

## CHAPTER 15

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# REFUGEES AND INTERNALLY DISPLACED PERSONS

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GIL LOESCHER

ONE of the most complex and difficult issues confronting the international community today is the problem of forced migration.<sup>1</sup> At the beginning of 2016, 65.3 million had been uprooted by persecution and conflict, the largest number since World War II. Among this number were approximately 19.5 million refugees and asylum seekers worldwide and this number certainly increased during 2015 and 2016 in particular as a result of the refugee crisis in Syria and other countries.<sup>2</sup> In addition there were some 5.2 million Palestinian refugees residing in some sixty camps throughout the Middle East and registered with the United Nations (UN) Relief and Works Administration and constituting one of the world's largest protracted refugee situations. Because refugees find themselves in a situation in which their own government is unable or unwilling to ensure their physical safety and most fundamental human rights, they are forced to cross borders to seek protection from the international community.

<sup>1</sup> This chapter draws on Gil Loescher, "UNHCR and Forced Migration," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Quasiyeh, Gil Loescher, Katy Long and Nando Sigona (Oxford: Oxford University Press, 2014), 215–26.

<sup>2</sup> UNHCR, *Global Trends: Forced Displacement in 2015* (Geneva: UNHCR, June 2016).

While the refugee crisis is global, some regions of the world are more affected than others. For example, most of the world's refugees are located in the poorest developing countries. As a general rule, more than 85 percent of refugees are housed in countries neighboring their own and less than 5 percent of the world's refugees seek asylum in the advanced industrialized countries of the North. Although the number of refugees is large, the great majority of forcibly displaced people remain within the borders of their own countries and are known as internally displaced persons (IDPs). IDPs are defined as persons in a refugee-like situation who have not crossed the borders of their country. At the beginning of 2016, there were over 40.8 million IDPs.<sup>3</sup>

Most refugee movements and internal displacements are caused by war, persecution, ethnic strife, weak governmental institutions, and sharp socioeconomic inequalities or a combination of these factors. The difficulty in building durable state structures in the context of deep ethnic divisions and economic underdevelopment in failed and fragile states often leads to domestic conflict and political instability. In addition, forced migrations are generated by actions of both governments and nonstate actors, ranging from decrees and overt use of force to more covert persecution, intimidation, discrimination, and inducement of an unwanted group to leave. Governments and nonstate actors alike take steps to effect ethnic cleansing in their areas of control, forcing out perceived enemy social classes and ethnic groups in order to consolidate political control.

In recent years there has been an upsurge in violent armed conflicts in countries such as Burundi, the Central African Republic, Iraq, Libya, South Sudan, Syria, Ukraine, and Yemen. In addition, protracted conflicts in Afghanistan, the Democratic Republic of Congo, and Somalia among others remain unresolved and have sparked new displacements. Forced displacement caused by armed conflict often lasts a very long time and typically continues well beyond the end of actual hostilities. The task of finding solutions for refugees and IDPs has become increasingly difficult and a significant majority of refugees and IDPs typically remain in displacement for five, ten, or even twenty years and more. By 2016, almost three-quarters of the global refugee population under UN High Commissioner for Refugees (UNHCR) protection was in a protracted refugee situation and the majority of the world's refugees and IDPs had spent more than twenty years in exile or internally displaced.<sup>4</sup>

A number of international organizations both inside and outside the UN system play a role in responding to forced migration. These include at the UN level: the United Nations Children's Fund (UNICEF), the World Food Programme (WFP),

<sup>3</sup> For current figures see Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/global-figures>.

<sup>4</sup> James Milner, "Protracted Refugee Situations," in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Quasieyeh et al. (Oxford: Oxford University Press, 2014), 151–62.

the UN Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (OCHA), and the International Organization for Migration (IOM), and outside the UN, the International Committee for the Red Cross (ICRC) and numerous other international organizations and nongovernmental organizations (NGOs).<sup>5</sup> This chapter examines the roles, functions, achievements, and failures of the principal international organization, the Office of the UNHCR, to protect refugees and IDPs and to find solutions to their plight. It begins by outlining some of the similarities and differences between refugees and IDPs. It then discusses the complex history, development, and limitations of the legal, normative, and institutional regimes for both refugees and IDPs. Finally the chapter outlines some of the current challenges and emerging issues for responding to both kinds of forced displacement before assessing the overall successes and failures of the international regime for forced displacement.

## REFUGEES AND IDPs: SIMILARITIES AND DIFFERENCES

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Refugees and IDPs are both victims of forced migration. The common conceptual feature that connects both is the unwillingness or inability of the country of origin to ensure the protection of its own citizens. Because both categories of people face threats to their personal safety and security, they seek access to protection outside their home community. Hence both groups need international protection.

Despite these similarities, from a legal perspective, refugees are fundamentally different than IDPs. Refugees cross borders to seek safety and protection either in neighboring countries or travel across continents to seek asylum. Because refugees are individuals who have fled their home country and no longer enjoy the legal protections afforded to citizens of a state, the 1951 Refugee Convention stipulates that refugees should have access to national courts, the right to employment and education, and a host of other social, economic, and civil rights on a par with nationals of the host country. In addition, the Convention grants the right of *non-refoulement*: the right not to be returned to a country where a person risks persecution which is now a principle of customary law.<sup>6</sup> Most importantly, refugees enjoy the protection of a UN agency, the UNHCR.

<sup>5</sup> For a discussion of the roles of many of these organizations see Chapter 14 in this volume: Thomas Weiss, "Humanitarian Action."

<sup>6</sup> Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007).

In contrast, IDPs do not cross borders to seek protection and assistance abroad. Because they have not left their own country they remain under the jurisdiction of their own government even in cases where government forces or authorities are responsible for their displacement. State sovereignty prevents the international community from intervening without the permission of the home country, unless the UN Security Council authorizes such action under Chapter VII of the UN Charter. Hence UN agencies and other international actors must seek permission of national authorities and at most play a subsidiary role of supporting government action even in situations where a government has withdrawn its presence from areas of displacement.

Despite these differences, in recent years the international community has accepted that IDPs are a specific category of international concern.<sup>7</sup> At the universal level, states regularly reaffirm their recognition of an international framework for the protection of IDPs, namely the “Guiding Principles on Internal Displacement.” Similarly, the adoption of the Kampala Convention strengthened cooperation on this issue at the regional level. Finally, the adoption of a number of specific laws, protection-oriented strategies, and policies at the national level further illustrates the growing importance of state concern for IDPs. While these are encouraging developments and will be discussed later in this chapter, the implementation of these norms remains slow and uneven and their effectiveness will depend on the degree of compliance by states affected by internal displacement and on monitoring by the international community.

## REFUGEES: THE UNHCR AND THE EVOLUTION OF THE REFUGEE REGIME

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While forced migration has been a feature of international society for a long time, international institutional concern for refugees only began in 1921 when the League of Nations appointed Fridtjof Nansen as the first High Commissioner for Refugees to respond to the outflow of Russian refugees after World War I. Over the next twenty years, the scope and functions of assistance programs for refugees in Europe gradually expanded, as efforts were made to regularize the status and control of stateless and denationalized peoples. During and after World War II, the United Nations

<sup>7</sup> Walter Kalin, “Internal Displacement,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Quasieyeh et al. (Oxford: Oxford University Press, 2014), 163–75.

Relief and Rehabilitation Agency and the International Refugee Organization, further developed the international organization framework.<sup>8</sup>

Since 1951, an international refugee regime composed of the UNHCR and a network of other international agencies, national governments, and voluntary organizations or NGOs have developed a response strategy that permits some refugees to remain in their first countries of asylum, enables others to be resettled in third countries, and arranges for still others to be repatriated to their countries of origin. Although unevenly applied, international laws that designate refugees as a unique category of human rights victims, who should be accorded special protection and benefits have been signed, ratified, and in force for over six and a half decades. In addition to its work for refugees, since 2005 the UNHCR has been the lead agency for protection, shelter, and camp maintenance for conflict-induced internally displaced persons around the world.

The Office's Statute sets out a clear mandate, defining the UNHCR's core mandate as focusing on two principal areas: to work with states to ensure refugees' access to protection from persecution and to ensure that refugees have access to a range of durable solutions. The UNHCR has also become the principal organization within the global refugee regime. The centerpiece of the regime is the 1951 Convention relating to the Status of Refugees, which provides a definition of who qualifies for refugee status, namely any person who is outside their country of origin due to a well-founded fear of persecution due to their race, religion, nationality, or political opinion. Because refugees are individuals who have fled their home country and no longer enjoy the protections afforded to a citizen of a state, the 1951 Convention also sets out the rights to which all refugees are entitled, namely that refugees should have access to national courts, the right to employment and education, and to a host of other social, economic, and civil rights on a par with nationals of the host country. The 1951 Convention also explicitly identifies the UNHCR as having supervisory responsibility for its implementation. The Office, therefore, has responsibility for monitoring and supporting states' compliance with the norms and rules that form the basis of the global refugee regime.<sup>9</sup>

Despite these provisions in its Statute and in the 1951 Convention, at its creation states ensured that the UNHCR had a limited role.<sup>10</sup> They originally restricted the Office's work to individuals who were refugees as a result of events in Europe occurring before 1951. The refugee instruments also focused exclusively on refugees to the exclusion of other displaced persons. Furthermore, states originally required

<sup>8</sup> Phil Orchard, *A Right to Flee: Refugees, States, and the Construction of International Cooperation* (Cambridge: Cambridge University Press, 2014); and Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (Oxford: Clarendon Press, 1995).

<sup>9</sup> Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007).

<sup>10</sup> Gil Loescher, *UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001).

UNHCR to be a small, low-budget, and temporary organization that would play an exclusively legal advisory role rather than in engage in the provision of material assistance. Yet, from these inauspicious beginnings, the Office has over time expanded and adapted to become a permanent global organization with an annual budget in 2016 of \$6.5 billion and 9,700 staff in 126 countries, offering protection and assistance not only to refugees but also to IDPs, stateless persons, and other displaced people.

At key turning points in the past six and a half decades, the Office has responded to changes in the political and institutional environment within which it works by reinterpreting and broadening its role and mandate.<sup>11</sup> From the 1960s on, using UN General Assembly “Good Offices” resolutions, the UNHCR expanded beyond its original focus on providing legal protection to refugees fleeing communist regimes in Eastern and Central Europe to becoming increasingly involved in refugee situations in the Global South. The passage of the 1967 Protocol eliminated the temporal and geographical limitations of the 1951 Convention. During the 1960s, violent decolonization and post-independence strife generated vast numbers of refugees in Africa, which required it to take on an ever greater role in providing material assistance. The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which applies to Africa only, broadened the refugee definition further to include those fleeing “occupation, conflict and serious public order disturbances.” During the 1970s, mass exoduses from East Pakistan, Uganda, and Indochina; highly politicized refugee crises in Chile, Brazil, and Argentina; and the repatriation of refugees and IDPs in southern Sudan expanded the UNHCR’s mission around the globe. Following the refugee exoduses in South and Central America, the 1984 Cartagena Declaration on Refugees expanded the regional refugee definition to include those fleeing “generalized violence, foreign aggression, internal conflicts or massive violations of human rights.” The 1980s also saw the Office shift away from its traditional focus on legal protection and assume a growing role in providing assistance to millions of refugees in camps and protracted situations in Southeast Asia, Central America and Mexico, South Asia, the Horn of Africa, and Southern Africa. During the post-Cold War era, the UNHCR assumed a wider role in providing massive humanitarian relief in intrastate conflicts and engaging in repatriation operations across the Balkans, Africa, Asia, and Central America. The late 1990s and early twenty-first century have seen the UNHCR take on ever greater responsibility for the victims of some major natural disasters and to assume formal responsibility for the protection of conflict-induced IDPs. The expansion of the Office’s work to include these new areas has often been

<sup>11</sup> Alexander Betts, Gil Loescher, and James Milner, *UNHCR: The Politics and Practice of Refugee Protection* (Abingdon: Routledge, 2016); and Anne Hammerstad, *The Rise and Decline of a Global Security Actor: UNHCR, Refugee Protection and Security* (Oxford: Oxford University Press, 2014).

controversial, and there have been concerns that the UNHCR has sometimes acted in ways that contradicted or undermined its refugee protection mandate.<sup>12</sup>

## THE UNHCR'S NORMATIVE AGENDA

Within this process of adaptation and expansion, the UNHCR has had limited political power. States remain the predominant actors in the international refugee regime. Nevertheless, the UNHCR is not entirely without means either to uphold its normative agenda or exercise a degree of autonomy. The UNHCR has at times assumed power beyond what states originally intended upon its creation.<sup>13</sup> In the past, most High Commissioners realized that in order to shape state behavior they had to exert their moral authority and leadership skills and use the power of their expertise, ideas, strategies, and legitimacy to alter the information and value contexts in which states made policy. The Office has tried to project refugee norms into an international system dominated by states who are, in turn, principally driven by concerns of national interest and security. Successful High Commissioners have convinced states that they can ensure domestic and interstate stability and can reap the benefits of international cooperation by defining their national interests in ways compatible with protection norms and refugee needs. In promoting its normative agenda, the UNHCR is further supported by NGOs, who not only act as the Office's main operational partners but also as norm entrepreneurs.

The UNHCR not only promotes the implementation of refugee norms; it also monitors compliance with international standards. Both the UNHCR Statute and the 1951 Convention authorize the organization to "supervise" refugee conventions. This opens up the possibility for the UNHCR to make judgments or observations about state behavior under refugee law and to challenge state policies when they endanger refugees. For example, in recent years, the UNHCR has given legal opinions on matters such as access to protection and detention of asylum seekers before

<sup>12</sup> Gil Loescher, "UNHCR at Fifty: Refugee Protection and World Politics," in *Problems of Protection: The UNHCR, Refugees and Human Rights*, ed. Niklaus Steiner, Mark Gibney and Gil Loescher (New York: Routledge, 2003), 3–18; Guy Goodwin-Gill, "UNHCR and Internal Displacement: Stepping into the Legal and Political Minefield," in *World Refugee Survey 2000* (Washington, DC: US Committee for Refugees, 2000), 26–31; Hammerstad, *The Rise and Decline of a Global Security Actor*.

<sup>13</sup> Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in World Politics* (Ithaca, NY: Cornell University Press, 2004); Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014); Loescher, *UNHCR and World Politics*.

regional and international courts such as the EU Court of Justice and the European Court of Human Rights and elsewhere.

For most of its history, the Office has also acted as a “teacher” of refugee norms and has sought to shape the conduct of states by its legitimacy and expertise. The majority of the UNHCR’s tactics have mainly involved persuasion and socialization in order to hold states accountable to their previously stated policies or principles. For example, High Commissioners have frequently reminded Western states that as liberal democracies and open societies they are obliged to adhere to human rights norms in their asylum and refugee admissions policies. Because the UNHCR possesses specialized knowledge and expertise about refugee law, states at times have deferred to the Office on asylum matters, for example when the Office has played a role in the refugee determination process in some states in Europe and elsewhere, particularly during the early period of its history.<sup>14</sup>

In recent decades, however, states have often questioned the UNHCR’s moral authority or simply ignored it in the interest of pursuing more restrictive asylum and refugee policies. As the scope of the global refugee regime has increased, efforts to ensure international solidarity and burden-sharing have been more problematic, particularly in recent times as European states confronted a mass influx of asylum seekers and migrants from Syria, Iraq, Afghanistan, Eritrea, and elsewhere in the Middle East, Africa, and Asia. In response to these and other refugee crises, states have often sought means of pursuing their interests in the global refugee regime by attempting to shift responsibility to other actors and by avoiding additional responsibilities.

Nevertheless, while its authority and legitimacy has consequently declined, during the past decade and a half the Office has tried to influence how states respond to refugees. During 2001–2, for example, the UNHCR initiated the Global Consultations on International Protection, which resulted in the adoption of an Agenda for Protection. Moreover, since 2007 the High Commissioner’s annual dialogues on Protection Challenges have provided a forum for states, NGOs, and experts to discuss action plans on issues such as mixed migration, burden-sharing, durable solutions, protracted refugee situations, IDPs, urban refugees, environmental displacement, and protection at sea. In response to the Syrian refugee crisis in 2016 the UNHCR played an important role in several conferences to address the financial dimensions of the crisis, to encourage new offers of resettlement places for Syrian refugees and to take part in a summit meeting on refugees at the UN General Assembly. Finally, the UNHCR continuously provides training and

<sup>14</sup> Loescher, *UNHCR and World Politics*; Gil Loescher and James Milner, “UNHCR and the Global Governance of Refugees,” in *Global Migration Governance*, ed. Alexander Betts (Oxford: Oxford University Press, 2011), 189–209; Arthur Helton, “What Is Refugee Protection? A Question Reconsidered,” in *Problems of Protection: The UNHCR, Refugees and Human Rights*, ed. Niklaus Steiner, Mark Gibney and Gil Loescher (New York: Routledge, 2003), 19–36.



promotes guidelines and standards for the international protection of refugees in handbooks, manuals, and in a variety of forums involving not only states but also experts, NGOs, and regional and local actors around the world.

## POLITICAL AND FINANCIAL CONSTRAINTS ON THE UNHCR

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The UNHCR is dependent on voluntary contributions to carry out its work. This gives significant influence to a limited number of states in the Global North who have traditionally funded the bulk of its operational budget.<sup>15</sup> At the same time, the Office works at the invitation of states to undertake activities on their territories and must therefore negotiate with a range of refugee hosting states, especially in the Global South. The UNHCR is consequently placed in the difficult position of trying to facilitate cooperation between donor states in the Global North and host states in the Global South. At the same time, the Office works within changing global contexts, with changing dynamics of displacement, and with a range of partners, both within and outside the UN System. The humanitarian world is now characterized as a competitive marketplace that involves a vast range of actors each with their own mandate, institutional identity, and drive to protect their own interests.<sup>16</sup> These political and institutional constraints affect the functioning of the global refugee regime and in some situations the ability of the UNHCR to fulfill its mandate.

Since the end of the Cold War, Western states have largely limited the asylum they offer to refugees and have focused on efforts to contain refugees in their region of origin.<sup>17</sup> Deterrence policies are aimed at physically or legally preventing refugees from reaching the territory of asylum states. These measures include nonarrival policies, such as pre-departure checks of boarding passengers by immigration liaison officers in key transit countries, strict visa requirements, sanctions against airlines carrying asylum seekers, and the deployment of warships to intercept illegal boats carrying asylum seekers on the high seas.<sup>18</sup>

<sup>15</sup> In recent years the top ten donor states are the United States, the European Commission, Japan, Sweden the Netherlands, Norway, the United Kingdom, Germany, Denmark, and Canada.

<sup>16</sup> Martin Gottwald, "Competing within the Humanitarian Marketplace: UNHCR's Organizational Culture and Decision-Making Process," *New Issues in Refugee Research*, Working Paper 190 (2010).

<sup>17</sup> Andrew Shacknove, "From Asylum to Containment," *International Journal of Refugee Law* 5/4 (1993): 516–33.

<sup>18</sup> For a discussion of these measures see Thomas Gammeltoft-Hansen, "International Refugee Law and Refugee Policy: the Case of Deterrence Policies," *Journal of Refugee Studies* 27/4 (2014): 574–95.

From the 1990s, states in the developing world also began to place restrictions on asylum.<sup>19</sup> Some states closed their borders to prevent arrivals, pushed for the early and often unsustainable return of refugees to their country of origin, and, in exceptional cases, forcibly expelled entire refugee populations. More generally, states have been placing limits on the quality of asylum they offer to refugees, by denying them the social and economic rights contained in the 1951 Convention, such as freedom of movement and the right to seek employment. Many states in the South now require refugees to remain in isolated and insecure refugee camps for protracted periods, cut off from the local community, and fully dependent on international assistance.<sup>20</sup> Even greater numbers of refugees and IDPs are residing in overcrowded and unsafe urban areas mostly without international protection and assistance and with different needs and livelihood opportunities.

The crisis of asylum in both the North and South has confronted the UNHCR with a nearly impossible task. As the global crisis of asylum emerged, states largely devised their own responses to insulate themselves from the growing number of refugees seeking access to their territories. The lack of cooperation by states, coupled with a long-standing global impasse over cooperation between Northern donor countries and Southern host states, has significantly frustrated the UNHCR's activities.<sup>21</sup>

## IDPs: THE EVOLUTION OF AN INTERNATIONAL INSTITUTIONAL FRAMEWORK

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While there has been global institutional concern for refugees since the early 1920s, IDPs have only recently attracted the attention of the international community. At the creation of the UNHCR in December 1950, governments debated whether “internal refugees”—internally displaced people—should be included in the refugee definition and decided to exclude these groups from the UNHCR mandate despite the opposition of some developing countries such as

<sup>19</sup> James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Basingstoke: Palgrave Macmillan, 2008).

<sup>20</sup> Amy Slaughter and Jeff Crisp, “A Surrogate State? The Role of UNHCR in Protracted Refugee Situations,” in *Protracted Refugee Situations: Political, Human Rights and Security Implications*, ed. Gil Loescher et al. (Tokyo: UN University Press, 2008), 123–40.

<sup>21</sup> Gil Loescher and James Milner, “The Missing Link: The Need for Comprehensive Engagement in Protracted Refugee Situations,” *International Affairs* 79/3 (2003): 595–613; Antonio Guterres, “Millions Uprooted: Saving Refugees and the Displaced,” *Foreign Affairs* 87/5 (September–October 2008): 90–9.

Pakistan.<sup>22</sup> Throughout the Cold War internal displacement was widely regarded to belong to states' internal affairs. For the most part, the UNHCR did not challenge the traditional notions of sovereignty and the principle of nonintervention in the domestic affairs of states. Thus, the Office refused to become involved in some of the major internal conflicts of the 1960s such as the Indonesian coup of October 1965 and the 1967–70 conflict in Biafra. During the 1970s and 1980s the High Commissioner was occasionally asked to assist IDPs, but only on an ad hoc basis. Furthermore, the UNHCR only undertook such activities when the operation was closely linked to refugee protection, the work fell within the Office's expertise, and the UNHCR had the permission of the host state. For the most part, the UNHCR focused its activities on refugees who had crossed national borders and avoided taking responsibility for IDPs.

IDPs only began to gain international attention at the end of the Cold War. The Iraqi Kurdish crisis of 1991, the political and ethnic conflicts following the breakup of the former Yugoslavia and former Soviet Union, and the emergence of new intra-state conflicts throughout Africa and Asia generated huge numbers of IDPs. The global number of IDPs ballooned from an estimated 1.2 million in 1982 to 20 to 25 million people in 1995. The rapid growth of IDPs and humanitarian emergencies led to a widespread recognition that there was a need to develop a coherent and effective legal basis for protecting IDPs and to establish a reliable institutional basis to provide them with protection and assistance.<sup>23</sup> In order to highlight this problem and to generate support for IDPs, the UN Secretary-General appointed Francis Deng to become his Representative for IDPs in 1991. The following year the UN Human Rights Commission created the mandate for the position. At the same time, a group of NGOs drew attention to the fact that IDPs were a human rights problem requiring international focus and attention as well as a change of view and policy toward state sovereignty. These developments, along with the tragedies of Rwanda, Srebrenica, and NATO's intervention in Kosovo, contributed to the adoption of the "Responsibility to Protect" (R2P) doctrine by the UN General Assembly in 2005. In subsequent years, R2P was used selectively to assist refugees and displaced people in situations such as Libya in 2011. However, in Syria, UNHCR and humanitarian agencies have been largely restricted to working outside borders.<sup>24</sup>

<sup>22</sup> Loescher, *UNHCR and World Politics*. The United States in particular opposed the incorporation of IDPs in the refugee definition in order to forestall an assistance mandate being extended to the newly created UNHCR. See Phil Orchard, "The Contested Origins of Internal Displacement," *International Journal of Refugee Law* (forthcoming).

<sup>23</sup> Thomas Weiss and David Korn, *Internal Displacement: Conceptualization and its Consequences* (Abingdon: Routledge, 2006); Phil Orchard, "The Perils of Humanitarianism: Refugees and IDP Protection in Situations of Regime-Induced Displacement," *Refugee Studies Quarterly* 36/2 (2010): 281–303.

<sup>24</sup> For analysis of R2P see Chapter 14 of this volume by Thomas Weiss: "Humanitarian Action"; Thomas Weiss, *Humanitarian Intervention: Ideas in Action*, 2nd ed. (Cambridge: Polity Press, 2012);

Throughout the 1990s, however, existing international organizations, including the UNHCR, resisted assuming formal responsibility for IDPs. While the Office had acted with UN support as lead agency in providing in-country protection in IDP emergencies in northern Iraq and in the former Yugoslavia there was little enthusiasm within the Office for formally expanding the organization's mandate to include the internally displaced.<sup>25</sup> In 1993, the UNHCR published a set of broad and flexible guidelines concerning the organization's activities on behalf of IDPs, allowing the Office to avoid a formal commitment to IDPs but also giving it the flexibility to get involved in IDP emergencies the agency considered appropriate or politically important to address. Most importantly, however, the guidelines did not resolve the problem of how the international community should deal with IDPs nor did they clarify the scale, scope, or duration of the UNHCR's operational involvement.<sup>26</sup>

In the face of resistance from the UNHCR and other international organizations to take formal responsibility for IDPs, Deng and his colleagues took a series of steps to increase the international visibility of IDPs and to develop a legal and normative framework for their protection.<sup>27</sup> This culminated in 1998 in the creation of the "Guiding Principles on Internal Displacement" which drew upon states' existing obligations under international human rights law and international humanitarian law to create a soft law framework defining states' obligations to IDPs.

Since 1998, international bodies have welcomed and explicitly referred to these principles when monitoring the implementation of international law. In 2005, the UN World Summit of heads of states and government unanimously recognized the Guiding Principles as an important international framework for the protection of IDPs. The Guiding Principles have also been included in the policies of many UN agencies, of regional organizations, and of individual states. For example, in 2006, the International Conference on the Great Lakes Region adopted the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Person which obliged the ten states parties to fully incorporate the Guiding Principles into their domestic legal order and thus provide them with the force of law.<sup>28</sup> In 2009 the

and Jennifer Welsh, "Implementing the Responsibility to Protect: Catalyzing Debate and Building Capacity," in *Implementation and World Politics: How International Norms Change Practice*, ed. Alexander Betts and Phil Orchard (Oxford: Oxford University Press, 2014), 124–43.

<sup>25</sup> On the history and risks of linking refugee crises with military intervention see: Adam Roberts, "Refugees and Military Intervention," in *Refugees in International Relations*, ed. Alexander Betts and Gil Loescher (Oxford: Oxford University Press, 2011), 213–35; and Hammerstad, *The Rise and Decline of a Global Security Actor*.

<sup>26</sup> UNHCR's Role with Internally Displaced Persons, IOM-FOM 33/93 of April 28, 1993; and Gil Loescher and Jeff Crisp, "UNHCR's Role in Protecting and Assisting Internally Displaced People," Central Evaluation Section, Discussion Paper, UNHCR, Geneva, November 1993.

<sup>27</sup> Weiss and Korn, *Internal Displacement*.

<sup>28</sup> Regarding the history and status of the Guiding Principles in international law see Francis Deng, *Protecting the Dispossessed: A Challenge for the International Community* (Washington, DC: Brookings Institution, 1993); Roberta Cohen and Francis Deng, *Masses in Flight: The Global Crisis of Internal*

African Union adopted the Kampala Convention addressing internal displacement in a comprehensive manner and requiring states parties to enact appropriate domestic legislation and to create an institutional framework for the coordination of IDP-related activities and allocation of funds to ensure implementation. In December 2012, the Kampala Convention entered into force.

Alongside the creation of these principles, an international institutional framework for the protection of and assistance to conflict-induced IDPs emerged. From 1998, the Internal Displacement Monitoring Center has gathered and published data on conflict-induced internal displacement, which led to an increase in attention to the plight of IDPs and a steadily growing involvement in the issue by the international community. The UN Inter-Agency Standing Committee (IASC), the primary mechanism for interagency coordination of humanitarian assistance by UN agencies, attempted to coordinate the responses to IDP emergencies through a so-called “collaborative” approach in which agencies jointly engaged in the protection of IDPs. Despite these efforts, various gaps in humanitarian assistance persisted resulting in inconsistent policy and programmatic responses to IDP crises and a glaring disparity between the assistance provided by the UNHCR to refugees and the ad hoc assistance afforded to IDPs. Consequently, in 2005, the IASC undertook a review of the international response to IDPs that called for better coordination of the delivery of humanitarian assistance by both intergovernmental actors and NGOs. Antonio Guterres, the UNHCR High Commissioner, strongly supported greater engagement by his Office with the issue of IDPs. A new division of responsibility emerged under the so-called “cluster” approach in which different UN and international agencies share responsibility for responding to different aspects of the needs of IDPs.<sup>29</sup> Since 2006, the UNHCR has taken responsibility for IDP protection and the provision of shelter and camp management in conflict situations. The ICRC plays a major role in the protection of civilians and IDPs in the midst of internal armed conflict and in negotiations with both governments and nonstate actors, such as rebel armies.<sup>30</sup> Other agencies, such as the IOM, assumed responsibility for

*Displacement* (Washington, DC: Brookings Institution, 1998); Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge: Cambridge University Press, 2005); Simon Bagshaw, *Developing a Normative Framework for the Protection of Internally Displaced Persons* (Ardsey, NY: Transnational Publishers, 2005); Walter Kalin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed. (Washington, DC: American Society of International Law, 2008); Walter Kalin et al., *Incorporating the Guiding Principles on Internal Displacement into Domestic Law* (Washington, DC: American Society of International Law, 2010); Phil Orchard, “Implementing a Global Internally Displaced Persons Protection Regime,” in *Implementation and World Politics: How International Norms Change Practice*, ed. Alexander Betts and Phil Orchard (Oxford: Oxford University Press, 2014), 105–23; Phil Orchard, *Protecting the Internally Displaced: Rhetoric and Reality* (Abingdon: Routledge, 2016).

<sup>29</sup> Inter-Agency Standing Committee, Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response, November 24, 2006.

<sup>30</sup> Miriam Bradley, *Protecting Civilians in War: The ICRC, UNHCR and their Limitations in Internal Armed Conflict* (Oxford: Oxford University Press, 2016); and David Forsythe and

camp coordination and camp management for disaster IDPs, the WFP for IDPs' food and nutrition, and UNICEF for child protection.

## KEY POLICY CHALLENGES: FAILURE OF DURABLE SOLUTIONS AND THE RISE OF PROTRACTED DISPLACEMENT

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The UNHCR was created with two core functions: to protect refugees and to solve refugee problems. However, in recent years the three durable solutions that can bring refugees' exile to an end—voluntary repatriation and reintegration (return to the country of origin), local integration (permanent residency or naturalization in the first country of asylum), and resettlement (ordered migration to a third country)—have failed to resolve most refugee situations and refugees have consequently spent longer times in exile. By the beginning of 2016, over half of the global refugee population under the UNHCR mandate, had been in exile for more than five years. In fact, the average duration of a refugee situation is now about twenty years.<sup>31</sup>

Since the late 1980s, repatriation or return to countries of refugees' origin has been the preferred durable solution of states and the UNHCR. With the return home of refugees, asylum countries are relieved of the financial, political, and security costs of providing a haven for refugees. Donor countries prefer repatriation to the expenses of maintaining long-staying refugees in camps or to bearing a greater resettlement burden themselves. Countries of origin sometimes welcome the return home of their citizens as a visible sign of confidence in a change of regime. For many refugees, return to their homes is a highly prized ideal and aspiration. For many years the UNHCR has tried to create conditions for sustainable return to countries of origin by encouraging collaboration with development actors such as the World Bank and UNDP with mixed results.<sup>32</sup> However, repatriation is not always possible or preferable. In situations where there are ongoing conflict or human rights violations the prospects for sustainable return and reintegration are slim. In several situations in recent decades, involving Burmese Rohingya in Bangladesh, Rwandese

B. Rieffer-Flanigan, *The International Committee of the Red Cross: A Neutral Humanitarian Actor* (Abingdon: Routledge, 2007).

<sup>31</sup> UNHCR, *Global Trends*; and Milner, "Protracted Refugee Situations."

<sup>32</sup> Jeffrey Crisp, "Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process," *International Migration Review* 35 (Spring 2001): 168–91.

Hutu in the Democratic Republic of the Congo, and Somalis in Kenya, to name only a few, the UNHCR has faced considerable pressures to push for involuntary repatriation. In mid 2016, the UNHCR reported that during the previous year only 201,400 refugees were repatriated. Compared to the 1990s when returns exceeded a million or more most years, in 2015 large numbers of unresolved violent conflicts in the Middle East, Africa, and Asia kept repatriations at very low levels.<sup>33</sup>

The UNHCR has also encouraged local integration through providing integrated community development assistance to both refugees and host communities. In recent years, a limited number of states have adopted programs for the naturalization and integration of refugees but these programs have encountered domestic political constraints and diminishing support from donor states. In reality, many host countries are politically unstable and have weak economies. Thus, relatively few host states are prepared to allow refugees freedom of movement and the right to work, let alone provide them with the opportunity to integrate fully, acquire residency, and work toward citizenship.

Resettlement efforts, too, have been disappointing in recent years with state willingness to resettle refugees declining. While some twenty-seven countries now have resettlement programs, the United States, Canada, and Australia resettle over 90 percent of the total. During the Cold War, very large numbers of refugees were resettled in the West reaching a peak during the Vietnamese boat-people crisis. Subsequently, however, the major resettlement states, particularly the United States, significantly reduced their annual intake of resettled refugees. In the aftermath of 9/11, refugee and immigrant entry controls have become increasingly securitized in the United States and elsewhere. In addition, the challenge and cost of integrating refugees makes many states wary of promoting large resettlement programs. In 2015, a total of 107,100 refugees were admitted by resettlement countries.<sup>34</sup> While these numbers are important, they pale in significance compared to the more than 4 million Syrians given refuge by host countries in the Middle East.

The decline in the effectiveness of the traditional durable solutions in recent years has resulted in a dramatic rise in the number of protracted refugee situations. Many of today's long-staying refugees were originally displaced in the early 1990s during conflicts in the Balkans, the Horn of Africa, West Africa, Central Africa, Colombia, and Southeast and Southwest Asia. Today many of these situations remain unresolved and many of these refugees now find themselves in protracted exile. In recent years, these long-staying refugees have been joined by millions of newly displaced refugees and IDPs uprooted by conflicts in Africa, the Middle East, Southwest Asia, and Ukraine. The UNHCR has been unable to leverage sufficient solutions for refugees many of whom are stranded in increasingly restrictive situations in host countries. Many are either confined to camps or are

<sup>33</sup> UNHCR, *Global Trends*.

<sup>34</sup> *Ibid.*

stranded in urban areas and are denied the opportunity to be self-reliant or to pursue a solution through local integration or resettlement. At the same time, the challenge of finding solutions for protracted refugee situations has coincided with the decline of donor state support for long-term refugee assistance and repatriation programs. These developments coincide with the outbreak of new refugee crises on the high seas, most vividly illustrated in recent times by the boat-people crises in the Mediterranean Sea and the Gulf of Aden as well as in the seas around Southeast Asia and Australia. At the same time, large numbers of refugees continue to be confined in camps across the Global South and provided with declining levels of food, shelter, and other needs by long-term “care and maintenance” programs by the UNHCR and NGOs. Even larger numbers of forcibly displaced people find their own way to one of the burgeoning cities of the Global South where they live alongside equally deprived local citizens and often receive insufficient support from the host state or the international community. Despite the close linkage between protracted conflict and protracted displacement, peace and security actors have largely failed to adequately address the conflict and human rights issues in countries of origin, and development agencies have not sufficiently engaged with finding solutions to long-staying refugee populations, particularly through repatriation and local integration.

In light of the failure of the traditional durable solutions to resolve protracted exile, many refugees are increasingly seeking their own solutions through irregular onward migration outside their region of origin. In the future the UNHCR and states will need to address the problems of chronic and unresolved exile with policies based increasingly on the capacities, interests, and aspirations of the displaced populations themselves.

## **KEY POLICY CHALLENGES: THE UNHCR’S DEPENDENCE ON FUNDING AND COOPERATION FROM STATES**

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The UNHCR’s relationships with states have changed significantly over time. The most important of these is the Office’s relationship with donor states, who control the direction of its work through the tight control of the organization’s resources. Contributions from the UN regular budget now account for less than 3 percent of the UNHCR’s Annual Budget. As a result, the UNHCR today is almost exclusively dependent on voluntary contributions from states to carry out its programs.



This dependence is compounded by the fact that funding has tended to come from a relatively small number of so-called traditional donors in the industrialized world, with around three-quarters of its budget coming from its top ten donors. The unpredictability of funding and the concentration of donorship have placed the UNHCR in a precarious political position. While the Office has attempted to safeguard the integrity of its mandate by being seen as politically impartial, its ability to carry out its programs depends upon its ability to respond to the interests of a relatively small number of donor states.

The influence of donor states is increased through their ability to specify how, where, and on what basis their contributions may be used by the UNHCR. This practice, known as “earmarking,” remains commonplace. The practice of earmarking allows donors to exercise considerable influence over the work of the UNHCR as programs considered important by donors receive considerable support, while those deemed less important receive less support.

During recent years, the numbers and needs of refugees have been growing considerably faster than the level of funding available globally for humanitarian aid. Thus currently more than half of the needs of refugees and other populations of concern to the UNHCR remain unaddressed further exacerbating their vulnerability. The Office needs significantly more secure funding to address the most basic needs of the people it is mandated to care for.

The interests of a relatively small number of northern states have been highly influential in determining the UNHCR's activities. Perhaps the most damaging effect of a concentration of donors is the perception by southern states that the UNHCR is beholden to a relatively small number of northern donors and therefore is tied to their interests. These perceptions have further frustrated efforts at ensuring international cooperation within the global refugee regime in recent years.

The UNHCR depends on cooperation and guidance from states in both the Global North and South. The Office's Executive Committee (ExCom) currently has 98 states as members. ExCom is responsible for approving the Office's budget and program, for setting standards and reaching conclusions on international refugee protection policy issues, and for providing guidance on the UNHCR's management, objectives, and priorities. It is the only specialized multilateral forum at the global level responsible for contributing to the development of international standards relating to refugee protection. Excom Conclusions are authoritative statements both on refugee rights and standards and on what states and other stakeholders should do to guarantee them. In recent years, ExCom has become too large and politicized, and operates less effectively as a decision-making body.<sup>35</sup> Not only are there too many participants, but the issues are complex, divisive, and numerous and

<sup>35</sup> Betts, Loescher, and Milner, *UNHCR: The Politics and Practice of Refugee Protection*, 108–12; Marion Fresia, “Building Consensus within UNHCR Executive Committee: Global Refugee Norms in the Making,” *Journal of Refugee Studies* 27/4 (2014): 514–33.

meetings are seldom a forum for organizational guidance. In addition, the increasing divide between industrialized states and developing countries makes international consensus on refugee matters exceedingly difficult to achieve. In recent years, most of the substantive discussions between the UNHCR and governments have taken place during side meetings outside the formal sessions of Excom, for example on issues such as naturalization of Burundian refugees in Tanzania, approaches to livelihoods, and new partnerships with the World Bank.

## KEY POLICY CHALLENGES: THE REFUGEE REGIME COMPLEX

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In recent decades the work of the UNHCR has been further complicated by the dramatic increase in new forms of international cooperation at the bilateral, regional, and international levels in the areas of labor migration, international travel, human rights, humanitarianism, security, development, and peacebuilding. A “refugee regime complex”<sup>36</sup> has emerged in which these different institutions overlap, exist in parallel to each other, and influence states’ policies toward refugees. With this proliferation of new actors, the UNHCR has had to compete for funds, visibility, and territory.

Many of the new institutions offer states the opportunity to bypass the UNHCR and the 1951 Convention when addressing their concerns with asylum. For example, new forms of interstate cooperation on irregular migration enable many states to limit the access of asylum seekers and migrants to their territory. Within the international travel regime, regional forums have been established which enable states to develop bilateral agreements on issues such as visa control, readmission agreements, international zones at airports, and extraterritorial border management. These mechanisms allow states to collectively manage who reaches their territory thereby enabling states to reduce asylum seekers’ access to spontaneous arrival without overtly violating the norms of the refugee regime.

While competition has clearly complicated the UNHCR’s work and effectiveness, the emergence of overlapping institutions has also enabled the Office to develop new partnerships that permit the Office to better fulfill its mandate. For example, a number of international human rights instruments provide sources of protection for refugees fleeing persecution that come from outside of international refugee

<sup>36</sup> Alexander Betts, “The Refugee Regime Complex,” *Refugee Studies Quarterly* 29/1 (2010).

law.<sup>37</sup> With only a few exceptions, refugees are entitled to rights set out in international and regional human rights treaties and customary international law. Human rights treaties such as the International Convention on Civil and Political Rights and the Convention Against Torture provide protection against refugees being forcibly returned to situations where they would face a real risk of death, torture, or cruel, inhumane, or degrading treatment. At times, the Office has also collaborated with other institutions such as the UNDP or IOM in ways that enabled it to engage with the development and migration implications of forced displacement.

Much of the Office's recent work, particularly on behalf of conflict induced IDPs, is premised upon interagency collaboration through the UN's Inter-Agency Standing Committee. The UNHCR's participation in the cluster framework is a step forward in greater coordination with other agencies. To date, however, apart from its work on IDPs, the Office has resisted fully committing itself to the new focus within the UN on interagency integrated missions and to fully participating in unified responses to new humanitarian emergencies and crises. The UNHCR remains concerned that by sharing its mandated functions with other agencies it risks losing its lead status for protection, assistance, and solutions for refugees. However, in order for it to become more effective, UNHCR will likely have to overcome its resistance to international coordination and will have to further expand its international links by establishing stronger complementary overlap with other institutions such as the Office of the High Commissioner for Human Rights, the World Bank, and the UN Peacebuilding Commission (PBC).

## KEY POLICY CHALLENGES: CHANGING TRENDS IN FORCED MIGRATION

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While the refugee problem remains as relevant as ever, the range of forced displacement challenges has become increasingly diverse. Today the UNHCR faces the most rapid period of change in the nature of forced displacement in the more than six and a half decades of its existence. In addition to assuming the lead in protecting IDPs in conflict situations, climate change, state fragility, food insecurity, and rapid urbanization all raise fundamental questions for new understandings of the Office's mandate and role in providing protection for populations displaced by these new developments.

<sup>37</sup> Jane McAdam, *Complementary Protection* (Oxford: Oxford University Press, 2007).

International migration has increased rapidly in recent decades. The UNHCR now works in a context in which asylum seekers and other groups of migrants are increasingly hard to distinguish. Both groups move for a variety of reasons including persecution, escape from violence, and human rights violations, as well as in the search for employment and a better standard of living. Asylum seekers and migrants often use the same traffickers and migration routes and states often fail to differentiate between them. Refugees and IDPs increasingly settle in city centers or along the outskirts of urban areas where they are difficult to access. Thus, mixed migration poses a huge challenge for how the UNHCR protects refugees. Moreover, as new drivers of cross-border displacement continue to emerge with the complex interaction of state fragility, environmental change, and food insecurity, the Office faces the dilemma of how to respond to other categories of vulnerable migrants who have protection needs.<sup>38</sup>

As new challenges emerge, the UNHCR will face the question of how to adapt and how to define the boundaries of its “population of concern.” It will need to judiciously decide when and when not to take on new activities. And when new challenges are recognized as requiring an international response, it will need to carefully judge whether to take on such tasks or to encourage other actors to assume responsibility.

## IDPs: CURRENT CHALLENGES AND EMERGING ISSUES

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Since the adoption of the cluster approach in 2005, the UNHCR’s involvement with the protection of conflict induced IDPs has grown significantly.<sup>39</sup> In the decade before the cluster approach was introduced the number of IDPs “of concern” to the UNHCR was in the range of 4 to 6 million. By 2007 that number had jumped to 13.7 million; by the end of 2011 the Office was engaged with 15.5 million IDPs in thirty-one countries.<sup>40</sup> At the beginning of 2016, the UNHCR was working with more than 37.5 million conflict-induced IDPs out of a total 40.8 million IDPs around the world.<sup>41</sup> The prolongation of old internal conflicts and the emergence of

<sup>38</sup> Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca: Cornell University Press, 2013).

<sup>39</sup> Simon Russell and Vicky Tennant, “Humanitarian Reform: From Humanitarian Reform to Clusters and Beyond,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Quasieyeh et al. (Oxford: Oxford University Press, 2014), 302–16.

<sup>40</sup> UNHCR, *UNHCR Global Report 2007* (Geneva: UNHCR, 2008).

<sup>41</sup> UNHCR, *Global Trends*.

new ones in the Middle East, North Africa, South Sudan, Somalia, Central Africa, Afghanistan, and Ukraine indicate that the number of IDPs will grow even larger in future years.

The cluster approach has resulted in a number of positive and negative outcomes for the protection of IDPs. The UNHCR's own early evaluations claimed that the new approach had fostered a common strategic vision at country level, had clarified roles and responsibilities, had strengthened the mobilization of resources, and had improved coordination among agencies. Later evaluations were less positive. The protection cluster was consistently singled out as one of the least effective and least resourced of all the clusters.<sup>42</sup> Major criticisms are that international, national, and local NGOs have not been regarded as equal partners by the UNHCR and that the system is not sufficiently grounded in accountability to crisis-affected communities. In several instances, the clusters "excluded local and national actors and failed to link with, build on, or support existing coordination and response mechanisms thus weakening national and local ownership and capacities."<sup>43</sup>

While many states affected by internal displacement have domestic laws and policies, implementation of these by states hosting IDPs are frequently hampered by security problems and by a lack of capacity on the part of national and local authorities.<sup>44</sup> Many IDPs are still unaware of their rights and are inadequately consulted and advised by national and international agencies. More effort is required by the UNHCR to improve coordination and ensure IDP protection can be delivered not only as a legal framework but also in practice. Among other things, this will require closer cooperation, consultation, and partnership with regional, national, and local authorities, greater engagement and consultation with displaced populations and local communities, and greater commitment by the UNHCR to train larger numbers of staff with appropriate skills and to provide greater financial resources to more adequately fulfill its role in the IDP protection cluster.

The UNHCR activities regarding IDPs are largely shaped by the Guiding Principles. The primary focus of its work with IDPs is to work with governments to ensure that they do not discriminate against IDPs and that they observe their responsibilities to their citizens as set out in the Guiding Principles. The Office's activities include assisting governments to observe these rights, to advocate on behalf of IDPs, to inform IDPs of their rights, and to assist in building capacity in IDP communities. Unlike the work for IDPs undertaken by the ICRC and by peacekeeping operations, however, the UNHCR does not usually engage in the physical protection of the internally displaced in conflict zones or intervene with nonstate actors, such as warlords, militias, rebel groups, criminal networks, or

<sup>42</sup> Russell and Tennant, "Humanitarian Reform."

<sup>43</sup> A. Street et al., *Review of the Engagement of NGOs with the Humanitarian Reform Process: Synthesis Report* (Geneva: International Council of Voluntary Agencies, 2009).

<sup>44</sup> Phil Orchard, "Implementing a Global Internally Displaced Persons Protection Regime," 105–23.

other paramilitary forces to prevent physical abuse or other human rights violations. Thus, the UNHCR has at best a very limited role in the physical protection of IDPs and is neither well trained nor equipped to deal with the armed violence and physical insecurity that characterizes many of these situations. Consequently, in many IDP crises, the UNHCR's protection role is quite limited and often can only mitigate slightly, if at all, the very dangerous situation most IDPs find themselves in.<sup>45</sup>

Most IDP situations, like refugee situations, are protracted crises lasting many years if not decades. Neither the UNHCR nor any single intergovernmental agency can handle on their own the complex, diverse, and interconnected protection needs and vulnerabilities of displaced people caught in protracted displacement. Responding effectively to IDPs requires not only protection but peacebuilding and post-conflict reconstruction and a range of developmental strategies that require greater collaboration between the UNHCR and developmental and peacebuilding agencies such as the World Bank, the UNDP, and the UN PBC.

## TOWARD A MORE EFFECTIVE RESPONSE TO REFUGEES AND IDPs

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The expansion of the UNHCR's programs and populations of concern has allowed the organization to grow and maintain its relevance both to the interests of key donor states and to some host states in the south. However, it has also led to a continuous growth of its activities in often potentially contradictory ways. In fact, taking on an expanded role has sometimes had negative consequences for protection and for finding solutions for refugees and IDPs. The Office has struggled to ensure that refugees have access to international protection and the range of rights contained in the 1951 Convention. States' unpredictable financial contributions and increasingly restrictive responses to refugees in their territories mean that protection needs are often inadequately met. As noted earlier, the UNHCR has often failed to fulfill the solutions aspect of its mandate. Particularly alarming is the fact that the average duration of a refugee situation has nearly doubled in the past decade. At present more than 20 million refugees and IDPs live in extended and chronic exile. These facts vividly demonstrate that existing approaches to solving displacement have failed. However, these challenges also further demonstrate the ongoing

<sup>45</sup> Bradley, *Protecting Civilians in War*.

relevance of the UNHCR's core mandate and the need to reinvigorate its focus on its central responsibilities.

The prevalence of protracted displacement highlights the need to ensure refugees' and IDPs' timely access not only to durable solutions but also to encouraging states to adopt a more flexible approach to offering protection and more opportunities for long term residency and citizenship to displaced people.<sup>46</sup> One promising development has been the adoption of regional citizenship and freedom of movement accords in West Africa in recent years. Following the end of violent civil wars in the region, some refugees from Sierra Leone and Liberia in West Africa were not only reissued with national passports but also were permitted by regional agreements to remain in their host communities in neighboring countries where they were allowed to legally work and reside.<sup>47</sup> Recent initiatives in California permit noncitizens to sit on juries, monitor polls in elections, and even practice law. This is part of a trend in some US states to open up legal residency and possibly future citizenship for some illegal immigrants.<sup>48</sup> In the future, the international community needs to work harder to remove obstacles that prevent refugees and IDPs being able to exercise choice, including restrictions on movement, citizenship, residency, employment, and education. Such strategies and approaches that build on the capacities, interests, and aspirations of displaced persons themselves require more institutional flexibility from international organizations like the UNHCR and IOM. Finally, these initiatives need to take place within broader development and peacebuilding strategies aimed at resolving protracted refugee and IDP situations.<sup>49</sup>

While the relevance of the UNHCR's core mandate therefore remains as salient as ever, the nature of displacement is fundamentally changing in the twenty-first century. The Office has moved beyond its original focus on refugees to an involvement with other groups, including asylum seekers, returnees, stateless persons, IDPs, and victims of natural disasters. The UNHCR's work and policy concerns are interconnected in complex ways with broader issue areas such as migration, security, development, and peacebuilding. Protecting and finding solutions for refugees and IDPs are not just UNHCR issues but cut across a wide range of international organizations' work and mandates. In order to fulfill its core mandate of achieving protection and solutions for refugees, the UNHCR cannot avoid engaging proactively in response to these developments. However, this is not an argument for the

<sup>46</sup> Katherine Long, *Permanent Crises? Unlocking the Protracted Displacement of Refugees and IDPs* (Oxford: Refugee Studies Centre, 2011); and Katy Long, "Rethinking Durable Solutions," in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Quasiyeh et al. (Oxford: Oxford University Press, 2014), 475–87.

<sup>47</sup> International Federation of Red Cross (IFRC), *World Disasters Report 2012: Focus on Forced Migration and Displacement*.

<sup>48</sup> *New York Times*, September 21, 2013, 1.

<sup>49</sup> IFRC, *World Disasters Report 2012*; and "Protracted Displacement: The Challenge of Protection," *Refugee Survey Quarterly* 30/4 (2011).

Office to infinitely expand its mandate and become a migration organization or a development organization. Rather, it is an argument for a UNHCR that plays a facilitative and catalytic role in mobilizing other actors to fulfill their responsibilities with respect to refugees. The Office will also need to become more focused and strategic in the advocacy, coordination, and facilitation role that it plays. To be able to play such a role, it will need to overcome some key challenges—its governance, transparency, and ability to secure funding—while developing ways of engaging more effectively with the UN system, regional organizations, states, and with refugees and IDPs themselves.

The UNHCR is a unique international organization, which has adapted and changed over time in order to balance its own institutional interests, the interests of states, the protection of refugees and other displaced people, and the need to uphold its normative agenda. The history of the UNHCR highlights the significant role that an international organization can play as the guardian of an institutional framework over time in spite of changing configurations of interests and power relations. However, it also highlights how the tensions and contradictions implicit in this role can shape the trajectory of the organization itself and even affect its central role of the protection of refugees and IDPs. It is only by confronting and responding effectively and creatively to these tensions and readjusting its structures and tactics that the UNHCR will be able to fully realize its mandate of protecting refugees and IDPs and finding solutions to their plight.