

# Introduction<sup>1</sup>

The turn of the Millennium marked the fiftieth anniversary of the creation of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the adoption of the UN Convention relating to the Status of Refugees. The Convention sets out the basic principles on which international refugee protection is built: *non-refoulement*, which emphasizes that refugees should not be returned to any place where they could face persecution; and impartiality, whereby all refugees are provided protection without discrimination. Recently, these principles have come under increasing threat. In a world which has grown increasingly hostile to asylum and refugees, the very relevance of the Convention has been questioned.

Critics of the Convention allege that it is outdated, unworkable, irrelevant and inflexible. They label it a complication in the context of contemporary 'mixed migration'. For their part, many states argue that the Convention does not adequately address either their interests or the actual needs of refugees. Besides such criticisms, the refugee protection regime is being confronted by other developments with the potential to constrain refugee protection. These include states' greater emphasis on the economic costs of offering asylum; concerns about security in the context of the 'global war on terror'; fears regarding complex 'mixed migration' movements; and more restrictive asylum policies.

States that once had generous refugee policies now see the costs of asylum as outweighing its benefits. Admittedly, it was easier to welcome refugees who were culturally similar, fulfilled labour needs, arrived in manageable numbers and reinforced ideological or strategic objectives. With the end of the Cold War, however, many states saw refugees as a burden rather than an asset. Furthermore, since the 11 September 2001 attacks in the United States, state security concerns have come to dominate the migration debate, at times overshadowing the legitimate protection needs of individuals.

As governments have revisited their asylum systems from a security angle, they have instituted more restrictive procedures or substantially modified their policies to similar effect. Many states have broadened grounds for detention, and now focus more strongly on detecting potential security risks when reviewing asylum claims. In some situations, the post-11 September context has been used to extend the scope of exclusionary provisions of the Convention, allowing for refugees to be denied access to status determination procedures. In other cases, refugees have been subject to expulsion. These developments have taken place against a background of greater collaboration between the asylum and immigration authorities and intelligence and law enforcement agencies.

*Uzbek refugees at the refugee camp outside the Kyrgyz village of Barash at the Uzbek-Kyrgyz border in May 2005. These refugees fled the military crackdown in Uzbekistan earlier the same month. (Vyacheslav Oseledko/AFP/Getty Images)*

States have serious concerns about ‘uncontrolled’ migration in today’s era of globalization. In the view of governments aiming to minimize migration, asylum is an exemption that allows too many people through. Human smuggling and trafficking complicate the migration landscape; being smuggled to sanctuary has become an important option for asylum seekers, even though it carries a price beyond its financial cost. By resorting to the services of a smuggler, an asylum seeker seriously compromises his or her claim in the eyes of many states. This also leads to an imputation of double criminality: not only do refugees flout national boundaries, they consort with criminal gangs to do so. Therefore, it is argued, their claims must be bogus and measures to restrict their basic rights are justified. Such sentiments have played into the hands of politicians who have ridden the anti-foreigner sentiments that were aggravated by the 11 September attacks. This has fuelled xenophobic attitudes, to the detriment of refugees and asylum seekers.

As concerns about the costs of asylum, state security and ‘uncontrolled’ migration have led to a reshaping of asylum policies in many countries, two parallel trends have emerged. Both have had a negative impact on access to asylum and the treatment of refugees and asylum seekers. The first is an overly restrictive application of the Convention and its 1967 Protocol, which has led to an increase in detention and exclusion, besides lack of due process. The second is a proliferation of alternative protection mechanisms that guarantee fewer rights than those contained in the Convention. In some states there has been a gradual movement away from a rights-based approach towards more discretionary forms of refugee protection. Such mechanisms have included the notions of ‘safe country of origin’, ‘internal flight alternative’, ‘effective protection elsewhere’ and ‘safe third country’.

While recognizing that states have legitimate concerns in the areas of security, uncontrolled migration and the costs of providing asylum, UNHCR has maintained that the fundamental principles of the Convention remain as valid and necessary as ever. It argues that the Convention has legal, political and ethical significance that goes well beyond its specific terms: legal, in that it provides the basic standards on which principled action can be founded; political, in that it provides a truly universal framework within which states can cooperate and share the burden resulting from forced displacement; and ethical, in that it is a unique declaration by states party to the Convention and/or its 1967 Protocol of their commitment to uphold the rights of some of the world’s most vulnerable people.

In an attempt to bolster support for the international framework for protection principles and to search for new approaches to enhance protection, in 2001 UNHCR launched the Global Consultations on International Protection. The process aimed to promote a better understanding of protection dilemmas among both the beneficiaries of international protection and its providers. The outcome of the Consultations, which were a two-year process involving governments, NGOs, experts on refugee issues and UNHCR, was the Agenda for Protection. This focused on multilateral co-operation as a means to improve the protection of refugees and asylum seekers around the world.

The Agenda for Protection also comprises the Declaration of States Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol, which was adopted at the Ministerial Meeting in December 2001. The Declaration affirmed that the Convention remains the cornerstone of the international protection regime.

Although not a legally binding document, the Agenda for Protection has considerable political weight as it reflects a broad consensus on what can be done to achieve certain goals in refugee protection. Its programme of action identifies specific protection objectives within the context of broader migration movements, security concerns and the search for durable solutions.

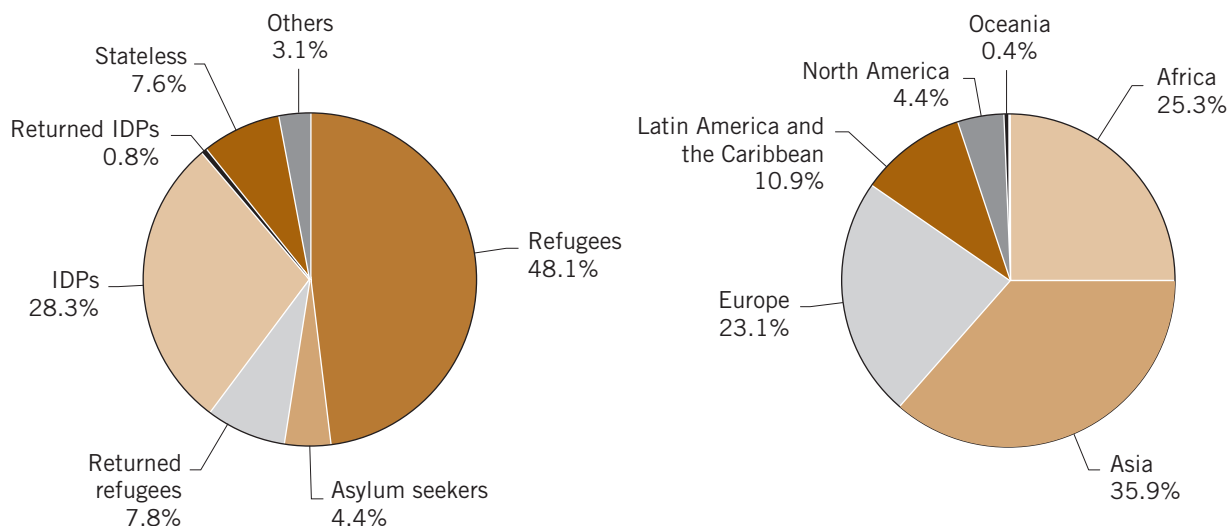
The Convention does not suffice to achieve these goals. Rather than revising it, however, action was taken to build upon it through multilateral dialogue and arrangements to improve burden-sharing between countries in the North and South. This involved discussions on how to deal with situations of mass outflow and secondary movements. Some of these discussions gave priority to targeting development assistance in refugees' regions of origin more effectively; others sought multilateral commitments for the resettlement of refugees. These efforts are referred to as the Convention Plus initiative.

The Agenda for Protection does not address all the problems that the international protection regime has had to confront since 2000. Some of these are not new, but have been exacerbated by recent political, economic and social developments. Protracted refugee situations, for instance, have been receiving more attention partly due to the threats to national, regional and international security that they represent. Another area of concern has been the shrinking of humanitarian space as a consequence of violent attacks on humanitarian workers and the growing role of military forces in delivering assistance.

The start of the new century has seen a decline in armed conflict when compared with the 1990s. Consequently, there have been fewer and smaller outflows of refugees. The largest forced displacement emergency in recent years has been in Darfur (Sudan), where violence has driven hundreds of thousands of Sudanese to flee to neighbouring Chad. But a far greater number of people remain internally displaced in Sudan. The situation in Darfur, and others like it, have made the international protection regime pay greater heed to improving its response to situations of internal displacement. It is recognized that this is an area where there have been gaps in coordination, demarcation of responsibility and accountability.

In this regard, UNHCR has been involved in efforts to reinforce the inter-agency Collaborative Approach, which was initiated in the 1990s to offer protection to internally displaced persons and aid integration and development. This approach called for all available agencies to respond within their means and according to their mandates and expertise. To render the Collaborative Approach more effective, in 2005 the Inter-Agency Standing Committee allocated leading roles in specific sectors to various agencies. Based upon its expertise, UNHCR was designated the lead agency in the sectors of protection, camp coordination and management and emergency shelter in situations of internal displacement arising from armed conflict.

**Figure 0.1** Total population of concern to UNHCR: by category and by region, 1 January 2005



Source: UNHCR.

*The State of the World's Refugees: Human Displacement in the New Millennium* presents the challenges to refugee protection and assesses the response of the international community. The fifth edition in the series, it provides an overview of key developments related to forced displacement from 2001 to September 2005. The period covers the tenure of Ruud Lubbers as UN High Commissioner for Refugees and the start of António Guterres' term. Produced by UNHCR with input from other international organizations, NGOs, academics and independent experts, the book is divided into eight chapters, each focusing on a particular theme. Besides the main text, boxes in each chapter highlight specific issues.

Chapter 1 examines the growing complexity of population movements. It provides an overview of the current dynamics of forced displacement in the world and the numbers involved. The changing causes of conflict are linked to new patterns of displacement. In an ever more interconnected world, migration has become more complex and the distinctions between categories of migrants blurred. Migrants seeking better economic opportunities and refugees fleeing conflict and human rights abuses are increasingly using the same routes and intermediaries—including people smugglers. Many of them, particularly women and children, fall victim to

human trafficking. Displacement induced by environmental degradation, natural and man-made disasters and development policies and projects is also addressed in this chapter.

The book moves on to look at efforts to strengthen international protection through enhanced inter-state cooperation. The Global Consultations on International Protection, the Regional Parliamentary Conference in Africa and the twentieth anniversary meeting of the Cartagena Declaration are some initiatives which have revived the international protection regime. However, as highlighted in Chapter 2, these developments have coincided with state concerns that have led to more restrictive policies which have had a negative impact on asylum seekers and refugees. Indeed, states face considerable challenges as they try to abide by their obligations under international refugee law while also meeting their security needs and improving border control. In this context, Chapter 2 goes on to examine the concepts of 'effective protection' and regional protection. It also looks at proposals on extraterritorial processing—which some perceive as geared more towards burden-shifting than burden-sharing.

*The State of the World's Refugees* also addresses recent developments related to refugee security. UNHCR and its partners have made the physical safety of refugees a priority, and have become more engaged in security issues. On the other hand, the emergence of new security concerns for states, particularly since the events of 11 September 2001, has led to the 'securitization' of asylum practices. Increasingly refugees and asylum seekers are perceived as harbingers of insecurity, rather than victims of it. In this context, the interdependent nature of the security threats in refugee situations is highlighted, and traditional perceptions of security purely in terms of a state's territorial integrity are linked to new concepts of human security.

Chapter 3 examines the security threats that refugees face and assesses responses to them. Under international law, it remains the state's obligation to ensure the physical protection of all those residing within its borders, including refugees. In reality, states often lack the capacity or the political will to provide such protection. In such cases, ensuring refugee protection necessitates and justifies international intervention at the political and military level. The chapter analyses the impact of state security concerns on refugee security, and also looks at sexual and gender-based violence, xenophobia and the impact of displacement on state and regional stability.

The international emergency response system continues to develop. Improvements have taken place in the areas of planning, human resources, supply stockpiles and early warning systems. Despite this, the response to the displacement crisis in Darfur, for example, was inadequate. This illustrates that gaps remain in the effectiveness of the international emergency response system. Chapter 4 notes that political will, funding levels and security issues determine the effectiveness of any emergency response. Recent developments, including an increase in the number

and types of humanitarian actors, the bilateralization of aid and the constriction of humanitarian space have added to the challenges faced by the emergency-response sector.

Chapter 5 draws attention to the problem of protracted refugee situations. The majority of today's refugees continue to live in long-term exile with no prospect of a durable solution. Many of the conflicts that have led to refugee flows over the past 20 years remain unresolved. The chapter examines the factors that contribute to the prolongation of these situations and their implications for the human rights of refugees. Long-standing refugee populations have, in some cases, strained relations between host states and countries of origin. The long-term presence of refugee populations is argued to cause instability in neighbouring countries and trigger intervention and insurgency. In recent years, the problem of protracted refugee situations has been put back on the international agenda. The chapter reviews contemporary efforts to resolve such situations.

Voluntary repatriation, local integration in the country of first asylum or resettlement in a third country reflect the range of options available for the permanent resolution of the 'refugee cycle'. Over the years, the relative priority afforded to each of these durable solutions has changed, and accordingly new approaches to realizing them have been adopted. Chapter 6 discusses renewed efforts targeting development assistance, including the concepts of Development Assistance for Refugees and the 4Rs (Repatriation, Reintegration, Rehabilitation and Reconstruction), as well as the strategic use of resettlement. These initiatives have placed durable solutions within the context of a multilateral dialogue through which UNHCR attempted to strengthen burden and responsibility-sharing. The Zambia Initiative and the Uganda Self-Reliance Strategy are two pilot projects aimed at gearing development assistance towards attaining durable solutions for refugees while addressing state interests.

Like refugees, some internally displaced people are in need of international protection. These include victims of conflict and human rights violations who do not receive protection from their own governments and thus draw international attention to their plight. Chapter 7 examines an important shift in international thinking about the internally displaced. Today, it is widely recognized that people in need of aid and protection in their own countries have claims on the international community when their governments do not fulfil their responsibilities or where there is a breakdown of state authority. International intervention in such circumstances challenges the notion of state sovereignty. The chapter examines recent efforts to strengthen the international response to crises of internal displacement.

Chapter 8, the concluding chapter, brings together recent efforts and initiatives aimed at improving the international community's response to crises of forced displacement. Achievements are gauged and gaps recognized. The challenges ahead are identified. Of these, the first is to ensure that the core principles of international law, in particular that of *non-refoulement*, are adhered to. Another is to see that the burden is shared fairly when addressing the root causes of forced displacement and

when responding to it. Finally, it suggests that the supervisory, accountability and partnership mechanisms of UNHCR, the lead organization in the field of human displacement, must be strengthened.

# Endnotes

## Introduction

- 1 This section draws on speeches and statements by the UN High Commissioner for Refugees António Guterres, and former High Commissioner Ruud Lubbers, as well as the Director of UNHCR Department of International Protection, Erika Feller.