the respective roles of UN organizations, the Red Cross and Red Crescent Movement, the NGOs and civil society?

What new forms of partnership might be required?

For some of the categories, at least, might a clearly defined regime of Temporary Protection be the answer?

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Ladies and gentlemen,

Let me turn now to the second major theme of the Dialogue: Burden-sharing.

Burden-sharing is a guiding principle of international cooperation in refugee situations. It is grounded in and governed by international law, in particular the principle of international solidarity.

The 1951 Convention is based on burden-sharing though it must be acknowledged that it contains no agreed indicators for bringing the concept about in practice.

*Ad hoc* burden-sharing arrangements have been established to respond to a range of important and recurrent types of refugee situations: large-scale influxes, mixed migration, irregular secondary movements, search and rescue at sea operations and protracted refugee situations.

As I indicated in my remarks to ExCom, a “new deal on burden-sharing” is required. It needs to be anchored in pragmatic frameworks, with a process for triggering commitments.

We need approaches flexible enough to allow us to address all phases and groups of people in a displacement cycle.

And fortunately, there are a number of good models.

*The Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America* is the most significant recent example of a comprehensive approach.

The plan both relies on and reinforces the high level of cultural and legal coherence in Latin America. It calls on governments, the UN and Inter-American systems and different sectors of civil society to support ambitious international protection and durable solution goals.

The “Solidarity Cities” initiative promotes the self-sufficiency of refugees alongside support for the needs of host communities.

The “Borders of Solidarity” effort does similarly in situations of mass influx, ensuring that the protection of asylum space does not operate to the detriment of local populations.

The “Solidarity Resettlement” programme underscores the critical role of this solution, both at the individual and strategic levels, and encourages countries to establish ongoing programmes.

Resettlement is indeed a tangible and effective form of burden-sharing. The world’s 24 resettlement countries received more than 128,000 submissions from UNHCR last year., Resettlement departures, the number of refugees travelling to their new homes, was also up, to just under 85,000. But there remains, though, a significant gap between resettlement needs and resettlement capacity. As many as 800,000 refugees need resettlement now. The number of available places is about one-tenth of that number.

Ladies and gentlemen,

In Asia too, there is appreciation of the utility of broad-based approaches to complex population and refugee movements. The Comprehensive Plan of Action for the Indo-Chinese in the 1980’s and 1990’s represents probably the best known example.

Today, regional cooperation frameworks are being forged through efforts such as the Bali process.

This encourages the adoption of approaches that are comprehensive and collaborative on the one hand, but sufficiently differentiated and individualized on the other to take account of the various categories of people on the move.

UNHCR is working with countries in the region to see how regional protection can be made to complement national protection mechanisms.

Ladies and gentlemen,

The burdens we are discussing fall disproportionately on the developing world. Four-fifths of the world’s refugees reside in developing countries.

UNHCR, as I announced in the [September 2010] ExCom session, is commissioning an independent study to get a better picture of the economic and social costs of hosting refugees. But we know already that the generosity of host countries and communities needs to be matched by solidarity from the developed world.

Our interventions have emphasized a number of areas: the sustainability of returns, support for local integration projects, regional development efforts in refugee impacted areas, support to local communities, and rehabilitation of former refugee settlements.

We have undertaken initiatives such as the Refugee-Affected and Hosting Area Programme in Pakistan. There, UNHCR works with the government, UNDP and development agencies to promote the harmonious co-existence of Pakistani and Afghan communities by strengthening governance and public service delivery.

But this is just a very modest initiative. It needs to be replicated and expanded in many other situations.

Since UNHCR will not alone have the resources to do all that needs to be done, we need to ensure that others get involved.

We need to exploit more fully the potentialities of UN initiatives such as Delivering as One. We need more systematically to mobilize development agencies and international financial institutions to our common efforts. And we need to ensure that other forms of bilateral development cooperation are fully explored.

For the purposes of helping to frame the discussion at this Dialogue, I would urge you to consider a number of questions:

What do you believe should be the scope of burden-sharing arrangements?

What forms of cooperation and solidarity could be contemplated?

What types of mechanisms could be used?

What would determine the nature and level of contributions?

What should trigger them?

What is the role of civil society in these efforts?

And what can UNHCR do better?

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Ladies and gentlemen,

The final major theme for the Dialogue is identifying the gaps that lead to statelessness and the measures needed to redress them.

The total number of people affected by statelessness is not known with certainty, but it may affect as many as 12 million people.

The lack of nationality represents the denial of a fundamental human right in itself.

But people unable to exercise this right inevitably find as a consequence a range of other rights impaired.

They may not be able to work legally or to travel. They may not be able to access health care or obtain education for themselves or their children.

As I noted earlier, the 1954 and 1961 [statelessness] conventions enjoy a very low level of adhesion – 65 and 37 signatories respectively.

The obvious priority in addressing and preventing statelessness is for more countries to sign and implement these instruments.

In the run-up to the 50<sup>th</sup> anniversary of the 1961 *Convention on the Reduction of Statelessness* next year, UNHCR is focusing on advocacy, in particular the promotion of accessions to the conventions.

And a guide has been prepared by the Division for International Protection.

And a number of discrete initiatives are foreseen, including a major effort in 2011 to advocate for legislative reforms so that mothers and fathers are equally able to pass on their citizenship to their children. Several countries have recently amended their legislation to allow this but in many places laws still prevent mothers from doing so.

Many of the measures needed to reduce statelessness have no or limited costs. Achieving them is more a question of political will or of breaking with past practice.

But on the other hand, some of the steps that need to be taken, such as the establishment of adequate birth registration systems and processes for giving effect to legal rights, will have costs.

Ladies and gentlemen,

The reduction of statelessness is a core mandate activity and you will find in us a willing partner, particularly in helping to enhance the capacity of national authorities.

I am heartened by the growing awareness of statelessness and the commitment to reduce its pernicious effects evident in recent initiatives such as last month's *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*.

Recognizing the importance of solidarity with stateless people and the contributions they make to their host societies, as the Declaration does, is the first step on the road to solutions.

For the purposes of helping frame the statelessness discussion at the Dialogue, allow me again to pose a number of key questions:

How do we bring about increased accessions to the statelessness instruments?

What can we do to enhance public awareness of stateless issues?

Can the international human rights framework be used to fill some of the protection gaps for stateless persons?

Are there good practice examples, for instance, in identifying stateless populations, establishing stateless determination procedures and enacting legislative reforms that can be replicated elsewhere?

What else can we – and UNHCR in particular – do to reduce statelessness?



Ladies and gentlemen,

As I have mentioned, the year-long program of activities we are planning for the commemorations of the 1951 and 1961 Conventions will culminate in a Ministerial-level meeting in December 2011.

That meeting will be geared towards the promotion of concrete activities to address the gaps I have mentioned.

We hope it will be the occasion for some very concrete pledges by states to undertake specific actions. We will be following up in the coming months on what these pledges might entail. I do believe that more than to engage in a very strong and controversial discussion on some sensitive issues, if we could take profit at next year to make states assume voluntarily pledges to improve their own protection regimes, we would be making enormous progress.

Our initial thinking is that they could address a range of commitments on such matters as:

- Acceding to the refugee and statelessness conventions;
- Withdrawing reservations that restrict the full implementation of the instruments concerned;
- Introducing or amending legislation to improve the implementation of the conventions at national level;
- Collaborating with other states to share burdens and address regional challenges;
- Facilitating UNHCR's role in supervision over the refugee and statelessness conventions;
- Resolving particular displacement, statelessness or protracted refugee situations and specific protection issues by, for example:
  - Establishing birth registration systems both for refugees and to prevent statelessness
  - Eliminating obstacles to the acquisition of nationality (for instance, the inability of women to confer nationality on their children)
  - Enhancing the social and economic rights of refugees (for instance through access to national services and livelihood programs)
  - Undertaking initiatives to reduce racism and xenophobia
  - Making entry systems more protection-sensitive

- Instituting differentiated processes and procedures for new arrivals
- Increasing government engagement in RSD
- Implementing alternatives to detention
- Creating or enlarging resettlement programmes.

The rich cross-section of governments, multilateral organizations, experts and other members of civil society participating in this Dialogue make it a uniquely appropriate catalyst for the thinking we need to do together.

Faced with protection challenges of unprecedented complexity, we need to use 2011 to generate a new momentum in the commitment of the international community to meet the protection needs of people displaced across borders.

With the upcoming commemorations and Ministerial-level meeting, we have an opportunity to both reaffirm the core principles of international protection and to forge a new protection dynamic.

These are bold and worthy objectives.

I wish you thoughtful discussions.

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