International Refugee Law and the United Nations

Presentation by Brian Gorlick
Senior Policy Advisor
UNHCR Office in New York
gorlick@unhcr.org
International Protection includes:

- Admission to safety
- Non-refoulement
- Physical security
- Non-discrimination in the enjoyment of civil, economic, and cultural rights
- Access to a durable solution (i.e. voluntary repatriation, local integration, or resettlement)
Provisional 2006 Statistics

Refugees, 9,900,000, 34%
IDPs under UNHCR's mandate, 12,900,000, 43%
Asylum Seekers, 740,000, 3%
Statelessness, 5,800,000, 20%
### Provisional 2006 Statistics: Refugees

<table>
<thead>
<tr>
<th>Top Five Countries of Origin</th>
<th>Top Five Countries of Asylum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>2.1 million</td>
</tr>
<tr>
<td></td>
<td>Pakistan</td>
</tr>
<tr>
<td></td>
<td>1 million</td>
</tr>
<tr>
<td>Iraq</td>
<td>1.5 million</td>
</tr>
<tr>
<td></td>
<td>Iran</td>
</tr>
<tr>
<td></td>
<td>968,000</td>
</tr>
<tr>
<td>Sudan</td>
<td>686,000</td>
</tr>
<tr>
<td></td>
<td>USA</td>
</tr>
<tr>
<td></td>
<td>844,000</td>
</tr>
<tr>
<td>Somalia</td>
<td>460,000</td>
</tr>
<tr>
<td></td>
<td>Syria</td>
</tr>
<tr>
<td></td>
<td>702,000</td>
</tr>
<tr>
<td>DCR and Burundi</td>
<td>400,000 each</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
</tr>
<tr>
<td></td>
<td>605,000</td>
</tr>
</tbody>
</table>
Asylum Seekers

Europe, 299,000, 50%

Africa, 159,000, 27%

Americas, 78,000, 13%

Asia, 53,500, 9%

Oceania, 7,100, 1%
### Provisional 2006 Statistics: Refugees

<table>
<thead>
<tr>
<th>Top Five Countries of Origin</th>
<th>Top Five Countries of Asylum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Pakistan</td>
</tr>
<tr>
<td>2.1 million</td>
<td>1 million</td>
</tr>
<tr>
<td>Iraq</td>
<td>Iran</td>
</tr>
<tr>
<td>1.5 million</td>
<td>968,000</td>
</tr>
<tr>
<td>Sudan</td>
<td>USA</td>
</tr>
<tr>
<td>686,000</td>
<td>844,000</td>
</tr>
<tr>
<td>Somalia</td>
<td>Syria</td>
</tr>
<tr>
<td>460,000</td>
<td>702,000</td>
</tr>
<tr>
<td>DCR and Burundi</td>
<td>Germany</td>
</tr>
<tr>
<td>400,000 each</td>
<td>605,000</td>
</tr>
</tbody>
</table>
Major Challenges

- Disproportionate burden on States
- Lack of commitment and political will
- Mixed flows
- Inadequate funding
- Erosion of protection in the name of national security
- International and intra-national conflicts
- Protection of Internally Displaced Persons
Disproportionate Burden on States

$12 billion to process 15% of the world's refugee claims

$1-2 billion to meet the needs of 85% of the world's refugees

15%

85%
Principle UN Human Rights Treaties

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966
- Convention on the Elimination of All Forms of Discrimination (CERD), 1965
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), 1984
- Convention of the Rights of the Child (CRC), 1989
- International Convention on the Protection of all Migrant Workers and the Members of Their Families (ICRMW)
- International Convention for the Protection of All Persons from Enforced Disappearance (not yet in force)
- Convention on the Rights of Persons with Disabilities (not yet in force)
Optional Protocols to UN Human Rights Treaties

- The Optional Protocol to the CEDAW recognises the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth the CEDAW. In reality it is rarely used.

- The Human Rights Committee, established under the ICCPR, and the Committee against Torture, established under the CAT, can also receive and consider individual communications concerning alleged violations of obligations under these treaties.

- There are two Optional Protocols of the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.
## Ratifications of International Human Rights Treaties

<table>
<thead>
<tr>
<th>UN Human Rights Treaty</th>
<th>Signatories</th>
<th>Parties</th>
<th>Date of Entry into Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICERD</td>
<td>5</td>
<td>173</td>
<td>4 January 1969</td>
</tr>
<tr>
<td>ICCPR</td>
<td>67</td>
<td>160</td>
<td>23 March 1976</td>
</tr>
<tr>
<td>ICCPR-01</td>
<td>34</td>
<td>109</td>
<td>23 March 1976</td>
</tr>
<tr>
<td>ICCPR-02</td>
<td>35</td>
<td>60</td>
<td>11 July 1991</td>
</tr>
<tr>
<td>ICESCR</td>
<td>66</td>
<td>156</td>
<td>3 January 1976</td>
</tr>
<tr>
<td>CEDAW</td>
<td>98</td>
<td>185</td>
<td>3 September 1981</td>
</tr>
<tr>
<td>OP-CEDAW</td>
<td>77</td>
<td>87</td>
<td>22 December 2002</td>
</tr>
<tr>
<td>CAT</td>
<td>74</td>
<td>144</td>
<td>26 June 1987</td>
</tr>
<tr>
<td>OP-CAT</td>
<td>57</td>
<td>34</td>
<td>22 June 2006</td>
</tr>
<tr>
<td>CRC</td>
<td>140</td>
<td>193</td>
<td>2 September 1990</td>
</tr>
<tr>
<td>OP-CRC-AC</td>
<td>122</td>
<td>114</td>
<td>12 February 2002</td>
</tr>
<tr>
<td>OP-CRC-SC</td>
<td>115</td>
<td>119</td>
<td>18 January 2002</td>
</tr>
<tr>
<td>ICRMW</td>
<td>28</td>
<td>36</td>
<td>1 July 2003</td>
</tr>
<tr>
<td><strong>UNHCR</strong></td>
<td><strong>International Instruments</strong></td>
<td><strong>Regional Instruments</strong></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------------------------------</td>
<td>-------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| 1950 Statute of the **UNHCR** has 2 functions:  
(a) grant international protection to ‘refugees’  
(b) solutions to refugee problems:  - voluntary repatriation  - local integration  - resettlement in another country  
- it also established a refugee definition – based on a well-founded fear of persecution  
- Executive Committee | 1951 Convention Relating to the Status of Refugees  
- Preamble – human rights context  
- Definition – well-founded fear of persecution (Art 1)  
- Non-refoulement (Art 33)  
- Rights and obligations | 1950 European Convention on Human Rights  
- Prohibition against torture, cruel and inhuman punishment (Art 3)  
1969 OAU Convention governing the specific aspects of refugee problems in Africa  
- Created wider refugee definition = "foreign aggression, events seriously disturbing public order” | 1984 Cartagena Declaration  
- Wider definition = "generalised violence and human rights violations” | 1984 Convention against Torture  
- non-refoulement where danger of ‘torture’ exists (Art 3) | Temporary Protection (TP) status in Europe  
- ‘B status’: ‘other or subsidiary protection status’ | 1984 Convention on the Rights of the Child  
- ‘best interests of the child (Art 3)  
- non-discrimination (Art 2)  
- Rights to enter for family reunion (Art 10)  
- Rights to international refugee rights (Art 22)  
- EU Directive grants TP to persons who have fled their country of origin for reasons of armed conflict or endemic violence, or to persons at serious risk of, or who have been the victims of systematic or generalised violations of their human rights. | EU Qualification Directive (April 2004)  
- Defines a refugee according to the 1951 Refugee Convention.  
- Defines who is in need of subsidiary protection under Article 15, i.e. the death penalty, torture, serious or individual threat. |
Definition of a Refugee: International Legal Provisions

- 1951 Convention relating to the Status of Refugees
- 1967 Protocol
- Organization of African Unity (OAU), 1969
- Organization of American States (OAS), 1984
Refugee Definition, Article 1(A)(2) - Any person who:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail him or herself 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.
**1967 Protocol: Significance to the status of refugees**

- Provides for refugees to gain recognition under the 1951 Convention as a result of events which occurred after 1 January 1951 (as the 1951 Convention provided a temporal limitation by defining refugees as those persons who fled their country of origin as a result of events which occurred before January 1951)

- The Protocol did away with the geographic and temporal limitation as formerly provided for under the 1951 Convention
Organization of African Unity (OAU) definition for refugee status

- Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order

- In either part or in whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge

- In another place outside his country of origin or nationality
Organization of the American States (OAS)  
definition for refugee status

Cartagena Declaration (Conclusion 3)

- In addition to the refugees as defined in the 1951 Convention, persons will be granted protection if:

  Have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human or other circumstances which have seriously disturbed public order.
<table>
<thead>
<tr>
<th>Legal Instrument</th>
<th>State Parties</th>
<th>Date of Entry into Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951 Convention relating to the status of refugees</td>
<td>144</td>
<td>22 April 1954</td>
</tr>
<tr>
<td>1967 Protocol</td>
<td>144</td>
<td>4 October 1967</td>
</tr>
<tr>
<td>Organization of African Unity</td>
<td>41</td>
<td>20 June 1974</td>
</tr>
</tbody>
</table>
The 1951 Refugee Convention Definition

- Inclusion
- Cessation
- Exclusion
Inclusion Clauses: main elements for establishing refugee status under the 1951 Refugee Convention

- Outside Country of Nationality / Former Habitual Residence
- Well-Founded Fear of Persecution
- Grounds: Link to Civil or Political Status
- Failure or Absence of Effective State Protection
Element 1: Outside Country of Nationality or Habitual Residence

What to consider when determining the country of reference:

- Claimants with a single nationality
- Claimants with a dual or multiple nationality
- Persons who may have a claim to a nationality
- Claimants with no nationality (stateless persons)
Element 2: Well-Founded Fear

- Fear is *well-founded* if there is a serious possibility of persecution upon return. Both subjective and objective elements to the well-founded fear definition.

- The **subjective element** means the asylum seeker has a *genuine* fear of persecution.

- The **objective element** means that the reasons for the fear *must be based in reality*:
  - Evidence of particularised past persecution
  - Shared responsibility for fact-finding
  - General human rights information
  - No requirement of targeting or ‘singling out’
  - Evidence of harm facing similarly situated persons
  - Testimony of the applicant standing alone
Element 3: Persecution

- While persecution is not defined in the 1951 Refugee Convention, it is generally agreed that it is a serious violation of basic human rights.

- Elements:
  - Serious violations of Human Rights
  - Threats to Life or Liberty
  - Failure of State Protection
Element 4: Grounds

- Race
- Religion
- Nationality/Ethnic Origin
- Membership of a Particular Social Group
- Political Opinion

Refugee applicants must satisfy at least one of the above grounds in order to be considered a refugee under the Convention.
**Element 5: Absence of Effective State Protection**

- No state protection implies that there are circumstances beyond the control or will of the person concerned.

- The persecutor may be a state or non-state agent. The key element is the absence, inability or unwillingness of the state to protect the individual.

- The concept is therefore **not** limited to actions of governments or their agents, nor does it matter whether a state wants to protect an applicant if, for whatever reason, it is unable to do so.
Cessation Clauses

Article 1 (C) describes six circumstances of cessation of refugee status:

- voluntarily re-availed her/himself of protection of the country of origin
- having lost nationality, voluntarily re-acquired it
- acquired a new nationality
- voluntarily re-established in the country of origin
- circumstances in connection in which s/he was recognized as a refugee have ceased to exist, can no longer refuse to avail her/himself of protection of the country of origin
- circumstances in connection with which a stateless person was recognized as a refugee have ceased to exist, is able to return to the country of former habitual residence.

Compelling Reasons

- Exception set in Article 1 (C):
  - for those who have suffered *appalling* persecution in the past
Exclusion Clauses

- Persons already receiving United Nations protection or assistance

- Persons not considered to be in need of international protection because they have the rights and obligations of nationals with the country of asylum; and

- Any person with respect to whom there are serious reasons for believing that:
  
  - he or she has committed a crime against peace, a war crime, or a crime against humanity;
  
  - he or she has committed a serious non-political crime outside the country of refuge prior to being admitted to that country as a refugee;

  - he or she has been guilty of acts contrary to the purposes and principles of the United Nations.
Exclusion Analysis

Exclusion considerations commonly arise (but not exclusively) in situations where an asylum seeker has allegedly committed a serious, non-political crime committed outside the country of refuge. In such cases the following analysis should be followed:

1. Political vs. non-political
   - If it is determined that the crime was political, then the exclusion clause may not be applied.

2. Seriousness of the Crime
   - It is the act or crime itself which must be serious in order to trigger an application of the exclusion clause.

3. Outside the Country of Refuge
   - Third, the crime must have been committed outside the country of refuge

4. Balancing
   - Fourth, if the crime is determined to be ‘serious’ and ‘non-political’, it is essential to balance the nature of the offense presumed to have been committed by the applicant, and the degree of persecution feared

5. Inclusion before Exclusion
   - the exclusion clauses should only be considered after it has been determined that a person has a well-founded fear of persecution on return to the country of origin
Human Rights Law to Fill in the Gaps

- The 1951 Refugee Convention imposes no system of review through examination of state party reports or a body of experts to assess compliance. UNHCR in effect plays this role.

- UN Human Rights Treaties and Jurisprudence can be useful to refugee advocates

- When refugee law fails to provide protection legal standards found in international human rights instruments can help ensure that minimum standards of treatment are met
Internally Displaced Persons (IDPs)

- IDPs, as defined by the *UN Guiding Principles on Internal Displacement*, are persons/groups forced to flee/leave their homes as a result of or to avoid:
  - armed conflict
  - generalized violence
  - violations of human rights
  - natural or manmade disasters

- Persons who have not crossed a state border

- The number of people who are currently internally displaced stands at approx. **25 million** persons
**IDPs: Differences with Refugee Situations**

- IDPs have not yet crossed an international border
- States do not consider refugee law standards to extend to IDPs
  - Human Rights and International Humanitarian Law is applicable to IDPs
- State sovereignty and insecurity in zones of conflict impede access to IDPs
- IDPs do not have a UN agency specifically mandated to protect them
IDPs protected/assisted by UNHCR

<table>
<thead>
<tr>
<th>Top IDP countries</th>
<th>Number of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>3 million</td>
</tr>
<tr>
<td>Iraq</td>
<td>1.8 million</td>
</tr>
<tr>
<td>Uganda</td>
<td>1.6 million</td>
</tr>
<tr>
<td>Sudan</td>
<td>1.3 million</td>
</tr>
<tr>
<td>DRC</td>
<td>1.1 million</td>
</tr>
</tbody>
</table>

- To address the needs of IDPs the UN assigned specific sectoral functions to various UN agencies through a “cluster approach”. UNHCR assumed lead responsibility for protection, camp coordination/management and emergency shelter for IDPs from conflict.

- In recent years hundreds of thousands of people were displaced within their own countries.

- As a result of these trends the number of IDPs assisted by UNHCR has doubled.
Principal Requirements for UNHCR’s Involvement in IDP Activities

- Specific authorization for involvement or a need to undertake additional activities as a natural extension of the mandate given by the General Assembly
- UNHCR must have the relevant expertise and experience
- Concerned State should consent to UNHCR’s involvement
- Activities must remain within the limits of the resources
Additional Policy Considerations for UNHCR’s Involvement with IDPs

- What is the strength of humanitarian imperative to get involved and what are the prospects of success?

- What is the degree of concern expressed by governments, the UN Secretariat and others?

- What are the obligations in the wider UN family?

- What needs to be considered in terms of Staff security; access to the affected population; and UNHCR’s presence in the country of origin?
Situations where UNHCR has responded to IDPs

- When IDPs are located in the same area as refugees
- When refugees return to their home country but find themselves internally displaced
- When helping IDPs in their own country may strengthen asylum across the border
- Where involvement could impact the prevention or solution of a refugee problem
- When IDPs have protection and solution needs similar to refugees
Protection Activities of UNHCR on behalf of IDPs

- Planning and developing protection strategies
- Carrying out direct protection strategies
- Undertaking capacity building
- Establishment of partnerships with national actors: central government structures, NGOs, human rights institutions, parliamentarians, judiciary, and religious groups
Solutions

- Promote long term development
- Bolster faith in the rule of int’l law
- Implement International Human Rights
- Remain true to the UNHCR mandate despite political pressure
- Hold International Institutions accountable
- Establish inter-agency and partnership approaches to support national efforts